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To: District Superintendents
Superintendent of Schools
New York City Board of Education
Superintendents of State-Operated Schools
Superintendents of State-Supported Schools
Principals of Public Schools
Principals of Nonpublic Schools
Administrators of Charter Schools
Directors of Pupil Personnel Services
Directors of Special Education
Chairpersons of Committee on Preschool Special Education
Chairpersons of Committee on Special Education
Impartial Hearing Officers
Approved Preschool Special Education Programs
Commissioner's Advisory Panel for Special Education Services
Commissioner's Advisory Panel for Nonpublic Schools
RSE-TASC Regional Coordinators
Regional School Support Centers

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Subject: Requirements Relating to the Use of Behavioral Interventions and Supports

On May 19, 2009, the United States (U.S.) House Committee on Education and Labor held a hearing to examine the uses of seclusion and restraint in U.S. schools (<http://edlabor.house.gov/documents/111/pdf/testimony/20090519GregKutzTestimony.pdf>). In light of this national report, Arne Duncan, Secretary of the U.S. Department of Education, has asked each state to publicize its policies and guidance for school districts to help ensure that "every student in every school is safe and protected from being unnecessarily or inappropriately restrained or secluded" and so that "administrators, teachers, and parents understand and consent to the limited circumstances under which these techniques may be used; ensure that parents are



notified when these interventions do occur; and provide the resources needed to successfully implement the policies and hold school districts accountable for adhering to the guidelines." (see <http://www.ed.gov/policy/elsec/guid/secletter/090731.html>)

The purpose of this memorandum is to publicize the regulations and guidance of the New York State Education Department (NYSED) governing the use of such interventions and to provide information to districts on the importance of developing a district wide approach to promote academic achievement while minimizing problem behavior for all NYS students. Protecting the health and safety of its students is one of the primary responsibilities of each school. As such, each district and approved private school, special act school district and State-operated school is required to establish a school district code of conduct and discipline that meets the requirements of Title 8 of the New York Code of Rules and Regulations (8 NYCRR) §¹100.2(l). Each school's code of conduct and discipline and behavioral interventions must be developed consistent with NYSED regulations that promote the use of positive behavioral supports and interventions and prohibit or limit use of certain types of behavioral interventions for students. NYSED regulations:

1. Prohibit the use of corporal punishment [8 NYCRR §§19.5];
2. Prohibit the use of aversive interventions, with limited exceptions [8 NYCRR §§19.5 and 200.22];
3. Authorize the limited use of unlocked time out rooms where a student is observed by staff at all times when a student needs an area to safely deescalate, regain control and prepare to meet expectations to return to his or her education program [8 NYCRR §200.22(c)]; and
4. Authorize the use of reasonable physical force, including the use of physical restraints only in emergency situations in which alternative procedures and methods not involving the use of physical force cannot reasonably be employed [8 NYCRR §§19.5 and 200.22(d)].

The attachment outlines the regulatory requirements relating to corporal punishment, aversive interventions, use of time out rooms, emergency interventions, behavioral assessments and behavioral intervention plans. Please reference the Official Compilation of 8 NYCRR for regulatory language and for any subsequent amendments to these regulations. An unofficial compilation of these regulations can be found at: <http://www.dos.state.ny.us/info/nycrr.htm>. School personnel should carefully review these requirements to ensure compliance.

Positive Behavioral Interventions and Supports

All school districts and approved private schools should be taking steps to implement school-wide, classroom, small group and individualized systems of positive

¹ The symbol "§" means "section" and "§§" means "sections."

behavioral interventions and supports. Schools that establish systems of positive behavioral supports and interventions have teaching and learning environments that are less reactive and that maximize academic engagement and achievement for all students.

NYSED has technical assistance resources available to promote school safety and school district implementation of school wide systems of positive behavior support, including a State Positive Behavior Interventions and Supports (PBIS) initiative. PBIS is the “decision making framework that guides selection, integration and implementation of the best evidence-based academic and behavioral practices for improving important academic and behavior outcomes for all students”². NYSED will be establishing a State Technical Assistance Center on PBIS in the Spring of 2010 to provide further information dissemination on this school wide initiative. Many of the boards of cooperative educational services (BOCES) also offer technical assistance resources to school districts on this topic. NYSED has also developed Quality Indicator Review and Resource Guides relating to behavioral supports and interventions (<http://www.vesid.nysed.gov/specialed/techassist/behaviorQI.htm>).

In addition, because social and emotional development and learning has an important role to play in making schools safe and maintaining a caring school climate; facilitating students’ holistic development; and enhancing student motivation, self-expectations and high achievement, NYSED has drafted for comment “Guidelines and Resources for Social and Emotional Development and Learning (SEDL)”. These guidelines promote the voluntary implementation of SEDL into elementary and secondary school education programs. Additional information on SEDL is available at <http://www.emsc.nysed.gov/sss/sedl/>.

Resources for Technical Assistance

The following are NYS resources for further information and technical assistance to promote safe and appropriate educational environments.

New York State Center for School Safety
<http://nyscenterforschoolsafety.org/services.html>

Violence Prevention Technical Assistance Center
<http://www.emsc.nysed.gov/nyc/VPTAC/home.html>

Student Support Services Network
<http://www.emsc.nysed.gov/sss/NetworkCoordinators.html>

Regional Special Education Technical Assistance Support Centers
<http://www.vesid.nysed.gov/specialed/techassist/rsetasc/home.html>

² Office of Special Education Program Technical Assistance Center on Positive Behavior Interventions and Supports - http://www.pbis.org/school/what_is_swpbs.aspx

Quality Indicator Review and Resource Guides relating to behavioral supports and interventions

<http://www.vesid.nysed.gov/specialed/techassist/behaviorQI.htm>

Coordinated Standards for Children's System of Care developed by the Committee on Restraint and Crisis Intervention Techniques

<http://www.ccf.state.ny.us/initiatives/RestraintRelate/RestraintResources/RestraintReport.pdf>

Thank you for your attention to this important matter. Questions on this memorandum should be directed to the Special Education Policy Unit at 518-473-2878 or to the Office of Elementary, Middle, Secondary and Continuing Education at 518-486-6090.

Attachment

Prohibition of Corporal Punishment
8 NYCRR §§19.5(a) and 100.2(l)

- State regulations prohibit the use of corporal punishment against a student 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, 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 in this State.
- Corporal punishment means any act of physical force upon a pupil for the purpose of punishing that pupil, except as otherwise provided below.
- In situations in which alternative procedures and methods not involving the use of physical force cannot reasonably be employed, nothing contained in the regulations must be construed to prohibit the use of reasonable physical force for the following purposes:
 - to protect oneself from physical injury;
 - to protect another pupil or teacher or any person from physical injury;
 - to protect the property of the school, school district or others; or
 - to restrain or remove a pupil whose behavior is interfering with the orderly exercise and performance of school or school district functions, powers and duties, if that pupil has refused to comply with a request to refrain from further disruptive acts.
- Each school district and BOCES is required to submit a written semiannual report to the Commissioner of Education that reports each complaint about the use of corporal punishment received by the local school authorities during the reporting period, the results of each investigation, and the action, if any, taken by the school authorities in each case. Information on complaints about the use of corporal punishment by public schools, BOCES or Charter schools, is available at <http://www.emsc.nysed.gov/ssss/pps/corporalpunishment/corporalpunishform08-09.doc>.

NOTE: This outline is based on regulations in effect as of August 28, 2009. Please reference the Official Compilation of Codes, Rules and Regulation of the State of New York (8 NYCRR) for regulatory language and for any subsequent amendments to these regulations. An unofficial compilation of these regulations can be found at: <http://www.dos.state.ny.us/info/nycrr.htm>.

Prohibition of Use of Aversive Interventions
8 NYCRR §§19.5(b) and 200.22(e)

- State regulations prohibit the use of aversive interventions to reduce or eliminate maladaptive behaviors of a student by a public school, BOCES, charter school, approved preschool program, approved private school, State-operated or State-supported school in this State, approved out-of-State day or residential school, or registered nonpublic nursery, kindergarten, elementary or secondary school in this State, except as provided pursuant to §200.22(e) and (f) of the Regulations of the Commissioner of Education relating to a child-specific exception to use aversive interventions to reduce or modify student behaviors and program standards for the use of aversive interventions. Only those students whose individualized education programs (IEPs) include a recommendation for aversive interventions as of June 30, 2009 may be granted a child-specific exception to the prohibition on the use of aversive interventions in each subsequent school year after June 30, 2009, unless the student's IEP is revised to no longer include such exception.

- Aversive intervention means an intervention that is intended to induce pain or discomfort to a student for the purpose of eliminating or reducing maladaptive behaviors, including such interventions as:
 - contingent application of noxious, painful, intrusive stimuli or activities;
 - any form of noxious, painful or intrusive spray, inhalant or tastes;
 - contingent food programs that include the denial or delay of the provision of meals 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; or
 - other stimuli or actions similar to the interventions described above.

The term does 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 other similar interventions.

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Use of Time Out Rooms

8 NYCRR §200.22(c)

- A time out room is an area for a student to safely deescalate, regain control and prepare to meet expectations to return to his or her education program. Time out rooms are to be used in conjunction with a behavioral intervention plan in which a student is removed to a supervised area in order to facilitate self-control or to remove a student from a potentially dangerous situation and as provided below.
- Except for unanticipated situations that pose an immediate concern for the physical safety of a student or others, the use of a time out room can only be used in conjunction with a behavioral intervention plan that is designed to teach and reinforce alternative appropriate behaviors.
- Each school which uses a time out room as part of its behavior management approach must ensure that the school's policy and procedures on the use of the time out room are developed and implemented consistent with §200.22(c) of the Regulations of the Commissioner of Education, including the physical and monitoring requirements, parental rights and IEP requirements for students with disabilities.
- The school's policy and procedures must minimally include:
 - prohibiting placing a student in a locked room or space or in a room where the student cannot be continuously observed and supervised;
 - factors which may precipitate the use of the time out room;
 - time limitations for the use of the time out room;
 - staff training on the policies and procedures related to the use of time out room;
 - data collection to monitor the effectiveness of the use of time out rooms; and
 - information to be provided to parents.
- A student's IEP must 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.
- The school district must inform the student's parents prior to the initiation of a behavioral intervention plan that will incorporate the use of a time out room for a student and must give the parent the opportunity to see the physical space that will be used as a time out room and provide the parent with a copy of the school's policy on the use of time out rooms.
- 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 must be adequate lighting and ventilation.

- The temperature of the room must be within the normal comfort range and consistent with the rest of the building.
- The room must be clean and free of objects and fixtures that could be potentially dangerous to a student and must meet all local fire and safety codes.
- The time out room must 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 must 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 must 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.

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Emergency Interventions

8 NYCRR §§200.15(f) and 200.22(d)

- Emergency means a situation in which immediate intervention involving the use of reasonable physical³ force is necessary to protect oneself from physical injury; to protect another pupil or teacher or any person from physical injury; to protect the property of the school, school district or others; or to restrain or remove a pupil whose behavior is interfering with the orderly exercise and performance of school or school district functions, powers and duties, if that pupil has refused to comply with a request to refrain from further disruptive acts.
- Emergency interventions must be used only in situations in which alternative procedures and methods not involving the use of physical force cannot reasonably be employed.
- Emergency interventions must not be used as a punishment or as a substitute for systematic behavioral interventions that are designed to change, replace, modify or eliminate a targeted behavior.
- The school must maintain documentation on the use of emergency interventions for each student, which must include:
 - the name and date of birth of the student;
 - the setting and the location of the incident;
 - the name of the staff or other persons involved;
 - a description of the incident and the emergency intervention used, including duration;
 - a statement as to whether the student has a current behavioral intervention plan; and
 - details of any injuries sustained by the student or others, including staff, as a result of the incident.
- The parent of the student must be notified when an emergency intervention has been used with his/her child. The documentation of emergency interventions must be reviewed by school supervisory personnel and, as necessary, the school nurse or other medical personnel.
- Staff who may be called upon to implement emergency interventions must be provided with appropriate training in safe and effective restraint procedures, as applicable.
- Residential schools must provide, or ensure the provision of, child abuse prevention training to all administrators, employees and volunteers on a regular, but at least annual, basis. The purpose of such training must be to increase the participants' level of awareness, encourage positive attitudes and enhance knowledge and skill

³ The use of mechanical restraints for emergency interventions is not allowed. (Note: This does not pertain to special transportation recommendations by a Committee on Special Education or Committee on Preschool Special Education).

development in areas including techniques of group and child management, including crisis intervention and appropriate restraint training [8 NYCRR §200.15(f)(1)].

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Assessment of Student Behaviors
8 NYCRR §§200.1(r), 200.22(a) and 201.3

- Functional behavioral assessments (FBA) must be conducted as required in §200.4 of the Regulations of the Commissioner of Education relating to the procedures for referral, evaluation, IEP development, placement and review, and §201.3 of the Regulations of the Commissioner of Education relating to discipline procedures for students with disabilities.
- FBA means the process of determining why the student engages in behaviors that impede learning and how the student's behavior relates to the environment. The FBA must be developed consistent with the requirements in §200.22(a) of the Regulations of the Commissioner of Education relating to the assessment of student behaviors and 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 behavior.
- 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 §200.1(r) of the Regulations of the Commissioner of Education (definition of *functional behavioral assessment*) 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
 - assessment of student preferences for reinforcement.

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Behavioral Intervention Plans

8 NYCRR §§200.1(mmm), 200.22(b) and 201.2(a)

- Behavioral intervention plan (BIP) means a plan that is based on the results of an FBA and, at a minimum, includes a description of the problem behavior, global and specific hypotheses as to why the problem behavior occurs and intervention strategies that include positive behavioral supports and services to address the behavior.
- The Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE) must consider the development of a BIP for a student with a disability when:
 - 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;
 - the student's behavior places the student or others at risk of harm or injury;
 - the CSE or CPSE is considering more restrictive programs or placements as a result of the student's behavior; and/or
 - as required pursuant to §201.3 of the 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.
- The IEP must indicate 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.
- A student's need for a BIP must be documented in the IEP, and the BIP must be reviewed at least annually by the CSE or CPSE.
- The BIP must identify:
 - the baseline measure of the problem behavior, including the frequency, duration, intensity and/or latency of the targeted behaviors. Such baseline must, to the extent practicable, include data taken across activities, settings, people and times of the day. The baseline data must 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 BIP must include regular progress monitoring of the frequency, duration and intensity of the behavioral interventions at scheduled intervals, as specified in the BIP and on the student's IEP.
- The results of the progress monitoring must be documented and reported to the student's parents and to the CSE or CPSE and must be considered in any determination to revise a student's BIP or IEP.

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