

Required Policy for Schools that Propose to Use Aversive Interventions Pursuant to a Child-Specific Exception*SUBJECT: *USE OF AVERSIVE INTERVENTIONS**

Except as provided pursuant to 8 New York Code of Rules and Regulations (NYCRR) Section 200.22(e) and (f) as referenced below, the School District shall not employ the use of aversive interventions to reduce or eliminate maladaptive behaviors.

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:

- a) Contingent application of noxious, painful, intrusive stimuli or activities;
- b) Any form of noxious, painful or intrusive spray, inhalant or tastes;
- c) 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;
- d) Movement limitation used as a punishment, including but not limited to helmets and mechanical restraint devices; or
- e) Other stimuli or actions similar to the interventions described in subparagraphs a) through d) of this paragraph.

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.

Child-Specific Exception to the Prohibition on the Use of Aversive Interventions to Reduce or Modify Student Behaviors

In accordance with the procedures outlined in Commissioner's Regulation Section 200.22(e), a child-specific exception to the prohibition of the use of aversive interventions may be granted for a school-age student only during the 2006-2007, 2007-2008 and 2008-2009 school years. However, a student whose individualized education program (IEP) includes the use of aversive interventions as of June 30, 2009 may be granted a child-specific exception in each subsequent school year, unless the IEP is revised to no longer include such exception. No child-specific exception shall be granted for a preschool student.

Aversive interventions shall be considered only for students who are displaying self-injurious and/or aggressive behaviors that threaten the physical well being of the student or that of others, and only to address such behaviors.

No child-specific exception shall be granted for interventions used as a consequence for behavior which are intended to induce pain or discomfort that include ice applications, hitting, slapping,

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SUBJECT: USE OF AVERSIVE INTERVENTIONS (Cont'd.)

pinching, deep muscle squeezes, use of an automated aversive conditioning device, the combined simultaneous use of physical or mechanical restraints and the application of an aversive intervention; withholding of sleep, shelter, bedding, bathroom facilities; denial or unreasonable delays in providing regular meals to the student that would result in a student not receiving adequate nutrition; the placement of a child unsupervised or unobserved in a room from which the student cannot exit without assistance; or actions similar to these interventions at the discretion of the Commissioner of Education.

Whenever the Committee on Special Education (CSE) is considering whether a child-specific exception is warranted, the District shall submit an application to the Commissioner of Education in a form prescribed by the Commissioner requesting a review of student specific information by an independent panel of experts.

Independent Panel of Experts

The Commissioner shall refer the application to an independent panel of experts appointed by the Commissioner or Commissioner's designee for a recommendation to the CSE as to whether a child-specific exception is warranted. The panel shall be comprised of three (3) professionals with appropriate clinical and behavioral expertise to make such determinations.

The panel shall notify the School District and the Commissioner of its recommendation as to whether a child-specific exception is warranted and the reasons therefore. For students whose current IEP does not include a child-specific exception, the panel shall provide such notice within fifteen (15) business days of receipt of an application.

CSE Determination of Child-Specific Exception

The CSE shall determine, based on its consideration of the recommendation of the panel, whether the student's IEP shall include a child-specific exception allowing the use of aversive interventions. The determination to provide a child-specific exception shall be made by the CSE and not by a Subcommittee. The CSE shall request the participation of the school physician member in such determination. The School District shall notify and provide a copy of the student's IEP to the Commissioner of Education 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 interventions shall identify the specific:

- a) Self-injurious and/or aggressive targeted behavior(s);
- b) Aversive intervention(s) to be used to address the behavior(s); and
- c) Aversive conditioning device(s) and/or mechanical restraint device(s) where the aversive intervention(s) includes the use of such device(s).

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SUBJECT: USE OF AVERSIVE INTERVENTIONS (Cont'd.)

The use of aversive interventions is not authorized unless the student's parent has given informed written consent.

Any such child-specific exception shall be in effect only during the time period the IEP providing such exception is in effect. If the continued use of an aversive intervention for a student is being considered for subsequent IEP(s), the CSE shall submit an annual application to the Commissioner of Education for each such IEP(s). If the student's IEP is amended or a subsequent IEP is adopted to no longer include a child-specific exception, the District need not notify the panel but shall submit a revised copy of the student's IEP to the Commissioner.

Program Standards for the Use of Aversive Interventions

Any program that employs the use of aversive interventions to modify an individual student's behavior as authorized pursuant to Commissioner's Regulations shall comply with program standards enumerated in Commissioner's Regulation Section 200.22(f). The program shall provide for the humane and dignified treatment of the student; and 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.

- a) Aversive intervention procedures may be used only if such interventions are recommended by the CSE consistent with the student's IEP and behavioral intervention plan as determined by the CSE.
- b) Aversive 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, such as verbal or other counseling services, speech and language therapy and/or functional communication training.
- c) Aversive interventions shall be combined with reinforcement procedures, as individually determined based on an assessment of the student's reinforcement preferences.
- d) The use of aversive interventions shall be limited to those self-injurious or aggressive behaviors identified for such interventions on the student's IEP.
- e) No program may combine the simultaneous use on a student of a physical or mechanical restraint device with another aversive intervention.

Human Rights Committee

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

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SUBJECT: USE OF AVERSIVE INTERVENTIONS (Cont'd.)

Each Human Rights Committee shall be comprised of individuals not employed by the school or agency and shall include at least one (1) licensed psychologist with appropriate credentials in applied behavior analysis; one (1) licensed physician, physician's assistant or nurse practitioner; one (1) registered dietician or nutritionist; one (1) attorney, law student or paralegal; one (1) parent or parent advocate; and may include not more than two (2) additional individuals selected by the school or agency. In addition, when the purpose of the Human Rights Committee meeting includes a review of an individual student's program, a representative of the School District/agency placing the student in the program and a representative of the State Education Department (SED) 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 interventions. 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.

Supervision and Training Requirements

Aversive interventions shall be administered by appropriately licensed professionals or certified special education teachers in accordance with Commissioner's Regulations or under the direct supervision and direct observation of such staff. Training shall be provided on a regular, but at least annual basis, and shall include, but not be limited to, training components as enumerated in Commissioner's Regulations.

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/she refuses consent for an aversive intervention. A parent shall be given a copy of the school's policies and procedures on the use of aversive interventions.

Progress Monitoring

The program shall provide for ongoing monitoring of student progress, including the collection and review of data and information as enumerated in Commissioner's Regulations. The program shall submit quarterly written progress reports on the implementation of the student's behavioral intervention program to the CSE and to the agency that placed the student in the program.

SUBJECT: USE OF AVERSIVE INTERVENTIONS (Cont'd.)

When the District places a student in a program that uses aversive interventions with such student, the District shall be responsible to ensure that the student's IEP and behavioral intervention plan are being implemented. The CSE shall convene at least every six (6) months, or more frequently as needed, to review the student's educational program and placement for any student for whom the CSE has recommended the use of aversive interventions. A representative of the School District shall observe the student at least every six (6) months and, as appropriate, interview the student in the program and communicate regularly with the student's parent and shall report the results to the CSE.

Policies and Procedures

Each school that proposes to use aversive interventions pursuant to a child-specific exception shall submit its policies and procedures to SED for approval prior to the use of such interventions. Only those schools with policies and procedures approved by SED on or before June 30, 2007 shall be authorized to use such interventions.

[Education Law Sections 207, 210, 305, 4401, 4402, 4403, and 4410](#)

8 New York Code of Rules and Regulations (NYCRR) Sections 19.5, 200.1, 200.4, 200.7, 201.2, and 200.22

Adopted: May 10, 2007