

Coalition for Transparency in Public Education

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Comment of the Coalition for Transparency in Public Education on the NYS Education Department's Proposed Amended Regulations Regarding Aversive Interventions Authorized for Students with Disabilities

The Coalition for Transparency in Public Education (The Coalition) commends the NYS Education Department (NYSED) for prohibiting, without exception, aversive interventions with pre-school children and for those portions of the proposed amendments which decrease the likelihood that students with disabilities will be traumatized, injured or die as a result of their treatment in schools. However, the proposed amendments and the aversive interventions which would still be allowable should these amendments be approved are seriously defective in the areas outlined below and as such, should be rejected.

We note at the outset that these proposed regulations are written in a fashion which is both overly-complex and difficult to analyze and understand. As a matter of policy, The Coalition believes that regulations regarding the education of children should always be structured and written in clear, easily-comprehensible language so that parents, educators and the public may understand their contents without the necessity of securing expert analyses and translations. The need for clear, unambiguous language is especially important when the regulations authorize treatment of vulnerable disabled children who, as NYSED acknowledges, may be harmed by such treatments.

The Coalition further recommends that written copies of all regulations which authorize the use of aversives, restraints, time out/seclusion rooms and emergency measures on students with disabilities be required to be given to parents - and to students upon whom such aversive interventions may be carried out - once each school year, at least 30 calendar days prior to any meeting which might write or amend any student's IEP. Where the students cannot read, or cannot be assumed to be able to comprehend the full import of the regulations, they should be provided to the children and, at the same time, explained to them in terms and language which they can understand.

The Commissioner's "Expert" Panel

NYSED's materials in the State Register indicate that the Commissioner's expert panel, which will be required to review applications for child-specific exceptions to the prohibition on the use of corporal punishment, will be funded to examine 100 such applications. There were, however, nearly 400,000 school-age children with disabilities aged 6-21 in the 2004-2005 school year in the State of New York, as reported by USDOE's Office of Special Education Programs on its www.ideadata.org web site.

It would appear that NYSED, *sub silentio*, is only requiring "expert" review of applications for placement at the Judge Rotenberg Center (JRC)

in Canton, MA, while some other, undisclosed, process is to be used for any applications which may be filed for permission to use aversives on the approximately other 399,900 children with disabilities, age 6-21, in New York's schools. Moreover, reports indicate that New York State sends more than 100 students to JRC each year; thus the number of panel reviews for which funds are allocated is seriously deficient for any purpose. **The Coalition requests that the Board of Regents reject the regulations insofar as they only foresee budgeting for genuine examination of 100 child-specific exception waivers, and requests that NYSED be required to establish - and secure funding for - a process in which all applications for child-specific exceptions be thoroughly vetted by a panel of true behavioral experts from the fields of psychiatry, behavioral psychology and school psychology.**

Currently, NYSED's process whereby districts, BOCES and schools can obtain permission to exceed maximum class and group size limitations essentially involves submission of a request for a waiver, with minimal documentation, to a Regional Associate. According to the statement of Andrew Cuddy, Esq., a special education attorney who has frequently litigated class size violation cases, Regional Associates have testified, in hearings, under oath, that they have never rejected a class size waiver application. Indeed, Mr. Cuddy states that some such waivers have been granted *ex post facto*, after the commencement of a hearing in which this violation was a material issue. His statement mirrors the experience of others involved in the special education system around New York State. The exception has become the rule. This should not be allowed to be the case regarding the use of aversives, restraints and seclusion, also known as "time out rooms" in NYSED parlance.

The Coalition believes that granting "recommendations" for the use of aversive behavior therapies or treatments, or "aversive interventions" as the proposed amended regulations call them, (surely a distinction without a significant difference), should not be subject to a rubber-stamp-yes process implemented by Regional Associates who may have no professional-level training or experience in behavior management, behavior modification, behaviors associated with particular professionally-given diagnoses, nor training in medical or psychiatric/ psychological contraindications for the use of any specified aversive, restraint or seclusionary measure.

The Coalition further believes that establishing a fictitious "expert" review process for the majority of cases in which recommendations for the use of aversives may be sought violates fundamental principles of transparency in government. We do not believe that anything regarding the education of children, much less anything regarding the education of children with disabilities, should be decided via a rubber-stamp process, or behind closed doors. Parents and the public have a right to know who is examining all such applications; the credentials of those doing the examining, and whether any such persons are operating under unwritten NYSED policy, typically translated by Regional Associates as an almost-irrebutable presumption in favor of the actions and approaches of local school districts, BOCES or individual schools.

Lastly, the "expert" panel, which may or may not be composed of genuine experts, has the authority to make recommendations for use of aversives after examining such medical information as a CSE may wish to submit. Without the presence of a physician on this panel, any such recommendation might be deemed to constitute practicing medicine without a license insofar as panel members may be recommending use of aversives which a physician would recognize as clearly dangerous and inappropriate given a particular child's medical condition and history. Inasmuch as there is no requirement that a CSE secure a physician's statement that use of any aversive, restraint or seclusion technique is medically or psychiatrically safe for any child with a disability, it is not clear that any such panel would have members competent to even ask CSEs for the appropriate medical documentation. Even if they did make such a request, however, the

“expert” panel has no authority to deny a waiver, thereby rendering the entire process a sham, as a district may totally ignore the panel’s recommendation. If NYSED is serious about protecting the health and safety of disabled students, then the regulations must mandate inclusion in the CSE of both a physician who has examined the student and who is knowledgeable about the risks associated with the proposed aversive treatment, and a psychiatrist or psychologist who has assessed the student and who is knowledgeable about the risks associated with the proposed aversive treatment.

Time Out/Seclusion Rooms and Restraints

1. A. The proposed regulations do not take into account the recent 2nd Circuit’s decision in CT Office of Protection and Advocacy v. Hartford Board of Ed., No. 05-1240-cv, 2d Cir., 9/15/06. This decision unequivocally held that the various federal laws which protect students with disabilities in non-institutional facilities apply to day public schools. Amongst the statutes which the Hartford Bd. of Ed. decision held applicable is 42 U.S.C. §15009. 42 U.S.C. § 15009 specifically prohibits use of time out (also known as seclusion) rooms for the purposes of punishment or as a behavior intervention for any person with a developmental disability. Time out (seclusion) rooms may only be used when there is an imminent risk of serious physical injury to the student or others. Students with professionally-diagnosed developmental disabilities may, in fact, be “classified” within the NYS special education system as mentally retarded, autistic, multiply disabled, severely learning disabled, speech impaired, other health impaired, etc. and can therefore be found in all varieties of NY schools, placements and programs. Given the pervasiveness of BOCES’ and districts’ use of time out rooms, and given the heterogeneity of diagnoses of children in such schools, programs and classes, it is possible and even *likely* that children with developmental disabilities *are and will be* unlawfully subjected to the use of seclusionary time out room incarceration as punishment.

B. The proposed regulations do not prohibit, without exception, the use of rooms which have locks on their doors for time out/seclusion purposes, nor use of any device which could hold a door closed. As NYSED is well aware, there have been many allegations that rooms used for time out/seclusion purposes have been locked; other allegations claim that devices such as chains and padlocks have effectively barred children from exiting such rooms without assistance. Indeed, even though its prior guidelines on the use of time out rooms prohibited locked doors and leaving students in such rooms unobserved, NYSED is well aware that numerous complaints of such violations were received.

Since it is impossible to monitor and guarantee that a lock on a door used for time out/seclusion will not be used - should someone assigned to watch a child placed in such a room need a break or be called elsewhere in the building due to an emergency, for example - **it is imperative that locks on such rooms’ doors be flatly prohibited and that use of devices to bar students’ exits from such rooms be similarly specifically prohibited.**

C. The proposed regulations set no standards for acceptable temperature ranges in such rooms: rather, they vaguely “require” that these be adequate and in accordance with those in effect in the rest of the school building. This is inadequate to protect the physical safety of many children. Not all school buildings, and within buildings, not all classrooms and rooms which may be used for time out/seclusionary purposes, have air-conditioning. As has been previously noted in many testimonies submitted in regard to the “emergency” regulations currently in effect, children may be taking medications which make them heat-sensitive (i.e., antihistamines,

numerous psychoactive medications); children may have medical conditions which make them heat sensitive. Thus refusal to establish concrete, easily-comprehensible standards for HVAC in such rooms needless exposes children to life-threatening environments.

D. On Friday, December 8, 2006, the US Dept. of Health & Human Services' Centers for Medicaid & Medicare Services (CMS) issued final regulations regarding restraint and seclusion for institutional and residential treatment facilities. It is of particular note that restraint and seclusion in institutions and residential treatment facilities cannot be used to stop destruction of property - only to protect the patient or others from imminent threat of serious physical harm.

In stark contrast, NYSED's regulations permit use of restraint and subsequent seclusion to protect the property of a school or district, even property of trivial value. Since restraints may kill, we believe it is appropriate to remove the provision that in "emergencies" all "reasonable" physical methods of restraint may be used: **the legally authorized penalty for destruction of property of trivial value should not be exposure to potentially lethal physical or mechanical restraints.** This is particularly relevant since the regulations authorize the use of "reasonable force" to stop trivial classroom disruptions, while not requiring that those who may use such "reasonable force" be trained so as to do so safely or that they be trained in research-validated methods of crisis de-escalation. Thus, an untrained paraprofessional observing an autistic 6-year old having an emotional outburst, would be authorized, under the proposed regulations, to treat that as an "emergency" and use physical force on the child. The Coalition does not believe that disproportionate physical responses are legal, effective, or appropriate. We note that failing to restrict the definition of an "emergency" to a situation involving the imminent risk of serious physical injury to the student or others is indicative of the very problem observed time and time again in schools: school personnel overreact to what are non-emergency situations with strategies that should be reserved for genuine safety emergencies. The Coalition requests that the Board of Regents reject the regulations insofar as they conflict with federal statutes by permitting the use of restraint and seclusion for anything other than legitimate, serious safety emergencies.

The Coalition finds it unacceptable that NYS institutionalized children with behavioral difficulties benefit from exacting protective requirements - only while institutionalized - and the moment they return to their homes and attend schools in NYS, they are stripped of every protection from abuse they previously enjoyed. The Coalition finds it equally unacceptable that NYSED - the agency of State government that is authorizing such potentially deadly conduct - declines to require that reports of all injuries and deaths which disabled children will, foreseeably, suffer as a result of the conduct it authorizes in these regulations be filed with it promptly and routinely. **Disabled children deserve something better than "see no evil ..."** The Coalition finds it unacceptable that health and safety protections and training standards are essentially totally ignored in the proposed amendments. If a student is at risk of harm or injury when restraint is used in a psychiatric facility, the same - or even greater - risk of harm or injury exists when restraint is used in a school setting where there are fewer, or no, medical and psychiatric staff.

We also simply note that discussions of how much force is "reasonable" are, typically, engaged in when discussing allegations of police use of inappropriate physical force, and/or firearms, in situations which may involve dangerous criminals. Such discussions are entirely inappropriate, in our opinion, when injected into the environment of a regular public school which happens to enroll one or more children with disabilities.

Additionally, the proposed section on Behavioral Intervention Plans states that planned use of time out rooms shall be a BIP constituent provision, and that it shall state the "(ii) factors which may precipitate the use of time out rooms; (ii) time limitations for the use of time out rooms".

"Time limitations" are to be left to the discretion of CSEs, which are not required to have psychiatrist, licensed psychologist or pediatrician members. In contrast, the December 8, 2006 CMS restraint and seclusion regulations: a) prohibit physicians' orders for seclusion on a PRN (as needed) basis - which is identical to a BIP containing specifications regarding "factors which may precipitate the use of time out rooms," and also contain specific limitations on seclusion time frames. For example, they restrict seclusion to a maximum of 1 hour for children under the age of 9. When time out rooms are used for "emergencies," NYSED's proposed regulations provide for children being secluded for unlimited periods of time, again, with no age limitations.

NYSED has not provided any research-validated findings or well-founded psychological, psychiatric or educational rationale for allowing staff-directed or staff-ordered use of time out rooms for punishment, nor for failing to restrict time out room use to genuine emergencies only, nor for failing to provide specific limitations, by age, for such seclusion for children. Given that the federal literature documents that these can cause serious emotional harm to many disabled children, NYSED's proposed regulations inexplicably authorize harmful adult conduct which should - and is - prohibited by law.

E. The proposed amendments still fail to require that time out rooms meet local health codes. Inspection by local health authorities could both insure that such rooms are not sources of contagion of dangerous diseases such as HIV, hepatitis and tuberculosis, but could also serve to assess their adequacy in terms of size and ventilation.

F. In its responses to public comment on its "emergency" regulations, NYSED specifically refused to require that children put into time out rooms be told that they can exit them when they desire, need, or are ready to do so. NYSED ignored testimony to the effect that if young children are not explicitly informed of their ability to leave seclusionary surroundings, they will think that they are not able - or allowed - to do so.

It makes little difference to a young child as to whether s/he is actually locked into such a room, or only believes that s/he is locked in. The Coalition believes that this evidences a callous disregard for the emotional welfare of young children who may well be traumatized by experiencing being locked into a small room, irrespective of the reality. Similar situations arise in the case of children who are physically frail, physically disabled, or who are unable to independently enter or leave such rooms. Such children should be, mandatorily, informed that if they wish to leave a time out room and cannot do so without adult assistance, the adult assistance will be provided on request.

G. NYSED leaves it up to a CSE, for insertion into a BIP, as to whether and when "information" regarding time out rooms and each use thereof will be provided to parents. The Coalition believes that parents should be notified each time a student with a disability is put into seclusion: verbally on the same day and in writing within 24 hours of each incident of seclusion. We note that many children who may foreseeably be put into such rooms have little or no ability to communicate to their families about what was done to them at school. Families may find themselves with extremely upset - even traumatized - children, and may be unable to ascertain the cause. This can, under some circumstances, lead to dramatically negative consequences for the children inasmuch as families may not be able to provide accurate information to their children's treating physicians about the causes of children's distraught behaviors. We do not believe it is appropriate for such vital information to be withheld from parents, nor do we believe that judgments regarding the necessity of providing such information to parents should be left to CSEs. We note that a number of litigations regarding use of time out rooms on children who were

not able to communicate what had been done to them to their parents are already in court: parents uniformly describe extremely upset children and an inability to determine the cause.

H. In response to substantial public testimony regarding the danger involved in the use of physical restraints, and the necessity for medical clearance for the use of any such physical restraints prior to their use, NYSED "rebutts" by proposing to amend the regulation so as to require a CSE to invite a school physician to attend a meeting where such interventions or methods may be discussed.

Unanswered is the question: "What happens if the physician declines the invitation?" Children with asthma; children with bronchitis; children with congenital heart defects - all may be foreseeably severely physically harmed by the use of physical restraints. **The Coalition does not believe that CSEs should be able to recommend physical restraints for children without full, recent medical examination of each child who may be subject to such restraints: the likelihood of children being severely injured, or dying, as a result of their use should not be left to the vicissitudes of CSEs "invitations" and physicians' concomitant desires to accept or reject such invitations.**

We would also point out that while NYSED would require a CSE to invite a school physician to such a meeting, a school physician who is not knowledgeable about an individual child's unique medical condition and history, and who has not personally familiarized him-or-herself regarding the methods of restraint used at any particular school, is hardly in a position to give a professionally knowledgeable "yea" or "nay" to a CSE's recommendation. Therefore, we believe that a requirement for CSEs to "invite" school physicians to their meetings when the use of physical restraints are to be decided is a facially empty one: it is extremely unlikely that any physician would accept such an invitation, and even more unlikely that any medical malpractice insurer would cover a physician for any recommendations made at such meetings.

Sham protective regulatory provisions serve little pragmatic purpose: the public, and parents, know that invitations are requests, not commandments.

I. NYSED requires that staff - including aides, paraprofessionals and janitors - under the direct supervision of licensed professionals or special education teachers, and who may implement aversive behavioral interventions including restraints - be trained, at least annually, in "... safe and therapeutic emergency physical restraint interventions" and "assessing and responding to the collateral effects of the use of aversive interventions, including, but not limited to, effects on a student's health, increases in aggression, increases in escape behaviors and/or emotional reactions."

Because the use of physical restraints is so thoroughly documented as dangerous, the CMS requires that physicians or licensed independent practitioners (i.e., RN's, paramedics) be present when restraints are ordered and when they are used, and that persons upon whom physical restraints are used be formally assessed at specified times to insure physical and psychiatric/psychological safety.

The Coalition does not believe that certified special education teachers in the State of New York are trained or qualified to substitute for medical practitioners when physical restraints are used. In effect, this provision gives medically-untrained personnel a license to engage in extremely dangerous conduct - and it should be removed from the regulations without further ado. The Coalition notes that there is no requirement that equipment to assess children's vital signs be

readily available, with personnel trained to use them: thus by the time a non-medical staff member guesses that a child may be in cardiac or respiratory distress via visual observation only, it may be too late to get the child the emergency medical attention s/he requires.

J. Finally, the proposed amended regulations do not require that staff who may use - or who may order the use of - physical restraints and/or seclusion be thoroughly trained and certified in any research-validated methodology or program of behavioral crisis defusing. In other words, the regulations authorize the most dangerous, potentially deadly "interventions" without mandating that staff be trained in, and exercise, those techniques most likely to obviate the need for physical restraints.

Restraints and seclusion as immediate responses - rather than the time-consuming and intensive efforts necessary to defuse a behavioral crisis - may be easier and more convenient for schools to implement. There is good reason why the CMS regulations, for example, require that the effort to defuse be made unless it is clearly inappropriate and unlikely to succeed. The reason is because the effort is worth making - and mandating - when the alternative is to go straight to an option which foreseeably may endanger a child's life. School, program and staff convenience do not justify use of what may be extremely dangerous restraint and seclusion techniques in public schools.

Inspection of Out-of-State Schools

The proposed regulations call for yearly on-site program reviews by NYSED program or fiscal staff.

NYSED's fiscal staff?

We believe that it is inadequate to safeguard the physical and psychiatric/psychological safety and well-being of these children to have their programs "reviewed" by NYSED fiscal staff. An on-site review by program and program staff is appropriate: review solely by NYSED's fiscal staff clearly is not.

Functional Behavioral Assessments and Behavioral Intervention Plans

The proposed amendment states that Functional Behavioral Assessments (FBAs) shall "as appropriate" be based on multiple sources of information including ... including any relevant information provided by the student's parent. ..." We do not believe that authorizing a CSE to reject a parent's information as irrelevant is appropriate. This establishes an environment in which CSE's may feel free to disregard parental input which is, in fact, relevant but ... inconvenient, or which a CSE merely does not want to take into account. The Coalition has heard too many stories of Behavioral Intervention Plans (BIPs) being created and implemented without prior parental knowledge or consent.

The proposal also specifically allows a CSE to "consider" the development of a BIP when a student's behavior impedes his/her learning or that of others In fact, the federal law requires the creation of a BIP under these circumstances.

The various federal protective laws hold that patients - or in this case, their authorized representatives, which would clearly include parents - always have the right to reject treatment.

And as NYSED's responses to various public comment points out, behavioral interventions, positive and negative, aversive and non-aversive, constitute "treatment" for many students with disabilities. Rather than allowing CSEs to jettison parental information as "irrelevant," CSEs should be mandated to include all parental information which is even hypothetically relevant. Further, no FBA should be allowed to be implemented, nor any BIP implemented, as a matter of federal protective law, unless and until parents or other lawfully appointed representatives have fully consented to each and every portion thereof.

Human Rights Committees

The regulations require that a school which uses aversives shall have a "Human Rights Committee," without requiring that any such committee have the authority to issue orders in order to insure that students' human rights are respected. Like the Commissioner's "Expert Panel," it is thus an entity without actual substance - and should thus be removed from the regulations. These Committees' sole authority is to report to the entity paying for the placement as to the implementation of the BIP's insofar as they specify aversive behavioral interventions.

Each Human Rights Committee, minimally, can be composed of: a) a licensed psychologist from the student's district's BOCES, who should have some completely unspecified "appropriate" credentials in applied behavior analysis; b) a physician's assistant or nurse practitioner; c) a registered dietician or nutritionist; d) one law student, who could be a first semester law student, and one parent or parent advocate. Invitations to attend must be extended to representatives of the student's school district or agency placing the student and a representative of NYSED. However, according to these regulations, none of these invitees must actually attend.

The Coalition requests that each Human Rights Committee be mandatorily composed of, at a minimum: a licensed psychologist with advanced professional training and experience in behavior management, behavior modification and professional-level training in applied behavior analysis; a physician; an attorney; a registered dietician or nutritionist; one representative from a Protection and Advocacy organization; a representative of the placing district or agency and a representative of NYSED. The Coalition further requests that each such properly constituted Human Rights Committee have the authority to order immediate cessation of the use of aversive behavioral interventions, restraints and seclusion where these have been shown to be harmful, ineffective, or both, or where the use of non-aversive positive behavioral interventions appears warranted in their stead.

Incident Reports

NYSED does not require that any harm which comes to any child due to the use of any aversives, or restraints, or seclusion, be reported to it for any purposes whatsoever. Without such reports, NYSED is not, and will continue to not be in any position to assess whether children are being injured or harmed by the use of these in schools, and will not be in a position to judge whether future regulatory amendments are necessary, or required, to safeguard the physical and psychiatric/psychological health of children with disabilities.

The Coalition requests that the amendments be amended so as to include mandatory written reporting to NYSED each time a child is, or may have been harmed by the use of an aversive, restraint and/or time out room, and also require mandatory reporting of each

incident of physical restraint and each incident of seclusion (sometimes called a "time out room"), such report to be filed electronically within 24 hours of each such incident. The Coalition further requests that NYSED be required to publish monthly information including the number of each such incident, and use of restraints and seclusion, for each school and BOCES program, such information to be made easily accessible to parents and the public.

CSE Review of Schools' Use of Aversives, Restraints and Seclusion

The regulations, as currently proposed, require a CSE to review twice a year program and placement for students whose IEP's include aversives, which may or may not include the use of restraints and seclusion. With all due respect, if an aversive behavioral intervention is ineffective, the appropriate formal review of what should be required data should be made far more frequently. If aversives, restraints and seclusion are not effective within a very short period of time, then their use is not therapeutic and does not constitute treatment: it constitutes abuse and should be terminated at the earliest possible time. A review monthly, at a minimum, should be the regulatory minimum.

The proposed regulations require a CSE to review a school or program's paperwork, but only require CSEs to conduct face-to-face interviews with students "as appropriate." With all due respect, a school which is abusing a child via use of aversives, restraints or seclusion is hardly likely to self-report to a CSE. Often, only a face-to-face interview with a child will reveal that the child is experiencing the trauma of such abuse. Similarly, the proposal allows CSEs to take input regarding parents' concerns "as appropriate." *Parental concerns regarding the use of aversives, restraints and seclusion are always appropriate* and should be mandatorily secured by CSEs every time continued use of aversives, restraints and seclusion is considered.

The Coalition requests that CSEs be required to conduct face-to-face interviews with all children who are subject to the use of aversives, restraints and seclusion, at least on a monthly basis, and that such CSEs also secure input from these children's parents monthly regarding the use, or potential abuse, of such behavior control modalities.

Training

As with the current "emergency" regulations, the proposed amended regulations require no genuine, specified, high level, professional training for any school person - staff, administrator, CSE member - who would be authorized to recommend the use of aversive behavioral interventions; authorized to administer such interventions; assess the efficacy of their use; chart and analyze behavior to determine antecedents, functions of unwanted behaviors, and the like. Nor do the amendments add any meaningful level of high level professional involvement in these activities by psychiatrists, other physicians, or licensed psychologists. Inasmuch as NYSED also does not require reporting on the use of these behavior control techniques, there is not, and cannot be, any way to evaluate the efficacy, or lack thereof, of the use of such control modalities in schools, nor can there be informed judgements as to whether extant training requirements are adequate - either to safeguard disabled children's physical and psychiatric/psychological safety and well being or to insure that the use of any of these techniques is necessary and cannot be replaced by non-aversive methods. Thus the use of such aversives is, and will continue to be, essentially uninformed by data: it will also be unexaminable by high level professionals.

Inasmuch as there is virtually no research showing that school use of such methods is effective, there can be little or no justification for their use as humane. Insofar as the available research shows that such behavior control modalities are ineffective - *and the only available*

research on the use of restraints in NY public schools, when implemented by certified special education teachers, shows them to be ineffective - their continued authorization and implementation can only be described as inhumane and abusive to the most vulnerable children in the NY population.

The Coalition therefore requests that the proposed amended regulations be withdrawn; the current "emergency" regulations be allowed to expire, and that the Board of Regents direct NYSED to conduct meaningful consultations with acknowledged psychiatric and psychological experts regarding the effective, humane treatment of unwanted behaviors in children with disabilities, and that regulations thereafter be crafted in accordance with those experts' opinions and the available professional research, and that a system be established in which specified, high level training is required of all school personnel who may recommend, or implement behavior management or behavior modification regiments, modalities, techniques and programs, and that the active involvement - in decision-making and implementation - of psychiatrists, licensed psychologists, and related professionals be mandated in all school behavior-related treatment of children with disabilities.

Aversives Sunset Provisions

There is some research showing that use of electric shock to the skin is effective for an extremely small number of persons who engage in severe self-injurious behaviors. NYSED's proposed regulations clearly permit some students and young adults, age 6-21, to such aversive behavioral interventions for what is essentially an unlimited period of time.

The regulations, albeit in a sideways and extremely convoluted manner, authorize use of another larger group of painful, unpleasant, and often obviously harmful aversives, restraints and seclusion for at least another 2-3/4 years for a very large number of children. Given that there is no controlled research published in peer-reviewed professional journals supporting the use of any of these in a school environment - including the Judge Rotenberg "school" - and given that the available research and data regarding NY's school outcomes for students with disabilities is so poor, continued authorization of any of these behavior control modalities constitutes abuse of disabled children. Nothing less; nothing more.

It is widely known that these aversives have been - illegally - used in NY schools or NYS-approved placements for many years until - arguably - it was authorized by the Board of Regents vote to approve "emergency" aversive behavioral interventions in June 2006 (cf, the Interagency Committee on Out of State Placements Report to the Governor, 2005; <http://www.ccf.state.ny.us/resources/OSP/OSP2005.pdf>).

The Coalition requests that the proposed aversive behavioral amendments be rejected and that the "emergency" aversive behavioral intervention regulations be allowed to expire until such time as:

a) NYSED provides full, unequivocal research support for the use of each of them in a school environment; and

b) NYSED provides full and complete data for each school, district, program, individual BOCES program and State-approved private school which currently uses any of them, including, but not limited to:

- (i) Frequency of use of each aversive, restraint and seclusion, separately;**
- (ii) Numbers of children who were injured as a result of the use of each;**
- (iii) Complete longitudinal discipline information, including in-school and out-of-school suspensions, and expulsions for each such district, school, discrete BOCES program and State-approved private school ;**
- (iv) Complete crime and violent incident data for each such district, school, discrete BOCES program and State-approved private school;**
- (v) Complete data documenting the effectiveness of each such aversive, restraint and seclusion behavior control technique or modality; and**
- (vi) Completion of a study, to be funded by the Legislature and conducted under the direction of the New York State Psychological Association and New York State Psychiatric Association to assess whether use of each of these behavior control techniques or modalities is safe, effective, efficient and humane, and whether NY school special education administrators and staff, as currently trained and certified, possess the training and knowledge necessary to implement behavior management or behavior modification programs effectively, efficiently, humanely, safely, and in accordance with the federal laws which protect the rights of persons with disabilities to be free from abuse.**

Respectfully submitted,

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