



NEW YORK STATE ASSEMBLY

822 LEGISLATIVE OFFICE BUILDING, ALBANY, NY 12248
TEL: 518-455-4941 FAX: 518-455-5939

250 BROADWAY, RM. 2232, NEW YORK, NY 10007
TEL: 212-312-1492 FAX: 212-312-1494

E-MAIL: GOTTFRR@ASSEMBLY.STATE.NY.US

COMMITTEES:
RULES
HEALTH
HIGHER EDUCATION
MAJORITY STEERING

CHAIR
MANHATTAN DELEGATION

RICHARD N. GOTTFRIED
75TH ASSEMBLY DISTRICT

CHAIR
COMMITTEE ON HEALTH

August 28, 2006

Board of Regents
New York State Education Department
Albany, NY 12234

Re: Proposed permanent regulations relating to
behaviorial interventions, including the use of
aversive behavioral interventions

Dear Friends:

The Regents are right to be distressed over the abusive treatment of children you have found going on in some preschools and schools. But the emergency regulation, now proposed to be made permanent, fails to simply prohibit this abuse, and instead seeks to regulate it. An effort to create such elaborate regulations that the brutality will not happen is commendable. But it is a risky proposition that puts New York in the position of declaring that brutalizing school children acceptable under certain circumstances. I urge you to step back and reconsider.

Someone reading the "Summary" document accompanying this proposal would be horrified to read that there is no law or regulation in this state that bars school staff from torturing children, including disabled children. Someone quickly reading the beginning of the proposal might be relieved to see that this is to be prohibited. But someone reading carefully would discover that the Board of Regents is proposing to explicitly legalize torture of school children, as long as a lot of paperwork is done, some people get notices that they might not read or understand, a committee reviews it, and it is called "aversive behavioral intervention."

We are talking about the torture of school children. The definition says:

- (2) As used in this section, aversive behavioral intervention means:
- (i) 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;
 - (ii) any form of noxious, painful or intrusive spray, inhalant or tastes;
 - (iii) withholding sleep, shelter, bedding, bathroom facilities or clothing;
 - (iv) 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;
 - (v) movement limitation used as a punishment, including but not limited to helmets and mechanical restraint devices;
 - (vi) the placement of a child unsupervised or unobserved in a room from which the student cannot exit without assistance; or
 - (vii) other stimuli or actions similar to the interventions described in subparagraphs (i) through (vi) of this paragraph.

The regulation has a bold, ringing “prohibition” of “the use of aversive behavioral interventions to reduce or eliminate maladaptive behaviors” in schools and preschools. But at the end of the paragraph, we see that this is “except as provided pursuant to section 200.22(e) and (f) of this Title.” And there we find pages of detailed procedures for determining when and how a school’s staff may torture a child.

Some might take comfort that the regulation says that “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.” But the sentence then says even this limitation only applies “where such approval is required by federal regulations.” Devices that are not within the FDA’s jurisdiction appear to be open for use. Are there federal regulations that require FDA approval for cattle prods and chili pepper juice or spray to be applied – including “intrusive(ly)” – to children?

Perhaps New York State would be a better place if the sanctimonious thugs who run some private boarding schools where troubled or disabled children are brutalized had to write it down. But maybe that would actually make the state more barbaric.

If we discovered that these regulations were in place at Guantanamo or Abu Ghraib, no one would have to demand Donald Rumsfeld’s resignation; there would be thunderous national and international outrage; there would be impeachment proceedings.

If a teacher thought a parent were doing these things to a child, the teacher would be statutorily obligated to report it to the child abuse hotline. The parent would probably be arrested for assault. But under this regulation, it could be legal for school staff.

“Aversive behavioral intervention” is an example of what George Orwell wrote about in his essay “Politics and the English Language:” a term for something that “can indeed be defended, but only by arguments which are too brutal for most people to face. . . . Such phraseology is needed if one wants to name things without calling up mental pictures of them.”

If the regulation were written in plain English and called it “torture,” it would be obvious that this is one of those things that “can indeed be defended, but only by arguments which are too brutal for most people to face.”

Do you really want to tell people that you voted for a regulation that says that with the right paperwork and review, school, preschool or boarding school staff, seeking “to reduce or eliminate maladaptive behaviors,” may subject a child to electric shock, noxious sprays, hurling, strangling, or deprivation of sleep, bathroom facilities, clothing, food or water?

The Regents should simply prohibit this.

Very truly yours,

A handwritten signature in black ink that reads "Richard N. Gottfried". The signature is written in a cursive, somewhat stylized script.

Richard N. Gottfried
Assembly Member

