

**NYLPI's Comments on Emergency Regulations Relating to Behavioral Interventions, including the Use of Aversive Behavioral Intervention**

**By  
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Good afternoon. Thank you for this opportunity to comment on the New York State Education Department's Emergency Regulations concerning behavioral interventions, including the use of aversive behavioral intervention.

My name is Jaclyn Okin Barney. I am a staff attorney at New York Lawyers for the Public Interest (NYLPI). Since 1981, NYLPI has had a contract with the New York State Commission on Quality of Care to provide legal and other protection and advocacy services for individuals with disabilities in New York City and across New York State. Over the years, we have advocated for thousands of individuals with a wide variety of disabilities, living in institutions and in the community. We have worked on countless special education cases and conducted numerous parent trainings. We have also worked collaboratively with other advocacy organizations around issues of special education policy reform, organized parents in support of inclusive education, and litigated cases of significant impact. As a result, we are well situated to comment on NYSED's emergency regulations pertaining to behavioral interventions for students with disabilities.

We were pleased to see that the emergency regulations generally prohibit the use of aversive or noxious stimuli on all children. However, the regulations' child-specific exception allowing particular students with disabilities to be exposed to aversive behavioral interventions raises great concern. We have not seen convincing evidence on actual long-term effectiveness of aversive techniques, and we question whether any perceived benefits of these techniques will transfer to real-life situations once a student has graduated. Moreover, we have spoken to students who have attended schools where aversive techniques are employed; they have told us that the use of such techniques has significant negative effects on those students experiencing the interventions as well as other students who have to witness their pain and suffering.

Each year, we see hundreds of cases where the New York City school system fails to provide children with the appropriate services and supports they require to address their disabilities. Deprived of appropriate services, students' often begin to act out, and for students already possessing behavioral issues, problem behavior can worsen. Yet, in the City's schools, functional behavior assessments and behavior intervention plans are rarely employed effectively or taken seriously. NYSED needs to take aggressive action to address these deficits in the State's public school programs before it can ever truly be said that a student has failed to respond to a full range of non-aversive interventions.

All this said, if NYSED continues to endorse a child-specific exception to its regulations on the use of aversive behavioral interventions, it is absolutely imperative that such an exception be narrowly tailored and include all the precautions possible to protect

children from unnecessary harm. While I plan to submit written testimony on behalf of NYLPI which will include a more detailed review and commentary on the Emergency Regulations and the ways in which we believe they can be more protective of students, today I wish to focus on five main ideas to the extent time permits.

First, the regulations should not alter the current practice of prohibiting public schools from employing aversive or noxious stimuli on students with disabilities. If a student is not responding to interventions at his or her public school, there are still more restrictive placements, including day and residential programs that could be tried. The child specific exception must be limited to students with disabilities attending highly specialized and restrictive private schools with highly trained staff.

The second restriction we propose is that the regulation must require higher standards for ensuring that parents have provided informed consent prior to their children being exposed to any aversive or noxious behavioral intervention. NYLPI staff knows parents who sent their children to schools that employ aversive behavioral interventions without being fully aware of the noxious behavioral techniques that the schools would employ. It is simply not enough for a parent to sign a consent form as the regulations currently require. Prior to any child-specific exception being written into a child's Individualized Education Program or behavior intervention plan, a parent must be counseled both in person and in writing of all the aversive behavioral interventions that a child may experience as a result of his or her consent. Additionally, prior to a child attending any school that employs such behavior interventions, a parent should be provided with the school's policy on the use of aversive behavioral techniques. All

communications with a parent and all written material that is provided to the parent must be provided in an accessible format and in his or her native language. This type of informed consent, including counseling and the distribution of written material, should also be provided to a parent prior to the authorization of physical restraint and/or time out rooms for any child.

My third point is that the regulations' definition of aversive behavioral intervention, while fine for the purpose of the prohibition, is dangerously overbroad for the purposes of the child-specific exception. The Department should identify specifically which of the banned aversive techniques may be authorized when deemed warranted through the child-specific exception. Without such clarification, it is possible that actions such as hitting, slapping, punching, hurling, strangling and shoving will be employed as aversive behavior interventions. We find it hard to believe that these methods are researched-based behavioral interventions, and we would be surprised to learn that these methods were the interventions intended by NYSED.

Our fourth suggestion is that the regulations be amended to expressly prohibit Committees on Special Education from authorizing the child-specific exception when the state's independent panel of experts did not recommend the use of aversive or noxious behavioral interventions for a particular student. As the regulations are currently written, the Committees on Special Education can simply choose to ignore the recommendations and guidance of the panel, thus reducing significantly the panel's ability to protect against unwarranted application of harmful stimuli to children. The CSE's simply do not have sufficient expertise to override the panel, and they should not be permitted to do so.

My final comments pertain to the emergency use of physical restraints in schools. There are a number of changes that need to be made to this section. I will focus comment today on the need for appropriate monitoring and reporting requirements.

In order to prevent unnecessary use of emergency physical restraints, it is imperative that schools be required to record and monitor the use of such actions. Not only should the use of physical restraints be reported to the school's principal or head administrator in writing by the end of day, but parents should also be made aware verbally by the end of the day of each time a physical restraint is used on their child. Within three days of the use of a physical restraint, the regulations should require a written report to be placed in the student's file, a copy of which should be given to the head administrator and mailed to the parent.

Thank you for considering my comments. I will submit further comments by mail. I would be happy to answer any questions you may have.