

Report of the New York State Psychological Association's Task Force on Aversive Controls with Children

Executive Summary

August 23, 2006

In June 2006, the Board of Regents approved “emergency” education regulations that amended the previously existing prohibition of corporal punishment, added a new general prohibition on the use of “aversive behavioral interventions” with disabled students with procedures for obtaining a child-specific waiver to permit their use, and added new regulations concerning time out rooms.

In response to the new amendments, NYSPA appointed a Task Force on the Use of Aversive Controls with Children to evaluate the regulations with regard to the protection of children with disabilities from the use of aversive or noxious controls, and to advise the honorable members of the NYS Board of Regents about its findings. While it should be noted that the new amendments have already been enacted, the Regents must vote at their September board meeting to determine if they should be made permanent.

The Task Force considered a variety of materials and sources of information in its deliberations including published research, reports by federal agencies and commissions, position statements by other mental health organizations on the use of restraint or seclusion, reports by disability support organizations and advocacy groups, the findings of the American Psychological Association Task Force on Zero Tolerance Policies, media reports relating to restraint and seclusion issues, and reports concerning discrimination related to minority status and disability status both nationwide and specifically in NYS.

Major Findings

1. New exceptions to prohibited use of force weaken the previously existing prohibitions against corporal punishment, significantly increase the risk of injury to students and school personnel, and do not provide sufficient safeguards against selective application based on minority or disability status.
2. Although certainly unintended, the new amendments effectually legalize corporal punishment of disabled students. Many of the consequences described as “aversive behavioral interventions” are actually corporal punishment techniques, such as hitting, kicking, slapping, and pinching. Under the new amendments, schools may seek and obtain waivers to use the “techniques” with disabled students, despite the continued prohibitions against their use with nondisabled students. Additionally, the plain language of 42 USC 15009 prohibits educational programs from using restraint or seclusion with developmentally disabled youth for any purpose other than a genuine safety emergency situation and bars schools from using techniques that would expose developmentally disabled students to any greater risk of harm than that to which students in the general population are subjected.

3. As noted by the NYS Education Department in its proposed amendments, there is little (or in some cases, no) adequately controlled and replicated research supporting the use of many of the identified aversive behavioral interventions in school settings in which they might now be used. Task Force members noted that some of the techniques described as “aversive behavioral interventions” not only constitute corporal punishment, but are included in literature on torture techniques. The Task Force was unanimous in concluding that mentally ill and developmentally disabled youth placed in lesser restrictive environments have no less need for, and right to, safe, effective, and humane treatment.
4. Although the new amendments incorporate a number of safeguards in the “aversive behavioral interventions” provisions, the Task Force found that the protections are not sufficient. As examples, the Commissioner’s “expert panel” that is to review a CSE’s or CPSE’s application for a child-specific waiver has no authority to deny an application and only serves in an advisory role. Furthermore, the new regulations do not require that a CSE or CPSE considering an aversive behavioral intervention include consultation with a physician and a licensed psychologist or certified school psychologist with expertise in the student’s disabilities, and they do not indicate which, of any of the listed aversive behavioral interventions would be prohibited, without any exception. The protections also contain no requirement that a student’s CSE consult with or involve a certified behavior analyst or psychologist with extensive experience in behavior analysis and program design.
5. The amendments do not address improving standards for teachers, CSE members, and school personnel with respect to understanding and implementing behavioral interventions, crisis de-escalation, and the safe use of emergency restraint procedures, even though such training in itself might obviate the need to take such measures,
6. The regulations fail to restrict the use of teacher- or staff-directed seclusion in time out rooms to situations involving the imminent risk of serious physical injury to the child or others. Any other use of seclusionary time out rooms with developmentally disabled students violates 42 USC 15009.
7. The amendments do not incorporate adequate personnel standards, safety, monitoring, debriefing, and reporting provisions with respect to the use of seclusionary time out rooms or emergency restraint in schools, despite the fact that both techniques have been associated with harm, injury, or death.

Major Recommendations

1. Corporal punishment, by any name, should be prohibited, without exception. Two of the new “physical force” exceptions (iii and iv) should be revoked.
2. The use of “restraint” procedures must conform to federal law, which only permits restraint of developmentally disabled students in situations involving the imminent risk of serious physical injury to the student or others. Schools must also insure that students are assessed to determine if they have any medical, psychiatric or social histories or complications that would preclude the use of restraint or that would require additional medical and/or clinical supervision and assessment during and after any episode of restraint. Personnel involved in restraint must be trained and certified in research-validated crisis de-escalation and safe restraint methods.

Incidents of restraint must be reported to the parents and the State, and any injuries associated with restraint must be reported promptly to parents and to the State. Where appropriate, emergency restraint should be followed by a debriefing to insure that the student understands why he or she was restrained.

3. The use of time out rooms for exclusionary or seclusionary time out must conform to federal law, which only permits seclusion of developmentally disabled students in situations involving the imminent risk of serious physical injury to the student or others. All use of seclusion for emergency purposes must be reported promptly to the parents and to the State, and all injuries associated with seclusion in time out rooms must be reported promptly to the parents and to the State. All students who might require emergency seclusion or time out room use should be examined by a physician to determine if there are any contraindications to the use of seclusion. All students who might require emergency seclusion or time out room use should be assessed by a licensed psychologist or certified school psychologist with knowledge of contraindications for seclusion. Where appropriate, emergency seclusion should be followed by a debriefing to insure that the student understands why he or she was secluded.

4. If time out rooms are legally permissible and recommended for a particular student as part of their behavior intervention plan, the use of time out rooms should be considered an aversive behavioral intervention. Informed consent should be required, the behaviors leading to the time out room must be clearly specified, and the maximum amount of time to be spent in time out rooms per incident and per day must be specified in the student's plan. Time out rooms should be required to be maintained a temperature in the thermal comfort zone of 70-74 degrees, and the room must conform to health codes as well as fire and safety codes. Schools must insure that personnel involved in monitoring a student in a time out room have appropriate medical and clinical skills to protect the safety of the student.

5. Many of the "aversive behavioral interventions" defined in the regulations should be prohibited, without exception, as planned behavioral interventions that would be part of a Behavior Intervention Plan. Techniques or treatments which are prohibited in other state-run facilities or agencies should also be prohibited in schools. If NYSED does not fully prohibit all aversive behavioral interventions, without exception, then:

- (a) The Commissioner's expert panel should have authority to deny a waiver;
- (b) The CSE or CPSE of any child being recommended for an aversive behavioral intervention should consult with a licensed physician who has examined the child, a licensed psychologist or a certified school psychologist who has assessed the child and who has expert knowledge of the child's disability and research-validated treatments, and a certified behavior analyst or psychologist with extensive experience in behavior analysis and program design.
- (c) No treatment shall be provided if the school does not have appropriately trained medical and clinical personnel to implement and monitor the treatment safely.

6. NYSED should disseminate information on research-validated methods of positive behavior supports and behavior interventions. NYSED should also arrange for professional-level training in behavior management for all teachers, CSE members, and other school personnel. Information on risks associated with using restraint, seclusion, and physical force with disabled students should be disseminated to teachers and other school personnel.

Summary

Although intended to prohibit aversive controls and to protect the safety of students, NYSED's regulations of June 2006 create significant health and safety risks for disabled youth, violate federal law and state law, and pose a risk of discrimination against minority and disabled students. The regulations should adopt the language and requirements of federal law and incorporate safeguards consistent with those required in other state-run facilities. We strongly recommend that aversive behavioral interventions, as defined in NYSED's regulations, should be prohibited, without exception, as disciplinary or educational interventions. Should NYSED not flatly prohibit aversive controls, we recommend specific safeguards and protections. There is also an urgent need for NYSED to address the ongoing misuse of time out (seclusion) rooms and to develop regulations that conform to federal law in terms of restricting the use of involuntary time out rooms to emergencies involving the imminent risk of serious physical injury. Professional training standards and safeguards must be improved so that teachers and other school personnel get the information, training, and support that they need to effectively meet the needs of an increasingly diverse population of students.

NYSPA stands ready to share its resources with NYSED and to collaborate with other professionals in planning training that will improve outcomes and safety for our most vulnerable students and school personnel.

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