

August 28, 2006

Dr. Rebecca H. Cort
Deputy Commissioner
Office of Vocational and Educational Services for Individuals with Disabilities
Room 1606, One Commerce Plaza
Albany, New York 12234

Dear Dr. Cort,

I am pleased to provide you and the Office of Vocational and Educational Services for Individuals with Disabilities (VESID) with the response of the New York State Association for Behavior Analysis (NYSABA) to the *proposed amendments to the Rules of the Board of Regents and the Regulations of the Commissioner of Education relating to behavioral interventions*.

NYSABA's response was prepared by our Legislative Committee consisting of professionals within the fields of education, developmental disabilities and applied behavior analysis. I believe that the response provides valuable feedback regarding the new regulations.

Sincerely,



Douglas C. King, M.Ed., BCBA
President, NYSABA

Enclosure

**COMMENTS SUBMITTED BY THE LEGISLATIVE COMMITTEE OF THE
NEW YORK STATE ASSOCIATION FOR BEHAVIOR ANALYSIS (NYSABA)
REGARDING:**

- 1. “New Requirements for Behavioral Intervention Plans, Including the Use of Aversive Behavioral Interventions” (June 22, 2006 memo from James P. Lorenzo)**
- 2. “Amendments to the Regulations of the Commissioner of Education” (Emergency adoption effective June 23, 2006)**

The New York State Association for Behavior Analysis (NYSABA), Inc., is the state chapter of the Association for Behavior Analysis (ABA), an international organization devoted to the study of experimental behavior analysis, and its clinical application of evidenced-based principles of learning, known as Applied Behavior Analysis. NYSABA represents scientists, scholars, and practitioners in psychology, education, and related fields who reside in (and outside of) New York state and are interested in the experimental analysis of behavior in all forms. NYSABA sponsors local presentations, publishes a newsletter and mailing list, and runs an annual conference. NYSABA supports quality education for human services in New York State through the applications of ethical, humane, and effective principles of behavior analysis.

NYSABA generally supports the modified rules and regulations outlined in James P. Lorenzo’s memorandum dated June 22, 2006 regarding “New Requirements For Behavioral Intervention Plans, Including the Use of Aversive Behavioral Interventions” Although NYSABA has some specific comments and recommendations (outlined below), we applaud the thoughtful and sensitive work of the Office of Vocational and Education Services for Individuals with Disabilities (VESID) in developing a comprehensive set of rules that protect New York’s school children from harm, provide a mechanism to help parents make difficult decisions about understanding and treating severe problem behavior, and provide clear guidelines to schools that define aversive methods and prohibit their use except under very restrictive and well defined circumstances.

NYSABA also supports the regulations which allow for the use of evidenced-based aversive interventions under clearly defined conditions. It is important to let therapeutic decisions be guided by current scientific findings and objective data on the efficacy of interventions for each individual student. We recognize that VESID has attempted to define clearly the steps that must be taken to ensure that positive and less restrictive assessment and intervention procedures have been conducted effectively and under the guidance of appropriately trained professionals prior to consideration of more restrictive interventions. The regulations clearly attempt to enhance protections for students and their parents and clarify the responsibilities of the schools for determining the appropriateness of more restrictive interventions.

NYSABA has the following specific comments regarding the modified rules and regulations that were adopted on an emergency basis effective June 23, 2006:

COMMENTS ON AMENDMENTS TO SECTION 19.5 OF THE RULES OF THE BOARD OF REGENTS

1. Paragraph (2)(i) states that “aversive behavioral intervention means 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 stimuli.” (emphasis added) Several of the items listed as “behavioral interventions” may also be characterized as “child abuse”, and NYSABA recommends that the word “behavioral” be removed because this may imply that these are (or have been) generally accepted methods of managing child behavior. It needs to be stated that these are instances of child abuse and will not be tolerated under any circumstances. They would be more accurately included in the definition of corporal punishment. In our opinion, electric skin shock is closely related, but there is some scientific evidence to support this approach with severely self-injurious children.

2. Paragraph (2)(iii) states that “aversive behavioral intervention means withholding sleep, shelter, bedding, bathroom facilities or clothing.” (emphasis added) Withholding bathroom facilities or limiting food as the administration of an aversive may be problematic in some instances. First, there are children who frequently request to use the bathroom in order to escape school demands or to engage in self-stimulatory play with water. In these instances, it may be necessary to limit the number of times the teacher honors a request to use the bathroom. A typical program would use a reinforcement procedure in which some requests are ignored or redirected. Under the current regulations, would this be considered the administration of an aversive? A similar problem could exist when there is a clinical need to limit food intake, such as might occur when working with a consumer who has Prader Willi Syndrome or when food is temporarily withheld and delivered in mini-meals in order to increase a child’s motivation (usually over the course of an hour or less). We recommend that this sentence read “withholding sleep, shelter, bedding, bathroom facilities or clothing contingently to punish behavior.”

3. Paragraph (2) concludes with a list of interventions that are excluded from the list of aversives. We recommend adding “positive practice, overcorrection, and physical prompts used to teach new skills”. We also recommend that “physical” (not mechanical) restraint be on this list. (See the discussion below on physical restraints.)

COMMENTS ON SECTION 200.22 ADDED TO PART 200 OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

1. Paragraph (d) deals with the emergency use of physical restraints. NYSABA is concerned that the policies on the use of physical restraint are too restrictive and nearly impossible to enforce. The distinction between the use of restraint as a reactive

emergency procedure and as a systematic application that is part of a comprehensive plan that includes antecedent and contextual modifications in practice is often unclear. We agree that restraint should be used only when other methods have not been effective. However, using physical restraint as a contingent (not emergency) procedure should be preserved and should not require the cumbersome approval process that you have outlined. We recommend that it be removed from the list of aversives. The exception would be the use of mechanical restraint. However, we agree that the contingent application of restraint should meet all other requirements including parent consent, Human Rights Committee (HRC) review and approval, and continuous monitoring.

2. Paragraph (e)(6) states that the school district shall notify the commissioner when a child-specific exception has been included in the student's IEP. The June 22 memo on the new requirements states "if the CSE or CPSE amends the student's IEP to no longer permit the aversive behavioral intervention, the school district does not need to notify the Commissioner." It would seem that such notification would be necessary in order for SED to discontinue monitoring the program or the child-specific exemption.

3. Paragraph (f)(2)(ii) states that "aversive behavioral intervention procedures may be used only if such interventions are recommended by the CSE or CPSE consistent with the student's IEP and behavioral intervention plan as determined by the CSE or CPSE." However, committee members often lack some of the critical skills for making these decisions. Will there be additional training or clinical guidance? If so, what training would be required and who would be qualified to provide the training? The same can be said about Functional Behavioral Assessments (FBA). Most private schools and public schools lack sufficient expertise to conduct comprehensive Functional Behavior Assessments. How will school personnel be trained? Who will determine if the assessment was adequately completed? In the case of contingent shock, we recommend that an Analogue Functional Analysis be conducted, as part of a broader assessment. This will require additional training and oversight by individuals with expertise in this procedure. NYSABA recommends that the Child-Specific State Panel on Behavioral Interventions be given the option of specifying the training of personnel that would be required before further consideration could be given for a child specific exemption.

4. Paragraph (f)(2)(v) states that "aversive behavioral interventions shall be implemented consistent with peer-reviewed research based practices..." NYSABA notes that no similar requirement is stated for the antecedent, reinforcement, and non-aversive consequences. We recommend including such a statement.

5. Paragraph (f)(2)(x) states that "behavioral intervention plans shall be designed and supervised by qualified professionals in accordance with their respective areas of professional competence". Other parts of the regulations refer to "qualified professionals". How is this defined? This is an important area needing clarification, particularly if individuals who have little or no specific training in the area of applied behavior analysis and severe behavior disorders are implementing aversive procedures. NYSABA recommends that the definition of qualified personnel be broadened to include Board Certified Behavior Analysts. It is also important that those supervising the

Behavioral Intervention Plans that include evidence-based punishment procedures requiring child specific exemptions have a minimum of three years of clinical experience in treating severe behavior disorders.

6. Paragraphs (f)(3)(i) and (f)(3)(ii) deal with the creation and composition of a Human Rights Committee. Although we understand the rationale for a Human Rights Committee (HRC), the stated requirements are not reasonable. Although most private agencies are likely to already have a Human Rights Committee, this committee will be a significant change for school districts. The requirements for a completely independent body made up of a licensed psychologist credentialed in ABA, licensed medical professional, registered dietician among others is unrealistic. In some areas of the state, a licensed psychologist who also is a Board Certified Behavior Analyst simply does not exist. It is extremely challenging to recruit and keep professional staff in the areas of medicine and law. NYSABA recommends that this section be modified to allow some qualified employed staff to sit on the committee and that the HRC consist of three or more non-employed staff from the list of individuals/professions listed. It should be noted that in most settings, this committee also reviews proposals and utilization reports on a broad range of methods that are not defined under the proposed regulations as an aversive (e.g., behavior support plans; certain toileting plans, etc).

7. Paragraph (f)(5) states “no parent shall be required by the program to remove the student from the program if he or she refuses consent for an aversive behavioral intervention”. What if all other options have been tried and are unsuccessful? This is particularly true if a parent also rejects the use of physical restraint. NYSABA recommends removing this statement entirely. It has the potential to create significant problems between parents and agencies.

ADDED NYSABA COMMENTS AND RECOMMENDATIONS

1. NYSABA recommends that there be some procedure for regular monitoring of the integrity of the aversive interventions by individuals with expertise in evidenced-based punishment and severe behavior disorders, as appointed by the state.

2. In our opinion, SED may want to consider approving one or two agencies in each region of the state to offer evidenced-based punishment interventions for students with severe disabilities, rather than consider individual agencies throughout the state that may not have the philosophy, resources, or credentials to deliver the services with appropriate integrity. In addition, these agencies should be subject to additional review by an SED-appointed panel of experts in evidenced-based punishment procedures and severe behavior disorders. This would ensure on-going monitoring of the integrity of the treatment methods.

NYSABA appreciates the work of SED in developing these much needed improvements in the regulations and we applaud the Board of Regents for approving the emergency regulations. We also appreciate the opportunity to make comments and suggestions in the hopes of providing the most effective and safest educational environments for the school children of New York.