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Bureau of Special Education FY'14 Memo #34

Date: May 28, 2014

To: Superintendents of Schools
Special Education Directors
Business Administrators

From: Office of the Commissioner

Division of Educational Improvement
Bureau of Special Education

Re: Amended - New Hampshire Rules for the Education of Children with Disabilities

The State Board of Education adopted the amended New Hampshire Rules for the Education of Children with Disabilities on May 13, 2014, effective May 15, 2014.

Ed 1113.04 Behavioral Interventions

(a) Positive behavioral interventions based on the results of a behavioral assessment shall serve as the foundation of any program used to address the behavioral needs of students.

(b) An LEA, other public agency, private provider of special education or other non-LEA program shall not employ any of the following aversive and deprivation behavioral interventions:

- (1) Any procedure intended to cause physical pain;
- (2) Aversive mists, noxious odors, and unpleasant tastes applied by spray or other means to cause an aversive physical sensation;
- (3) Any non-medical mechanical restraint that physically restricts a student's movement;
- (4) Contingent food/drink programs;
- (5) Electrical stimulation;
- (6) Placement of a child in an unsupervised or unobserved room from which the child cannot exit without assistance; and
- (7) Physical restraint, unless in response to a threat of imminent, serious, physical harm pursuant to RSA 126-U.

Ed 1113.05 Emergency Intervention Procedures All crisis or emergency intervention procedures shall be included in the student's IEP and shall comply with Ed 1113.04 and RSA 126-U:5

Ed 1113.06 ~~[Use of Aversive Behavioral Interventions]~~. RESERVED

~~[(a) If authorized in writing by a physician and an IEP team, the following interventions may be used:~~

- ~~(1) A non-medical mechanical restraint that physically restricts a student's movement; or~~
- ~~(2) Physical restraint, not in response to a threat of imminent, serious, physical harm.~~
- ~~(b) Aversive behavioral interventions may only be used when:~~
 - ~~(1) At least 2 written positive behavioral interventions were previously implemented without success;~~
 - ~~(2) The individual implementing the restrictive intervention has been trained and is knowledgeable in the use of positive interventions, restrictive treatment procedures, and alternatives for de-escalation of problem behavior;~~
 - ~~(3) A behavioral intervention plan detailing the use of the restrictive procedure has been developed and incorporated as a part of the IEP;~~
 - ~~(4) A description of the target behavior that will be addressed using the restrictive intervention is included in the IEP;~~
 - ~~(5) A description of the measurable criteria stating the expected change in the target behavior or behaviors is included in the IEP;~~
 - ~~(6) A specific time limit for the use of the restrictive behavioral intervention procedure is detailed in the IEP;~~
 - ~~(7) A system is developed to record the frequency, duration, and results of the intervention;~~
 - ~~(8) A system is developed to regularly inform the parents of the progress in changing the target behavior using the restrictive intervention procedures.~~
 - ~~(9) The parent or parents have given informed consent to the use of the restrictive intervention procedures separate from the consent for the IEP.]~~

Ed 1114.07 Behavioral Interventions

(a) Positive behavioral interventions based on the results of a behavioral assessment shall serve as the foundation of any program used to address the behavioral needs of students.

(b) Each private facility or other non-district program shall have a written statement of the policies and procedures followed by the program in managing student behavior. This statement shall be provided to the sending LEA and the parent at the time each child with a disability becomes enrolled in the program, at the time of the annual review of the child's educational progress, and any time the facility or non-district program's policies and procedures for managing behavior are revised.

(c) A private facility or other non-district program shall not employ any measure which is aversive or depriving in nature or which subjects a child with a disability enrolled in that program to humiliation or unsupervised confinement or to abuse or neglect as defined in RSA 169-C, the Child Protection Act, or which deprives the child of basic necessities such as nutrition, clothing, communication, or contact with parents, so as to endanger the child's mental, emotional, or physical health consistent with Ed. 1114.07.

(d) Each private facility or other non-district program shall train staff in child management techniques. The program shall administer discipline equitably and with respect and courtesy towards the child.

(e) Each private facility or other non-district program shall have a written procedure based on state and federal law concerning the reporting of suspected instances of child abuse.

(f) An LEA, other public agency, private provider of special education or other non-LEA program shall not employ any of the following aversive and deprivation behavioral interventions:

- (1) Any procedure intended to cause physical pain;
- (2) Aversive mists, noxious odors, and unpleasant tastes applied by spray or other means to cause an aversive physical sensation;
- (3) Any non-medical mechanical restraint that physically restricts a student's movement;
- (4) Contingent food/drink programs;
- (5) Electrical stimulation;
- (6) Placement of a child in an unsupervised or unobserved room from which the child cannot exit without assistance; and
- (7) Physical restraint, unless in response to a threat of imminent, serious, physical harm.

Ed 1114.08 Emergency Intervention Procedures All crisis or emergency intervention procedures shall be included in the student's IEP and shall comply with Ed 1114.07 and RSA 126-U:5.

Ed 1114.09 ~~Use of Aversive Behavioral Interventions.~~ RESERVED

~~[(a) If authorized in writing by a physician and an IEP team, the following interventions may be used:~~

- ~~(1) A non-medical mechanical restraint that physically restricts a student's movement; or~~
 - ~~(2) Physical restraint, not in response to a threat of imminent, serious, physical harm.~~
- ~~(b) Aversive behavioral interventions may only be used when:~~
- ~~(1) At least 2 written positive behavioral interventions were previously implemented without success;~~
 - ~~(2) The individual implementing the restrictive intervention has been trained and is knowledgeable in the use of positive interventions, restrictive treatment procedures, and alternatives for de-escalation of problem behavior;~~
 - ~~(3) A behavioral intervention plan detailing the use of the restrictive procedure has been developed and incorporated as a part of the IEP;~~
 - ~~(4) A description of the target behavior that will be addressed using the restrictive intervention is included in the IEP;~~
 - ~~(5) A description of the measurable criteria stating the expected change in the target behavior or behaviors is included in the IEP;~~
 - ~~(6) A specific time limit for the use of the restrictive behavioral intervention procedure is detailed in the IEP;~~
 - ~~(7) A system is developed to record the frequency, duration, and results of the intervention;~~
 - ~~(8) A system is developed to regularly inform the parents of the progress in changing the target behavior using the restrictive intervention procedures.~~
 - ~~(9) The parent or parents have given informed consent to the use of the restrictive intervention procedures separate from the consent for the IEP.]~~

Ed 1120.04 Parental Consent

- (a) An LEA shall obtain informed, written consent from the parent of a child with a disability prior to:
- (7) Access to public insurance pursuant to 34 CFR 300.154(d); and

Ed 1120.08 Public and Private Insurance An LEA shall comply with the requirements detailed in 34 CFR 300.154 and He-M 1301 when proposing accessing public and private insurance.

- (a) When accessing public insurance the LEA:

- (1) Shall obtain informed parental consent once, pursuant to 34 CFR 300.154(d), the first time the public agency seeks to access the child's public insurance;
- (2) Shall provide annual notification pursuant to 34 CFR 300.154(d)(2)(v). The annual notification includes a withdrawal of consent provision. The withdrawal of consent provision terminates the LEA's authority to access the child's state public benefits or insurance program. This withdrawal of consent provision is effective upon the LEA's receipt of the parent's signed withdrawal.

For more information, please contact Santina Thibedeau, Santina.Thibedeau@doe.nh.gov / 271-6693.