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Bureau of Special Education Support FY'23 Memo #18

Date: October 31, 2022

To: Superintendents of Schools  
Administrators of Special Education

From: Office of the Commissioner of Education

Division of Learner Support  
Bureau of Special Education Support

RE: Changes to LEA Request for Out-of-State Programs Entered into NHSEIS Form

The New Hampshire Department of Education (Department), Bureau of Special Education Support (Bureau) is updating the LEA Request for Out-of-State Programs Entered into NHSEIS form to address Ed 1126.06 (b).

When considering out-of-state placement options, Local Education Agencies (LEAs) must ensure that programs meet the behavior intervention standards of Ed 1114.07 and Ed 1114.08. When completing an out-of-state program request form, an LEA representative must now sign to certify that the program meets the requirements of Ed 1114.07 and Ed 1114.08.

**I certify that this program meets the  
behavior intervention standards of  
Ed [1114.07](#) and Ed [1114.08](#)**

Requesting LEA Signature

**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 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, or 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 or 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 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.

**RSU 126-U:5 Limitation of the Use of Restraint to Emergencies Only.**

I. Restraint shall only be used in a school or facility to ensure the immediate physical safety of persons when there is a substantial and imminent risk of serious bodily harm to the child or others. The determination of whether the use of restraint is justified under this section may be made with consideration of all relevant circumstances, including whether continued acts of violence by a child to inflict damage to property will create a substantial risk of serious bodily harm to the child or others. Restraint shall be used only by trained personnel using extreme caution when all other interventions have failed or have been deemed inappropriate.

II. Restraint shall never be used explicitly or implicitly as punishment for the behavior of a child.

The updated form can be found on the Department's website: <https://www.education.nh.gov/who-we-are/division-of-learner-support/bureau-of-student-support/special-education/program-approval>

Should you need any further clarification or have specific questions, please contact Mary Sheehy at 603 271-4776 or [Mary.D.Sheehy@doe.nh.gov](mailto:Mary.D.Sheehy@doe.nh.gov)