

OFFICE OF PATIENTS' RIGHTS

Protection & Advocacy, Inc.

100 Howe Avenue, Suite 210N

Sacramento, CA 95825-8202

Telephone (916) 575-1610

Toll Free (800) 254-5166

FAX (916) 575-1613

To: All Patients' Rights Advocates

From: Office of Patients' Rights

Re: Behavioral Intervention

Date: June 28, 2001

This Information Letter discusses school districts' use of behavioral interventions with special education students. Recently, several advocates questioned the appropriateness of a school district's use of seclusion with students with disabilities and asked what steps they could take to address this. The discussion below addresses the following: limitations of the types of behavioral intervention school districts may use; the procedures school districts must follow before using behavioral interventions; the use of behavioral interventions during an emergency; how to file a special education compliance complaint if a school district is not following the law; and other steps advocates may take to address the inappropriate use of behavior restraints in schools.

Are there any limitations on the types of behavioral interventions school districts may use with students with disabilities?

In 1990, the California Legislature enacted Assembly Bill 2586 (Hughes). [Cal. Ed. Code Sec. 56520 – 56524.] This bill, often referred to as the Hughes Bill, and the implementing regulations prohibited the use of aversive behavior interventions and require school districts to use positive behavioral interventions.

School Districts may not use any behavioral interventions that inflict pain or trauma. [5CCR Sec. 3001(d). 3052(a)(5).] School districts may not use any of the following behavioral interventions, even in an emergency:

- Release of toxic or unpleasant sprays near the student's face;
- Denying adequate sleep, food, water shelter, bedding, comfort, or access to bathroom facilities;
- Subject the student to verbal abuse, ridicule or humiliation or cause emotional trauma;
- Use locked seclusion;
- Impede adequate supervision of the student;
- Deprive the student of one or more of his/her senses; or
- Employ any device, material or object that simultaneously immobilizes all four extremities (except prone containment in emergencies.)

[5CCR Sec. 3052(i) and (l).]

What are positive behavioral interventions that school districts may use?

School Districts are required to use positive behavioral interventions. Positive behavioral interventions are procedures that can be used each time a student displays, or is likely to display, a targeted serious behavior problem. School districts should not use techniques that simply suppress problem behaviors unless they also teach the student substitute appropriate behaviors. Positive behavior techniques may include: altering events in anticipation of a behavior problem to try to prevent its occurrence; teaching an alternative behavior; teaching adaptive behaviors; manipulating the consequences for serious behavioral problems; and reinforcing appropriate behaviors. Positive behavioral interventions respect the student's dignity and personal privacy and assure physical freedom, social interaction, and individual choice. [5 CCR Sec. 3001 (f).]

What are school districts required to do to address a student's behavioral problems?

Every special education student who demonstrates a serious behavior problem must receive a functional analysis assessment. This assessment is used to develop a positive behavior intervention plan. The plan contains a set of goals and objectives related to reducing maladaptive behaviors and substituting appropriate behaviors.

A functional analysis assessment must be performed by an individual with training in behavior analysis. The assessment involves a great deal of observation of the student, collection and analysis of data and study of the student's environment and

past history. Each assessment must include the following: observation of the targeted behavior; observation of the antecedent events associated with the behavior; observation and analysis of the consequences following the display of behavior; analysis of the settings in which the behavior occur; and review of health and medical factors which may influence the behavior; and review of the history of the behavior. [5CCR Sec. 3052(b)(1).]

What happens after the behavioral assessment is completed?

The School District is required to convene an IEP (individual education program) meeting after the functional analysis assessment has been completed. The purpose of this meeting is to develop a positive behavior intervention plan. The behavior plan must contain sufficient detail to direct their implementation. It must include the following elements:

- A summary of information from the functional analysis assessment;
- An objective and measurable description of the targeted serious behaviors and positive replacement behaviors;
- Goals and objectives specific to the targeted behaviors;
- A detailed description of the behavioral interventions to be used and the circumstances for their use;
- Schedules for recording the frequency of interventions and demonstrations of replacement behaviors;
- Criteria for determining when the interventions will be phased out or replaced with less intense or less frequent interventions;
- The extent to which interventions will be used in the student's home and in other settings;
- Specific dates for the IEP team to review the behavior intervention program's effectiveness.

[5CCR Sec. 3001(f), 3052(c).]

What can a school district do during an emergency?

If a student exhibits unpredictable spontaneous behavior which poses a clear and present danger to himself or others or exhibits behaviors that cause serious property damage, the school personnel may use emergency interventions, including prone containment by trained staff, for the time necessary to address the emergency. [5 CCR Sec. 3001 (c), 3052(i).]

Following the use of an emergency behavioral intervention, the school district is required to notify the parent and, when appropriate, the residential care provider within one day. If the student does not have a behavioral intervention plan, the district must schedule an IEP meeting within two days to determine whether a functional analysis assessment is necessary and to determine the necessity for an interim behavioral intervention plan.

What can a patients' rights advocate do if a school district does not follow these behavioral intervention requirements?

When a school district has not followed the law or has not implemented a student's behavioral intervention plan, a compliance complaint may be filed. Any individual, public agency or organization may file a written complaint. The complaint may concern a single child, a group of children or a local school district policy.

If a child or group of children is in immediate physical danger, or the health, safety or welfare of a child or group of children is threatened, a complaint may be filed directly with the California Department of Education (CDE) and the CDE must investigate the complaint. [5 CCR Sec. 4600, 5 CCR Secs. 4611(a) and 4650(a)(viii)(C).] A complaint that alleges that a school district is using prohibited behavioral interventions meets this criteria. Other criteria for direct state investigation may be found at 5 CCR Sec. 4650(a)(viii).

Under federal and state law, the CDE has 60 calendar days from receipt of the complaint to carry out any necessary investigation and to resolve the complaint.

Complaints should be sent to the following address:

Complaint Management and Mediation Unit
Special Education Division
California Department of Education
515 L Street, Suite 270
Sacramento, CA 95814

Are there any other ways advocates can challenge the use of impermissible behavioral interventions?

If a school district is using a seclusion box for secluding a child, the advocate may want to consider involving the Fire Marshall or other local fire authority. Some Districts have impermissibly used seclusion boxes as part of a behavioral intervention plan. These boxes, in addition to violating Hughes Bill requirements, also do not meet fire safety regulations. Some advocates have had success by contacting the Fire Marshall or other local fire authorities who have required school districts to remove the seclusion boxes because they violate local and state fire laws.

If the behavioral interventions inflict pain or trauma or otherwise rise to the level of child abuse, the advocate should consider filing a child abuse report. As a result of a recent statutory change, child abuse reports against school officials are not made to the Child Protective Services Agency, instead they should be made to local law enforcement officials. If a complaint is made to the Child Protective Services Agency, that agency is required to forward the complaint to local law enforcement (see Penal Code §§11165.9 and 11165.14).

F:\DOCS\OPR\Informational Letters\Behavioral Intervention.2001.doc