

THE SPECIAL EDUCATION MUCKRAKER

Dee Alpert, Publisher
(Hey – Somebody's got to do it!)

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Special Report

ABU GHRAIB ON THE HUDSON: NYSSED'S NEWSPEAK ABOUT AUTHORIZING SCHOOL ABUSE

In an Orwellian move which would make the master proud, the NYS Ed. Dept. (NYSED) has proposed regulations which are drafted to look like they prohibit - ***but which actually authorize*** - use of severe aversives, restraints and time out/seclusion rooms in every single school and pre-school in New York State. To summarize NYSED's proposals:

In pre-schools for children as young as 3 - in ***any*** New York State pre-school, regular public school, private school, or program operated by an Intermediate Educational Agency (IEA, BOCES) , ***staff will be able to use electric skin shock, strangling, hitting, slapping, "painful intrusive stimuli," withholding food and water, and denying access to toilets [the famous "except as provided" legal loophole] if they follow the procedures in these regulations,*** and which do not require Ph.D. Psychologists with professional specializations in behavior, nor child psychiatrists, to be involved in the decision-making. Nor in the implementation and supervision. ***The devil's in the details, folks!*** But why one detail includes "strangling" is beyond us. Almost.

<http://www.regents.nysed.gov/2006Meetings/May2006/0506emscvesidd1.htm>.

(b) Prohibition of the use of aversive behavioral interventions.

(1) ***No public school, BOCES, charter school, approved preschool program, approved private school, State-operated or State-supported school in this State, approved out-of-State day or residential school, or registered nonpublic nursery, kindergarten, elementary or secondary school in this State shall*** employ the use of aversive behavioral interventions to reduce or eliminate maladaptive behaviors, ***except as provided*** pursuant to section 200.22(e) and (f) of this Title. [Note - It's that old "except as provided" loophole.]

(2) As used in this section, aversive behavioral intervention means: (i) 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 similar stimuli; (ii) any form of noxious, painful or intrusive spray or inhalant; (iii) ***withholding*** sleep, shelter, bedding, ***bathroom facilities*** or clothing; (iv) contingent food programs that include ***withholding*** or limiting ***food or drink or essential nutrition or hydration*** as part of meal times or intentionally altering staple food or drink in order to make it distasteful; (v) movement limitation used as a punishment, including but not limited to helmets and mechanical restraint devices; (vi) ***the placement of a child unsupervised or unobserved in a room from which the student cannot exit without assistance;*** or (vii) other stimuli or actions similar to the interventions described in subparagraphs (i) through (vi) of this paragraph.

Now, "corporal punishment," such as hitting, slapping, kicking, hurling" is ***already illegal*** in New York schools. ***The proposed regs. would authorize them, via the "except as provided" clause.***

What's going on here? It could be that the folks at NYSED just goofed, and wrote up regulations that clearly permit things that make sane, civilized people cringe. But ***strangling?***

Strangling! We can only assume that some school employee lost it and used a choke hold on a kid, and is going to be sued. Or so we're told already happened. (Cops can't do this to disturbed people on the street: why should school staff be permitted to do it to very young children?) By NYSED's defining "aversive behavioral interventions" to include strangling, the strangler's lawyers will be able to claim that strangling a kid is a generally accepted practice within the special education "expert" community in New York. But ***strangling pre-schoolers?*** Really! Ditto for ***hitting, slapping, kicking pinching, and hurling,*** "except as provided."

Withholding food, water and toilet facilities? These are illegal in New York and can be prosecuted under "endangering the welfare of a child" laws. Or were illegal. If this is approved ...

Locking kids in time out/isolation rooms? NYSED's current "guidelines" ***already*** prohibit this. Lots of schools and programs do it anyway. If they build 'em, they will use 'em. The regs

would make it at least arguably legal. Suits are pending because NYS schools and programs have locked severely disabled young kids in tiny time out rooms, daily, for long periods of time, often without an adult continuously outside to make sure the child isn't coming to harm. NYSED hasn't lifted anyone's license or certificate for doing this so far. Why would it start now?

Restraints? One new NYS suit is from a case where a special ed. bus driver duct-taped an 8 year old to her seat; an older one was brought when a child with a tracheotomy tube, in a wheel chair, having a noisy tantrum, had her hands and mouth duct-taped closed by her special ed. teacher. Teacher not disciplined. **But of course!** Then there are stories of kids with autism being tied into Rifton Chairs, which are designed to provide physical support for kids with severe disabilities such as paraplegia, for hours on end. They are **not** recommended for restraining kids with disabilities.

What kids are we really talking about? Beware the Judge Rotenberg School red herring. A NYS intergovernmental taskforce came out with recommendations over a year ago to reduce the very large number of NYS kids in out-of-state placements. These were kids sent to expensive residential special ed. schools; kids with severe behavioral problems sent to residential treatment schools; abused and neglected disabled kids placed by county social service agencies, and kids with disabilities referred by the juvenile justice system. Most have serious psychiatric diagnoses. The TF said that more in-state placements for these kids should be set up and that some, such as the infamous NYS School for the Blind, should be expanded. **This was one month after a horrific abuse scandal at the NYSED-operated School for the Blind.** Guess they thought NYSED has a fast learning curve. It doesn't.

At the same time, NYSED is under ferocious pressure from the USDOE to place more and more severely disabled kids in regular neighborhood schools. These include kids now in separate public and private schools for kids with serious psychiatric and physical disabilities, and day treatment programs, including kids with profound autism.

To allow little NY local schools to set up in-house classes for kids with severe behavior problems - cheaper than putting them into public or private special schools, and it won't get US DOE mad for violating the inclusion mantra - NYSED decided to establish regulations which would allow all schools and programs in NYS to use behavior management and modification techniques, on kids of all ages, **without being forced to hire the high-level behavior psychologists at the Ph.D. level, and child psychiatrists whom these kids' prior real psychiatrically-oriented programs had to pay a lot for.** Since some of these - the NY publicly-operated special ed. day schools and regular little districts - are already threatened with suit for abusing disabled kids with inhumane "behavior modification" modalities, **most of which are currently illegal in NY schools at this time,** NYSED drafted regulations which would legalize, regularize and legally immunize every single pre-school, nursery and kindergarten, regular public schools, districts, co-ops (BOCES) when perpetrating these abusive practices - and also conveniently immunize from suit the people already illegally using these techniques in the obvious abuses NYSED new-speaks about as "treatment." But **strangling?**

These regulations give the appearance of prohibiting or seriously limiting the use of these aversives by attaching all kinds of high-sounding procedural requirements. Time and time again, it has been shown that violations of similar procedural requirements designed to protect disabled kids have been widely ignored or violated, under NYSED's blind eye. When these abuses happen in public pre-schools, nursery schools and k-12 public special ed. and local schools, none of the legal protections against cruel and inhumane treatment for disabled kids and adults in institutional programs and schools apply. **NYS Child Abuse Hotline folks have no authority to handle complaints of abuse of severely disabled kids in public schools. NYSED admits it has no forensic experts competent to investigate cases where severely disabled kids are abused in schools.**

This is the same NYSED which recently defined sex with a student too legally disabled to give consent as a minor sexual offense, not countable toward a school being deemed "persistently dangerous." Although it's a federal felony. And which refuses to even **publish** violent and criminal incident data on its BOCES-operated all-special ed. schools. Now NYSED wants to make it legal for every little local neighborhood pre-school and public school to use aversives, restraints and time out/seclusion rooms, even on on pre-school age profoundly disabled kids? They've got to be kidding.

What do you get when you mandate inclusion of severely behaviorally disordered kids without funding - and requiring - any specified level of professional training at all? Now what do **you** think will happen if this proposal is approved? **Strangling?**

Tell the Regents to just say "no." Reach 'em at: <http://www.regents.nysed.gov/terms.html>