

Conditional and Prohibited Procedures

A Fact Sheet from the Minnesota Disability Law Center

This fact sheet is a brief overview of the definitions, permissible uses, and state law related to conditional and prohibited procedures in schools. Different laws apply in different settings. The term conditional procedures includes the restraint and seclusion of children.

Notice: Disability Law Center Fact Sheets, including this one, are intended as brief informational introductions to Minnesota and federal legal requirements on the topic. This fact sheet does not constitute legal advice and does not create an attorney-client relationship. Each situation is different and the law is subject to change and interpretation.

Definitions

Conditional Procedures: aversive and deprivation procedures which are not prohibited and include: manual restraint (body) , mechanical or locked restraint (devices), locked time out, temporary delay or withdrawal of regularly scheduled meals or water up to 30 minutes

Aversive Procedure: planned use of aversive stimulus contingent on behavior listed in IEP or in emergency.

Aversive Stimulus: object, event or stimulation occurring right after behavior to suppress it.

Deprivation Procedure: planned delay or withdrawal of goods, services, activities contingent on behavior listed in IEP or in emergency.

Time Out – 1. “contingent observations”: a non regulated intervention within the same room
2. “exclusionary”: a non regulated intervention requiring the student to leave the room; and 3. “locked”: a regulated involuntary intervention requiring removal of the student to a special room and where the student cannot leave.

Locked Time Out: regulated, removal to specially designated isolation room/space

- Criteria for return
- Automatic locking mechanism that disengages if not in use
- Part of a comprehensive plan that uses positive behavioral supports
- Evaluation re. contraindication for psychological or physical health reasons
- Continuously monitored by trained staff
- Access to water and bathroom, if seclusion for more than 15 minutes
- Documentation of length and number in a school day
- Safe environment – tamper proof, controls immediately outside room
- Observation window or device to allow continuous monitoring
- Space 5 by 6 or equivalent, allow student to stand, stretch and lie down
- Well-lighted, well ventilated, heated and clean
- Meet all fire and safety codes

Prohibited Procedures: corporal punishment; assume and maintain position/activity that causes physical pain; intense sounds, lights, other stimuli; noxious smell, tastes, substance or spray; deny or restrict access to equipment and devices; faradic skin shock; total or partial restriction of auditory or visual sense (not study carrels); withhold meals or water; deny access to toilet facilities.

Permissible Uses of Conditional Procedures –

Two Situations: Planned Use or Emergency

Planned Use	Emergency
<i>Prior to Use:</i> Identify severity and frequency of target behaviors Identify at least two positive interventions implemented and effectiveness Design and implement interventions based on needs, goals, and document in IEP	A situation where immediate intervention is needed to protect someone from physical injury, emotional abuse (verbal or non verbal threats and gestures) or to prevent severe or serious property damage.
<i>Prior to Use :A:</i> description of behaviors, antecedents, consequences, reinforcers, function of behavior, use variety of methods (FBA)	Must be least intrusive intervention necessary
<i>Prior to Use:</i> If Time out for Seclusion considered – see above definitions	May use “reasonable force”
May implement Conditional Procedures once prior steps are completed	If 2 or more times in a month or if a pattern, must call meeting and determine any evaluation needs, within 5 days of conditional procedure use

Other Considerations:

- Must notify parents of emergency use on same day or in writing within two days if same day notification not possible
- Must hold IEP meetings if a peace (police) officer removes a student twice within 30 days to determine the adequacy of the IEP and need for additional evaluation.
- All behavioral interventions not in IEP must be consistent within discipline policy.
- Repeated or continued use must be reviewed in IEP.
- Parents may withdraw consent for behavioral intervention plan at any time and district must send notice and request parent signature, and must call IEP meeting within 3 days to consider change in program or placement.

Minnesota Conditional Procedures Laws

3525.0200 DEFINITIONS FOR SPECIAL EDUCATION.

Subp. 1d. **Aversive procedure.** "Aversive procedure" means the planned application of an aversive stimulus: (1) contingent upon the occurrence of a behavior identified for reduction or elimination in the IEP; or (2) in an emergency situation governed by subpart 2c.

Subp. 1e. **Aversive stimulus.** "Aversive stimulus" means an object that is used, or an event or situation that occurs immediately after a specified behavior in order to suppress that behavior.

Subp. 1g. **Conditional procedures.** "Conditional procedures" means interventions that meet the definitions of aversive and deprivation procedures which are not prohibited. Conditional procedures include:

- A. the use of manual restraint;
- B. the use of mechanical or locked restraints;
- C. time out procedures for seclusion; and

D. temporary delay or withdrawal of regularly scheduled meals or water not to exceed 30 minutes except as provided in subpart 2a.

Subp. 2a. **Deprivation procedure.** "Deprivation procedure" means the planned delay or withdrawal of goods, services, or activities that the pupil would otherwise receive: (1) contingent upon the occurrence of a behavior identified for reduction or elimination on the IEP; or (2) in an emergency situation governed by subpart 2c.

Subp. 2b. **Direct services.** "Direct services" means special education services provided by a teacher or a related service professional when the services are related to instruction, including cooperative teaching.

Subp. 2c. **Emergency.** "Emergency" means a situation in which immediate intervention is necessary to protect a pupil or other individual from physical injury, emotional abuse due to verbal and nonverbal threats and gestures, or to prevent severe property damage. The emergency intervention must be the least intrusive intervention possible to reasonably react to the emergency situation. This subpart does not prohibit staff persons from using reasonable force to protect themselves or other pupils or students as provided in Minnesota Statutes, section 609.379.

Subp. 3a. **Functional behavioral assessment or FBA.**

"Functional behavioral assessment" or "FBA" means a process for gathering information to maximize the efficiency of behavioral supports. An FBA includes a description of problem behaviors and the identification of events, times, and situations that predict the occurrence and nonoccurrence of the behavior. An FBA also identifies the antecedents, consequences, and reinforcers that maintain the behavior, the possible functions of the behavior, and possible positive alternative behaviors. An FBA includes a variety of data collection methods and sources that facilitate the development of hypotheses and summary statements regarding behavioral patterns.

Subp. 8e. **Manual restraint.** "Manual restraint" means physical intervention intended to hold a pupil immobile or limit a pupil's movement by using body contact as the only source of physical restraint.

Subp. 8f. **Mechanical restraint.** "Mechanical restraint" means the use of devices, for example, mittens, straps, or restraint chairs, to limit a pupil's movement or hold a pupil immobile as an intervention precipitated by the pupil's behavior. Mechanical restraint applies to uses

intended to prevent injury with pupils who engage in behaviors, for example, head-banging, gouging, or other self-injurious actions that result in tissue damage and medical problems. Mechanical restraint does not apply to restraint used to treat a pupil's medical needs or to position a pupil with physical disabilities.

Subp. 25a. **Time out for exclusion.** "Time out for exclusion" involves procedures which remove a pupil from the regularly scheduled education program for brief periods not to exceed 30 minutes. Time out for exclusionary purposes is not regulated by this chapter.

Subp. 25b. **Time out for seclusion.** "Time out for seclusion" involves procedures which place the pupil in a specially designated isolation room or similar space.

3525.0850 BEHAVIOR INTERVENTIONS.

This policy is intended to encourage the use of positive approaches to behavioral interventions. The objective of any behavioral intervention must be that pupils acquire appropriate behaviors and skills. It is critical that behavioral intervention programs focus on skills acquisition rather than merely behavior reduction or elimination. Behavioral intervention policies, programs, or procedures must be designed to enable a pupil to benefit from an appropriate, individualized educational program as well as develop skills to enable them to function as independently as possible in their communities.

3525.2900 DEVELOPMENT AND CONTENT OF INDIVIDUAL EDUCATION PROGRAM PLAN.

Subp. 5. The IEP and regulated interventions.

A. There are two types of regulated interventions: conditional procedures and prohibited procedures.

(1) Conditional procedures may only be used when included as part of the pupil's IEP or in an emergency situation according to part 3525.0200. In order to utilize a conditional procedure, the IEP team must:

(a) identify the frequency and severity of target behaviors for which the conditional procedure is being considered;

(b) identify at least two positive interventions implemented and the effectiveness of each;
and

(c) design and implement regulated interventions based on present levels of performance, needs, goals and objectives, and document in the IEP.

(2) Prohibited procedures are interventions that are prohibited from use in schools by school district employees, contracted personnel, and volunteers. The procedures or actions listed in subitems (a) to (i) are prohibited:

- (a) corporal punishment as defined in Minnesota Statutes, section 121A.58;
- (b) requiring a pupil to assume and maintain a specified physical position, activity, or posture that induces physical pain as an aversive procedure;
- (c) presentation of intense sounds, lights, or other sensory stimuli as an aversive stimulus;
- (d) use of noxious smell, taste, substance, or spray as an aversive stimulus;
- (e) denying or restricting a pupil's access to equipment and devices such as hearing aids and communication boards that facilitate the person's functioning except temporarily when the pupil is perceived to be destroying or damaging equipment or devices;
- (f) faradic skin shock;
- (g) totally or partially restricting a pupil's auditory or visual sense not to include study carrels when used as an academic intervention;
- (h) withholding regularly scheduled meals or water; and
- (i) denying a pupil access to toilet facilities.

B. All behavioral interventions not covered in the IEP must be consistent with the district's discipline policy. Continued and repeated use of any element of a district's discipline policy must be reviewed in the development of the individual pupil's IEP.

C. If an emergency intervention is used twice in a month or a pupil's pattern of behavior is emerging that interferes with the achievement of the pupil's educational goals and objectives, a team meeting must be called to determine if the pupil's IEP is adequate, if additional evaluation is needed, and, if necessary, to amend the IEP. Districts may use conditional procedures in emergencies until the IEP team meets, provided the emergency measures are deemed necessary by the district to protect the individual pupil or others from harm. The IEP team shall meet as soon as possible, but no later than five school days after emergency procedures have commenced. District administration and parents must be notified immediately when a regulated procedure is used in an emergency situation.

D. Time-out procedures that seclude a student in a specially designated isolation room or similar space must meet the following conditions:

- (1) specific criteria for returning the pupil to the routine activities and regular education environment;

(2) an evaluation to determine whether seclusion is contraindicated for psychological or physical health reasons;

(3) provision for the pupil to be continuously monitored by trained staff;

(4) adequate access to drinking water and to a bathroom for a time-out that exceeds 15 minutes;

(5) documentation of the length of time spent in each time-out procedure and the number of occurrences each school day;

(6) a safe environment for the pupil where all fixtures are tamper proof, walls and floors are properly covered, and control switches are located immediately outside the room;

(7) an observation window or other device to permit continuous monitoring of the pupil;

(8) a space that is at least five feet by six feet or substantially equivalent to these dimensions and be large enough to allow the pupil to stand, to stretch the pupil's arms, and to lie down;

(9) be well-lighted, well-ventilated, adequately heated, and clean; and

(10) all applicable fire and safety codes.

E. A parent has the right to withdraw consent for a behavior intervention plan at any time by notifying the program administrator or designee and the district must stop the procedure immediately. After parental consent is withdrawn and the procedure is stopped, the school must send written acknowledgment to the parent and request parental signature. If a parent's signature to withdraw consent cannot be obtained, the district must document its efforts to communicate and obtain the signature. Parents must be contacted within three school days to determine the need to convene the IEP team to consider a change in program or placement.

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