

MDLC Position Paper **on Proposed Special Education Rules**

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MDLC has reviewed the Minnesota Department of Education's (MDE) proposed special education rules. This position paper identifies a number of concerns and positive features of the proposed rule.

The full text of the proposed rules and MDE's explanation of the proposed changes are available on MDE's website at <http://education.state.mn.us/mde/Legislation/Rulemaking/index.html>.

MDE will present the proposed rules and accept testimony on these rules at a rule making hearing on December 3, 2007. Information about this rule making hearing is available at <http://education.state.mn.us/mdeprod/groups/Compliance/documents/Publication/032654.pdf>.

Introduction

This position paper focuses on two main areas of concern – the rules concerning positive behavioral interventions and supports (which include rules on the use of restraint and seclusion) and the eligibility criteria for specific learning disabilities. We also are noting several areas of support. Please contact Jaynie Leung, ejleung@midmnlegal.org, Linda Bonney, lbbonney@midmnlegal.org, or Dan Stewart, djstewart@midmnlegal.org with any questions. MDLC will also provide its written comments on the proposed rule upon request.

Positive Behavioral Interventions and Supports

MDLC supports the use of positive behavioral interventions as the primary strategy to address challenging behavior and strongly opposes the unnecessary use of manual and mechanical restraints, locked time-out and seclusion for children in any setting, including public schools. We urge the department to reduce and ultimately eliminate the use of restraint and seclusion. We support the department's efforts to ensure the safety of staff and children when restraint and seclusion are used.

MDLC supports a requirement that a physician's order must be obtained if the district proposes to use manual restraints, locked time-out and seclusion in addition to the proposed requirement for mechanical restraints. All types of restraints and seclusion have the potential to create serious and deadly consequences, such as physical and psychological injury, loss of dignity, violation of a child's rights, and even death. The use of manual, mechanical and seclusion without this necessary safeguard should be prohibited.

MDLC supports the proposed requirement for districts to demonstrate mechanical restraints and show parents the room used for locked time out or seclusion. MDLC asserts that manual restraints should also be explained or demonstrated on a volunteer or a model.

MDLC believes that additional training requirements are necessary for staff and children. Because of the serious risk these intrusive interventions pose, the training should be based on peer-reviewed research and professional standards and should include de-escalation, monitoring, child-specific considerations, supervision protocols and data collection procedures.

Further, in the same vein, registration requirements should be increased to include annual reporting of mechanical restraint devices. And, in order to promote continual improvement at the district level, the oversight committee should meet at least annually, review data on restraint and seclusion in all district facilities and include a parent of a child with a disability and a licensed mental health professional.

MDLC is concerned that there is confusion and uncertainty about the application of these rules in mental health facilities (such as day treatment centers) and with students ages 18-21 who are vulnerable adults. For these facilities and groups, MDLC strongly encourages MDE to ensure consistency with and clarify why, when and how different rules apply. MDLC's position is that the least intrusive provisions should prevail and that MDE work to resolve the legal differences in the restraint and seclusion areas and ensure as much consistency as possible.

Lastly, we express support for conducting FBAs and implementing BIPs for children who exhibit difficult behaviors, but we have concerns that FBAs may not be appropriate for children who children with certain mental illnesses, such as bipolar disorder, Tourette's, delusions or auditory hallucinations as seen in childhood schizophrenia. Some behaviors may in fact be symptoms of a mental health disorder and must be addressed as symptoms rather than behaviors. Further, a mental health screening must be done prior to conducting an FBA.

Specific Learning Disabilities (SLD)Criteria

MDLC believes the inclusion of pre-referral interventions pursuant to Minn. Stat. 125A.56 in the proposed criteria does not allow districts to by-pass these referrals when there is an urgent need for evaluation. The inclusion of this language may also further delay a special education evaluation when a district uses the response to intervention approach for determining eligibility.

The proposed timeline for the response to intervention approach for determining eligibility has a minimum that exceeds current Minnesota timelines for completing a special education evaluation. There is no maximum amount of time and this could result in a prolonged delay in determining a child's eligibility for SLD.

This proposed timeline is additionally problematic for children who are being evaluated for eligibility under other special education disability categories. In this circumstance, districts would have two separate timelines to follow, one for evaluating eligibility for SLD under the response to intervention approach and one for other disability categories.

There is no specific requirement for districts to inform and to gain consent from parents about the initial participation in the response to intervention route to eligibility

Statements of Support

MDLC supports MDE's proposed rules for the least restrictive environment (3525.0400), the parts of the positive behavior intervention and supports not noted above, care and treatment (3525.2325), surrogate parents (3525.2440 and 2445), criteria upon re-evaluation (3525.2720), educational placement (3525.3010), and the retained IEP development provisions (3525.2810).

Further Questions

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