Position Statement on the Use of Restraints, Seclusion, Equipment and Aversive Techniques

BACKGROUND

In enacting the Developmental Disabilities Assistance and Bill of Rights Act of 2000, the United States Congress found that "individuals with developmental disabilities are at greater risk than the general population of abuse, neglect, financial and sexual exploitation, and the violation of their legal and human rights." Significantly, the Developmental Disabilities Assistance and Bill of Rights Act also sets forth Congress' express finding that both the federal and state governments:

- have an obligation to ensure that public funds are provided only to institutions ... that provide treatment, services and habilitation that ... meet minimum standards relating to [the] prohibition of the use of physical restraint and seclusion ... unless absolutely necessary to ensure the immediate physical safety of the individual or others, and prohibition of the use of such restraint and seclusion as a punishment or as a substitute for a habilitation program.
- [42 U.S.C. §15009(a)(3) (emphasis added)]

POSITION

Consistent with these principles, it is the position of the New Jersey Council on Developmental Disabilities (Council) that the use of restraints, seclusion, restrictive equipment and aversive techniques must be carefully defined and closely monitored to prevent misuse of these practices. It is also the position of the Council that the need for and use of such techniques must be minimized in favor of less restrictive practices and that certain restrictive and aversive techniques must be prohibited.

It is the further position of the Council that the State, through its applicable agencies, is required to define and prohibit those aversive techniques, chemical, physical, and mechanical restraints, seclusion practices, and safeguarding, therapeutic, and supportive equipment that pose an unacceptable risk of physical, psychological or emotional harm to people with developmental disabilities who reside in State funded or regulated facilities or who receive State services or public education.

RECOMMENDATIONS

To achieve this position the Council calls upon the State to clarify, expand, and effectively monitor and enforce protections for children and adults who are vulnerable to being subjected to unnecessary restraint, seclusion and aversive measures. Specifically, the Council calls upon the State to take regulatory action to:

1. develop appropriate and clear definitions of aversive measures, chemical, physical, and mechanical restraints, seclusion, and safeguarding, therapeutic and supportive equipment in order to facilitate appropriate and effective regulation of methods that pose an unacceptable risk of physical, psychological or emotional harm
2. prohibit the use of certain defined aversive techniques, certain forms of seclusion, and certain defined restraints and equipment that have been shown to present an unacceptable risk of emotional harm or physical injuries
3. appropriately and effectively regulate the use of identified and permitted practices.
4. prohibit the inclusion of certain defined restraints as a standing order in any plan for an individual receiving services from a facility operated by any public or private entity that provides services to people with developmental disabilities
5. clearly define how and when specific restraints or equipment may be used in emergency situations to stop or prevent an immediate threat of personal injury
6. clearly define how and when specific restraints or equipment may be used to enable physicians or other appropriately licensed health care professionals to administer medical examinations or treatments
7. Deleted by amendment January 28, 2010.
8. clearly define when safeguarding, therapeutic or supportive equipment may be used and establish appropriate and effective protocols
9. require that any restraint or equipment utilized only be applied and monitored by staff trained in the use and proper application of the particular restraint or equipment and in accordance with recognized standards for lessening, exercise and monitoring
10. establish standards for appropriate counseling and debriefing of affected individuals after the use of restraint, seclusion or equipment ("affected individuals" includes the person subjected to the procedure, individuals with developmental disabilities who witness the procedure, and staff involved in the procedure)
11. require providers to conduct a functional behavioral analysis following the use of restraints in an emergency situation in order to develop more appropriate forms of intervention
12. require ongoing training for all staff at facilities and agencies providing services for people with developmental disabilities in alternate approaches to challenging behavior, including positive behavioral supports and functional behavior analyses
13. require ongoing training for all staff at facilities and agencies providing services for people with developmental disabilities in the legal and ethical responsibilities that providers and staff have in relation to people in their care
14. require that individuals assigned to inspect, monitor, investigate or make decisions regarding the use of restraints, seclusion or equipment on a person with a developmental disability possess appropriate expertise and training in the use of restraints, seclusion and equipment and in alternate approaches to challenging behavior including positive behavioral supports and functional behavior analyses
15. require the State to create and maintain a system for tracking all incidents involving the use of restraints, seclusion or safeguarding, therapeutic and supportive equipment by individual and by facility, and for analyzing incident data for the purpose of quality improvement, including the identification of environments where individuals are at risk of harm, and for independent oversight and public reporting of all incidents involving the use of restraints, seclusion or safeguarding, therapeutic and supportive equipment

16. require the State to create and maintain a public internet site that includes statistical information about the use of restraints, seclusion, or safeguarding, therapeutic and supportive equipment at individual facilities and provider agencies serving people with developmental disabilities
17. require providers to conduct a functional behavioral analysis as an essential element in developing a treatment or habilitation plan to address challenging or injurious behavior

Deleted by amendment January 28, 2010.

SUPPLEMENTAL RECOMMENDATIONS

The Council adopts this supplement to the position it adopted on March 24, 2005 in order to amplify and clarify the Council's position on protecting the rights and ensuring the safety of children and adults with developmental disabilities who receive state-funded or state-regulated services through the Department of Human Services (DHS), the Department of Education (DOE), the Division of Children and Families or other state regulated providers.

1. The Council renews its call for the state to effectively regulate and limit the use of restraints and other restrictive practices.

2. Effective regulation includes

a. the establishment of clear definitions of prohibited practices
b. the implementation of effective personnel training requirements that ensure safe and effective practices in all settings; and
c. the definition and requirement of the necessary elements of positive educational and behavioral interventions that reflect scientifically validated practices for children and adults.

3. The Council calls upon all public and private schools and service providers to meet or exceed current legal requirements and to voluntarily adopt practices that safely and effectively eliminate the non-emergency use of restraints and other restrictive practices as follows.

4. The Council calls upon the state and all public and private schools and service providers to prohibit the use of aversive stimuli which, as used herein, means the deliberate infliction of physical and/or emotional pain and suffering and includes the aversive restriction of sensory functions.

5. The Council calls upon the state and all public and private schools and service providers to prohibit the use of seclusion and isolation.

6. "Seclusion and isolation" as used herein does not include "time-out" practices that provide a quiet, comfortable, accessible, unlocked space where a child may choose to take a break from sensory stimulation or may be supported to calm down and self-regulate, and which is

used within the context of a positive behavior support plan that is directly related to the function of the child's behavior.

7. The Council calls upon the state and all public and private schools and service providers to prohibit the use of prone restraints and any other method that may interfere with breathing in children or adults. This includes positional or compressional compromise of the person's diaphragm.

8. The Council calls upon the state all public and private schools and service providers to prohibit the non-emergency use of physical, chemical or mechanical restraints as a method of instruction, treatment, discipline or behavior management, for staff convenience or to address staff shortages or program failures.

9. The Council calls upon the state and all public and private schools and service providers to effectively regulate and monitor the emergency use of specific restraints when such practices become necessary to respond to an imminent threat of serious physical injury to a person.

10. The Council calls upon the state and all public and private schools and service providers to require all incidents involving restrictive practices be accurately reported in detail.

11. The Council calls upon the state to take steps to ensure that state regulated programs serving children and adults with developmental disabilities have sufficient resources to maintain effective numbers of appropriately trained personnel to minimize the occurrence of emergencies, to minimize the use of restrictive practices, and to eliminate the risk of serious physical injury or psychological trauma.

a. This includes a commitment by the Governor and Legislature to appropriate sufficient funds to ensure training and staffing necessary to implement and expand the use of proven non-restrictive approaches to preventing and responding to behavioral challenges in children and adults.

ADOPTED: MARCH 24, 2005; AMENDED JANUARY 28, 2010
SUPERCEDES INTERIM POSITION ADOPTED JANUARY 22, 2004
APPENDIX – BACKGROUND FOR 2010 AMENDMENTS

In January 2009, the National Disability Rights Network (NDRN) (formerly National Association of Protection and Advocacy Systems (NAPAS)) issued a report entitled School is Not Supposed to Hurt: Investigative Report on Abusive Restraint and Seclusion in Schools. Based on its research, NDRN, among other things, calls for:

- federal and state legislation and regulation banning the use of seclusion and of restraints that may interfere with breathing (such as prone restraints where the person is held face down on the floor or against another surface)

- requirements that schools implement, and teachers and staff receive training in, evidence-based positive behavioral supports and other practices that have been shown to reduce or eliminate the use of restraints and seclusion
- prompt reporting of any use of seclusion or restraint
- With regard to seclusion and isolation, NDRN pointed to research that there is no evidence that this practice has therapeutic value:
- Few research studies are available that incorporate a methodology that includes some kind of rigor able to support generalized conclusions. Such methodological rigor could include control groups or even measured patient outcomes. Sailas and Fenton (2000) conducted a review of 2,155 citations from 1974 to 1999 and found not one controlled study of seclusion. The published research also does not have a theoretical foundation. No attempt has been made to connect theory with research methodology when studying seclusion.
- Miller (1986) is one of the few researchers who have examined the use of seclusion specifically with children. His definition of seclusion ranged from use of a locked isolation room, to sitting on a chair, to being sent to one's room. The 40 children included in the study, ranging in age from 5 to 13, were asked to draw and comment about seclusion or time-out. The pictures they drew that portrayed people did not seem to convey the concept of children gaining self-control while in seclusion, but rather conveyed punishment, where the child was crying and pleading for help. The children's descriptions of seclusion also included feeling very afraid and abandoned.
- [Finke, Linda M. Seclusion is Not Evidence-Based Practice. The Journal of Child and Adolescent Psychiatric Nursing. Oct-Dec 2001.]

In response to the NDRN study, the United States Government Accounting Office (GAO), issued a report to the United States House of Representatives Committee on Education and Labor in May 2009 entitled, Seclusions and Restraints; Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers. In its report, the GAO noted that there are no federal regulations regarding the use of restraints and seclusion in schools and no entity that collects data on either the use of these practices or the extent to which they are linked to injury or death. Therefore, the GAO could not give Congress specific information about the frequency with which restraints and seclusion are used across the country or the number of children harmed by their use. However, the GAO advised the Legislature that there have been "hundreds" of cases over the last 20 years in which allegations were made that restraints and seclusion caused the death or injury of children.

Significantly, as a result of its research, the GAO concluded that "restraints that block air to the lungs can be deadly." The GAO also listed the following factors present in 10 cases of death and serious injury that it studied in detail:

- the children had disabilities
- the children were secluded and / or restrained
- many of the children had not engaged in physically aggressive behavior
- many of the parents had not given consent to the use of such practices with their child
- teachers and staff involved had not been trained in the use of these practices

The Alliance for the Prevention of Restraint, Aversive Interventions and Seclusion (APRAIS) is a collaboration of many national disability organizations that includes the National Association of Councils on Developmental Disabilities (NACDD) and the two other DDA based groups, NDRN and the Association of University Centers on Disabilities (AUCD). The NJ Council on Developmental Disabilities is a member of NACDD.

In May 2009, APRAIS issued an action alert entitled: Recommendations to the White House – Urgent Action Needed to Restrict Abusive Practices in Public Schools. In this appeal, APRAIS, calls for legislation that, among other things:

- Is based on the principle that restraint and seclusion are not a treatment, program, or plan, but constitute a failure of treatment, programming, and planning; and indicates the likelihood that behavioral supports, educational methodologies, and placement are inadequate.
- Bans the use of prone restraint...
- Bans the use of aversive interventions...
- Recognizes that the practice of seclusion is unsafe, potentially traumatizing, and of questionable value in an emergency. Secluding children in locked rooms is experienced as a dehumanizing form of punishment and may result in intense panic, fear, and even self-injury.
- Seclusion should not be confused with the practice of providing a quiet, comfortable, accessible, unlocked space where a child may choose to take a break from sensory stimulation or may be supported to calm down and self-regulate, and which is used within the context of a positive behavior support plan that is directly related to the function of the child's behavior.
- Requires and defines the necessary elements of positive educational and behavioral interventions that reflect scientifically validated practice. Effective legislation should build on the decades of available research and experience by practitioners, researchers, and policy makers who have committed to and achieved positive behavioral intervention and restraint and seclusion reduction.

In light of these recent national findings, and consistent with federal standards, the New Jersey Council on Developmental Disabilities (Council) finds that the unregulated and unreported use of restrictive practices[1] continues to pose an unacceptable risk of death, physical injury and psychological trauma to children and adults. For these reasons, the Council adopts this supplement to its March 24, 2005 position on the use of restrictive practices.

[1] As used herein, the term "restrictive practices" includes the use of chemical, physical, and mechanical restraints and the use of aversive stimuli, seclusion and isolation. "Restrictive practices" also include the misuse of safeguarding, therapeutic, and supportive equipment to restrain freedom of movement as a means of punishment, to control behavior, for staff convenience or to address staff shortages.