

**ASAN's Testimony on Aversives & Restraints by Ari Ne'eman**

**Category : Preventing Abuse, Neglect, and Bullying**

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Comments

On the Proposed Regulations  
for Aversive Therapies, Timeout Rooms,  
and Physical Restraints

To the New York State Education Department  
Vocational and Educational Services for Individuals with Disabilities

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Submitted by:  
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My name is Ari Ne'eman. I am the President of the Autistic Self Advocacy Network, an organization of individuals on the autism spectrum advocating for public policy change to advance the interests of all individuals on the autism spectrum. The Autistic Self Advocacy Network is a volunteer-run nonprofit organization dedicated to advancing advocacy and support for the autism spectrum. Our cooperative membership includes adults on the autism spectrum, parents, family members, educators, and other individuals who feel passionate about autism advocacy. We believe that the autism spectrum is a natural, legitimate and permanent part of human genetic diversity and are committed towards advocating towards the full and meaningful realization of all rights, legal protections and services for individuals on the autism spectrum.

I am writing to give comment on New York State Education Department's Emergency Regulations for Aversive Behavioral Intervention, Time-out Room Seclusion and Physical Restraint. Many of these techniques are used primarily on individuals on the autism spectrum, making our membership very concerned about the content of these regulations. We applaud VESID for taking steps to regulate these practices, however the current regulations are insufficient in that they fail to provide for vital protections and contain loopholes allowing unacceptable practices.

Advocates for facilities that continue to practice these techniques have promoted the continued legality of these techniques as part of a "right to effective treatment." The Commission agrees in the need for a continuum of placements and the availability of all appropriate educational techniques. However, research shows that aversive techniques are neither appropriate nor effective. Legitimate concerns have been raised that aversives only perpetrate a culture of coercion for those individuals that these methods are used upon.

In the words of the National Council on Disability, an independent federal agency that makes recommendations to the President and Congress on all issues relevant to individuals with disabilities,

“There are limits to what society can permit in the name of treatment...Students with severe behavioral disabilities are not criminals, and yet present law allows them to be subjected to procedures which cannot be used on the most hardened criminals, or, in some cases, even on animals.” That the regulations allow the continued use of aversives, even with additional oversight, is concerning, given that it violates already present standards in regards to corporal punishment and threatens the equal protection rights of individuals with disabilities.

## Restraint Use

We recognize that there are certain situations that call for the use of restraint by trained personnel in an appropriate fashion. However, it is necessary to limit the use of these techniques to prevent abuse. Mechanical and physical restraints should only be used in the context of an emergency situation posing immediate danger either for harm to the person in question and others. Chemical restraints should not be applied unless the individual poses an immediate threat to himself or others and medication should not be given to any individual outside of the aforementioned emergency situation except on the explicit written instructions of a qualified physician and the parent(s) or guardian of the individual in question. Furthermore, their use should not be extended beyond the emergency situation they are called for and de-briefing of all staff personnel involved should occur in order to determine the reason why the situation escalated to that level and what could have been done to prevent the need for restraint use. Restraints are not legitimate medical interventions – they are emergency measures to respond to the result of an immediate threat of injury. The use of restraints is a failure in treatment and must be treated as such.

We call upon VESID to alter the regulations to provide for:

- A comprehensive ban on the use of aversive techniques in any and all facilities within the State of New York, as well as a ban on sending New York Students to facilities where these techniques are utilized.
- Restrictions on restraint use to limit them to responding to an imminent, emergency situation, preventing their use as part of an organized system of treatment.
- Parental Notification requirements within twenty four hours of any incident requiring restraint use and de-briefing requirements for all staff and personnel involved.
- State Tracking of each instance of restraint use disaggregated by facility, staff personnel and students to attempt to locate offenders or students who are disproportionately involved in incidents of restraint use.
- A comprehensive Restraint Reduction Initiative aimed at spreading best practices research on restraint reduction and information on positive behavioral supports. *[Update, July 2009: ASAN has revised its policy and does not advocate the use of positive behavioral support (PBS) programs.]*
- To facilitate criminal prosecution of those who abuse the use of restraints, clear guidelines on the legal and regulatory framework surrounding restraint use and training in the implementation of said guidelines in the context of law enforcement should be provided to coroners, district attorneys and all other relevant law enforcement personnel.
- A database of leadership personnel in facilities that have been closed down by the state for reasons of abuse and monitor their placements in other facilities in the future in order to prevent re-opening of

closed facilities under other names.

- A requirement for all deaths in public or private facilities or schools to be reported, investigated, followed by an autopsy and, where appropriate, prosecuted.