

FRCD Newsletter

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ISBE Proposes School Code Amendment Prohibiting Behavioral Interventions Causing Pain

The Illinois State Board of Education (ISBE) has proposed an amendment to Article 14.072 of the Illinois School Code (23 Ill. Admin. Code 401; 105 ILCS 5/14.702 and 14.801; Sections 401.10, 401.30, 401.210; and 401.270) expressly prohibiting the “use of behavioral intervention strategies that would jeopardize the safety or security of students or would rely upon pain as an intentional method of control”.

ISBE’s announcement explains the proposed amendment as follows:

A Complete Description of the Subjects and Issues Involved: Revisions made to this set of rules in 2007 included a new provision expressly prohibiting the “use of behavioral intervention strategies that would jeopardize the safety or security of students or would rely upon pain as an intentional method of control” (see Section 401.140(a)). It has recently become clear that one of the out-of-state facilities where an Illinois student is placed does use techniques such as the administration of electrical shock as methods of behavioral control. As ISBE staff members have learned more about the philosophy procedures employed in this facility, concern has grown that the Illinois student who is currently placed there may be subjected to such forms of treatment despite our clear regulatory prohibition against them.

Of further concern are the potential secondary effects on students who, although not subjected to such aversive techniques, may witness their application to other students in their environment. We therefore believe that ISBE should be able to disapprove a program immediately when such techniques are used and that, beginning with the upcoming annual approval cycle, programs that rely on these techniques should be no longer be eligible for approval.

To establish these policies, Part 401 needs to be revised in two respects.

- *First, under the existing rules on changing facilities’ approval status during a year for which approval has been granted, immediate withdrawal of that approval is not available in response to the use of intentionally painful techniques. That is, section 401.30 generally calls for nonapproval only after a program has first been assigned a status of either “Approved with Administrative Review” or “Pending Further Review”. Exceptions are made to permit immediate nonapproval “if any issues of noncompliance that present imminent danger to the students exist or if the State Superintendent verifies that the provider has unilaterally and intentionally ceased providing appropriate education pursuant to a school district’s contracts and one or more students’ IEPs.” As can be seen, neither of these exceptions clearly covers these troublesome behavioral intervention strategies, necessitating the addition of a third exception under which nonapproval will be immediate.*

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**ISBE’s Response to AG Special Ed
Committee Request for Memorandum of
Guidance on RTI (see page 2)**

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ISBE Responds to AG Advisory Committee Request For Guidance on RTI

In its January/February 2008 Newsletter, FRCDD reprinted a letter to ISBE from Matt Cohen in his role as Chair of the Attorney General's Committee on Special Education, recommending a memorandum of guidance from ISBE on the RTI (Response to Intervention). Following is ISBE's March 19, 2008 response to the letter.

Dear Mr. Cohen:

Thank you for your letter to State Superintendent Christopher Koch sent on behalf of the members of the Attorney General's Advisory Committee on Special Education which raised questions relevant to the recently-released State of Illinois Response to Intervention (RtI) Plan. I apologize for the delay in our response.

Our agency is in agreement with the recommendation you make regarding issuance of further guidance to the field on RtI implementation issues. Our Special Education Services Division is presently working on a Question and Answer document that will address RtI implementation issues, including those which you have raised.

We anticipate an initial draft of this document will be completed by the last week in March, at which point it will be circulated to stakeholders for comment prior to its broader release to the field. As soon as this document is circulated for comment, the Special Education Services Division will see that you receive a copy of the draft to ensure that you have an opportunity to voice any comments you may have, as well as comments from the Advisory Committee.

Once again, thank you for your correspondence regarding this important issue. If you would like to discuss the matter further, please contact Assistant Superintendent Beth Hanselman at (217) 782-4870.

Sincerely,

*Darren R. Reisberg
General Counsel*

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- *Second, the existing rule setting forth general requirements (Section 401.210) should be amplified to state unequivocally that providers must have policies in place prohibiting the use of techniques that rely on the intentional infliction of pain. To correspond to that addition, Section 401.10(a)(10), which calls for providers to describe their behavioral interventions, will now need to reference Section 401.210 instead of 401.140.*

The revisions to section 401.270, Student Records, will update that rule so it accurately references the rules for Special Education (23 Ill. Adm. Code 226) now that the comprehensive revisions to those rules are in place.

To review the Illinois State Board of Education's Notice in full, consult the ISBE website:
<http://www.isbe.net/spec-ed>; click on the Regulations/Legislation link