



## ADMINISTRATIVE RULES OF MONTANA



### 10.16.3346 AVERSIVE TREATMENT PROCEDURES

- (1) Positive behavioral interventions based on the results of a functional behavioral assessment shall serve as the foundation for any program utilizing aversive procedures to address the behavioral needs of students. Aversive treatment procedures may be appropriate for an individual student who exhibits behaviors which pose a risk of physical harm to the student or others, or a risk of significant damage to property, or significantly disruptive or dangerous behaviors which cannot be modified solely through the use of positive behavioral interventions. Aversive treatment procedures must be designed to address the behavioral needs of an individual student, be approved by the IEP team, and may not be used as punishment, for the convenience of staff, or as a substitute for positive behavioral interventions.
- (2) Aversive treatment procedures are defined as:
  - (a) physical restraint, other than as provided in 20-4-302, MCA, when the IEP team has determined that the frequency, intensity or duration of the restraint warrants an aversive treatment procedure; and
  - (b) isolation time-out which results in the removal of a student to an isolation room under the following conditions:
    - (i) the student is alone in the isolation room during the period of isolation;
    - (ii) the student is prevented from exiting the isolation room during the period of isolation;
    - (iii) the door to the isolation room remains closed during the period of isolation; and
    - (iv) the student is prohibited from participating in activities occurring outside the isolation room and from interacting with other students during the period of isolation.
- (3) Any student in isolation time-out must be under the direct constant visual observation of a designated staff person throughout the entire period of isolation.
- (4) The following procedures are prohibited:
  - (a) any procedure solely intended to cause physical pain;
  - (b) isolation in a locked room or mechanical restraint, except in residential treatment facilities and psychiatric hospitals as defined in 20-7-436, MCA, when prescribed by a physician as part of a treatment plan and when implemented in compliance with relevant federal and state law;
  - (c) the withholding of a meal for a period of greater than one hour from its scheduled starting time;

- (d) aversive mists, noxious odors, and unpleasant tastes applied by spray or other means to cause an aversive physical sensation; and
  - (e) mechanical restraint that physically restricts a student's movement through the use upon the student of any mechanical or restrictive device which is not intended for medical reasons.
- (5) Exclusion time-out is not considered an aversive treatment procedure. Exclusion time-out is defined as any removal of a student from a regularly scheduled activity for disciplinary purposes that does not result in placing the student in an isolation room under all of the conditions described in (2)(b).
- (6) IEPs may include the use of aversive treatment procedures only when:
  - (a) subsequent to a functional behavioral assessment, a series of no less than two written positive behavioral intervention strategies, which were designed to target the behavior to be changed, were previously implemented;
  - (b) the IEP team includes a person trained and knowledgeable about best practices in the application of positive behavioral interventions, aversive treatment procedures and nonaversive alternatives for de-escalation of behaviors; and
  - (c) a written behavioral intervention plan using aversive treatment procedures is developed and incorporated as a part of the IEP.
- (7) A behavioral intervention plan using aversive treatment procedures must be in writing and shall:
  - (a) include a statement describing no less than two positive behavioral intervention strategies previously attempted and the results of these interventions, as described in (6)(a);
  - (b) describe the target behavior(s) that will be consequented with the use of the aversive treatment procedure(s);
  - (c) include short-term objective(s) with measurable criteria stating the expected change in the target behavior(s);
  - (d) provide a written description of the aversive treatment procedure(s);
  - (e) specify a time limit for the use of the aversive treatment procedure for any one instance;
  - (f) include data collection procedures for recording each application of the aversive treatment(s);
  - (g) state when the IEP team will meet to review the ongoing use, modification or termination of the aversive procedure;
  - (h) designate an individual responsible for ongoing review and analysis of the data on the target behavior;
  - (i) state how the student's parents will be regularly informed of the progress toward the short-term objectives in the IEP at a frequency no less than is required in 34 CFR 300.347; and
  - (j) state whether any standard school disciplinary measures are waived.
- (8) When an aversive treatment plan is incorporated in the IEP, the parents must be informed that their consent to the IEP includes consent for the aversive treatment plan. Failure to obtain consent is subject to due process proceedings under ARM 10.16.3507 through 10.16.3523.

- (9) Parents must be informed as soon as possible, but no more than 24 hours after the procedure is used, in writing, or orally if in writing is not possible, in their native language each time an aversive procedure is implemented on their child.

**Authorizing statute(s):** 20-7-402, MCA

**Implementing statute(s):** 20-7-403, 20-7-414, MCA

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**History:** NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00; AMD, 2001 MAR p. 396, Eff. 3/9/01; AMD, 2010 MAR p. 1076, Eff. 4/30/10; AMD, 2015 MAR p. 2257, Eff. 12/25/15.