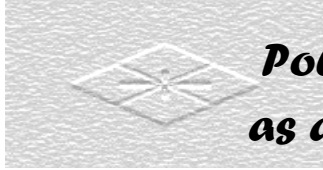


Appendix B



Policy of Use of Time-Out Rooms as a Behavioral Intervention



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MEMORANDUM

Date: August 7, 2003
TO: Superintendents
Special Education Directors
FROM: Sam Howarth
State Director of Special Education
RE: Use of Time-Out Rooms as a Behavioral Intervention

The New Mexico State Department of Education's (SDE's) Special Education Office (SEO) has received several requests for guidelines on the use of "time-out rooms." Neither, the Individuals with Disabilities Education Act (IDEA) nor Section 504 of the Rehabilitation Act of 1973 provides specific guidance on this issue. Therefore, the SEO bases the following guidance on a review of relevant case law and state safety codes.

The Definition of Time-Out

The SEO defines the term *time-out* as a continuum of behavior management techniques that are designed to address inappropriate or negative student behavior resulting from over-stimulating or challenging classroom situations. This continuum begins with minimally intrusive or restrictive strategies that can be implemented within the classroom setting. The continuum then progresses to more restrictive strategies that may involve the physical separation of a student from his or her classmates, **for a brief amount of time**, in order to enable the student to regroup and **return to the classroom setting**.

The time-out continuum of behavior management techniques begins with responses to student behavior that do not result in the student's removal from the classroom setting. Examples of these

less intrusive strategies include planned ignoring of the behavior and discussing the behavior with the student immediately. The continuum then progresses to in-class strategies that require the student to cease classroom activity for a short period of time. However, the student is not removed from the classroom setting. Strategies along this point in the continuum may include placing the student in a time-out corner of the classroom for a specified period of time in order to enable him or her to regain composure and resume classroom activity. Classroom teachers may designate a specific location within the classroom to use for this purpose. Finally, the time-out continuum includes strategies that require the student's removal from the classroom setting altogether **for a brief amount of time** in order for the student to regroup in private prior to returning to the classroom setting. The more restrictive time-out strategies may include relocating the student to the hallway, another classroom, or a school time-out room.

In situations where a student with a disability demonstrates behavior that impedes his or her learning or that of others, the IDEA requires the IEP team to consider positive behavioral interventions, strategies, and supports to address that behavior. IEP teams may consider the use of time-out **as a positive intervention** and design time-out strategies to assist students in correcting the attitude and/or behaviors that interfere with their ability to remain in the classroom. **However, the SEO does not condone the use of time-out as a punishment for negative student behavior or as a means of removing the student indefinitely from the classroom setting, as it does not meet the intent of the IDEA.** The use of time-out must have positive implications, including enabling the student to return to the classroom setting.

A district or school's decision to remove a student from regular activity and placing him or her in an isolated setting, such as a time-out room, can have legal implications. The following section discusses relevant case law pertaining to the use of time-out rooms for students with disabilities.

Case Law Related to the Use of Time-Out Rooms

Courts have held that placing a student in a locked time-out room might be "excessively intrusive" depending on the student's age and emotional disability. A student's placement in time-out can, in some instances, be deemed an "unreasonable seizure" in violation of the Fourth Amendment. An unreasonable seizure is a removal that is not justified before or at the time of placement and is not within reason given the student's age, sex, disability, and the nature of the infraction. An "unreasonable seizure" of a student also occurs when he or she is not properly informed of the purpose of the time-out area or the reason for his or her removal from the classroom. Therefore, if a student with a disability and his or her parent are not made aware, through the IEP process, of how the time-out will be utilized and the projected outcome or purpose of the use of time-out strategies, placement in a time-out room may be considered an unreasonable seizure.

In determining whether a placement in a time-out area is an unreasonable seizure, courts must consider two issues. First, the courts must consider whether the student established that he or she was "seized" within the meaning of the Fourth Amendment at the time that he or she was sent to the time-out room. Second, the court must consider whether the time-out was reasonable. Two federal district court decisions defined the circumstances under which a court may find that a district violated the constitutional ban on unreasonable seizures¹. These courts considered the following

¹ See *Rasmus v. State of Arizona*, 24 IDELER 824 (D. Ariz. 1996) and *Hayes v. Unified School District No. 377*, 559 IDELER 249) (D. Kan. 1987).

factors. In addition, the SEO provides questions and comments for IEP team discussion points when considering the use of time-out rooms for students with disabilities.

- **Nature of the misconduct.** Can the student's behavior be addressed through a less intrusive time-out strategy within the classroom setting? Or, does the student's behavior warrant his or removal from the classroom?
- **Location of the time-out room.** Where is the time-out room in relation to the student's classroom? Does the student's behavior justify the time it takes to transfer the student to and from the time-out room?
- **Size of the time-out room.** Is the time-out room of adequate size to accommodate the student and the school staff person who is responsible for supervising the student for the duration of his or her placement in the time-out room?
- **Interior of the time-out room.** Is the interior of the time-out room indicative of a punitive setting? Or, is it an environment that enables the student to de-escalate and thereby return to and participate in the classroom setting?
- **Safety considerations.** Is the time-out room a safe setting for both the student and the staff person supervising him or her? Have all dangerous objects been removed from the room? Does the time-out room meet all state, local, and fire code requirements?
- **Amount of time spent out of the classroom in isolation.** Did the amount of time the student spent in the time-out room correspond with his or her age and cognitive ability? Has the IEP team considered the student's age, sex, disability, and the nature of his or her behavior in determining the maximum amount of time the student can spend in the time-out room? Best practice dictates that in most cases, the number of minutes a student spends in a time-out room should typically equal the student's age, but should not exceed 10-15 minutes. In addition, when making this determination, the IEP team must consider the cognitive functioning of the student.
- **How time was spent during time-out.** Was the student provided with assistance in regaining his or her composure through discussing the behavior or utilizing other interventions identified within the IEP? Is there a written plan that outlines what to do once a teacher places the student in the time-out room?
- **District policy on time-out.** Does the district have policies and procedures on the use of time-out rooms for all students? If not, the SEO strongly urges districts and/or schools operating time-out rooms to develop formal policies and procedures that ensure the protection of students' personal rights.

A reasonable seizure, therefore, is one that has a clearly defined and documented objective or purpose and considers the age, sex, and disability of the student, as well as the nature of the student's behavior. In the case of a student with a disability, placement in a time-out room is considered reasonable if it is a part of a well-documented set of interventions aimed at improving the student's behavior in the classroom setting. The SEO expects that documentation of interventions would occur through the IEP process, which includes conducting a Functional Behavior Assessment (FBA) and developing a Behavior Intervention Plan (BIP). The SEO also expects that districts and/or schools will obtain written permission from parents authorizing the use of time-out rooms as a part of a student's BIP and IEP.

Technical Assistance from New Mexico State Fire Marshall's Office

In addition to the above-cited court decisions, the SEO sought technical assistance from the New Mexico State Fire Marshall's Office. Subsection 5-2.1.5, Chapter 5, Means of Egress of the Life Safety Code (1997 Edition), provides as follows:

Locks, Latches, and Alarm Devices

Doors shall be arranged to be opened readily from the egress side whenever the building is occupied. Locks, if provided, shall not require the use of a key, a tool, or special knowledge or effort for operation from the inside of the building.

Further, the New Mexico State Fire Marshall's Office explicitly stated that all doors (including those to time-out rooms) are to "remain open and accessible at all times." The doors should remain "free and clear of all obstructions in the event of fire or other emergency." Students placed in a time-out room should be able to self evacuate or be assisted in evacuation without delay.

Recommended Procedures for Utilization of Time-Out Rooms

In light of the court decisions and guidance from the New Mexico State Fire Marshall's Office, the SEO offers the following guidance to districts and schools who use time-out rooms or are considering constructing them.

- **Districts must develop policies and procedures outlining the use of the time-out continuum of behavior management techniques, specifically the use of time-out rooms.** Policies and procedures should include clearly written procedures that the school or district will follow when implementing time-out behavior management techniques, especially time-out rooms. In addition, the district and/or school must include in its policies and procedures its method of providing students with disabilities adequate notice (through the IEP process) to enable them to protect themselves from being placed in a time-out room. The district and/or school should also notify the student and the parents (through the IEP process) of the maximum number of minutes a student will be placed in time-out and indicate that extended time-outs beyond that limit will not be used without notification of administrative personnel and parents. The range used most often by districts is a maximum of 10-15 minutes.² It is important to note that not all students would require this maximum amount of time in the time-out room.
- **Adopt a continuum of time-out strategies.** Districts must be able to demonstrate that a variety of time-out strategies are available for use with students. Districts must not resort to student isolation (time-out rooms) as a means of eliminating negative behavior in all instances. Not all behaviors require the student's immediate removal from the classroom.
- **Time out rooms must be designed and constructed in compliance with all SDE, local, and fire code regulations.** Time-out rooms must have adequate heating, lighting, and ventilation and be free of any dangerous objects.

² See *Marion County (Florida) School District*, 20 IDELR 634 (OCR 1993).

- **Do not lock a time-out room.** The time-out rooms must remain unlocked and free and clear of obstructions. In the event of a fire or other emergency, occupants must be able to self evacuate or be assisted without delay.
- **Staff must directly supervise or monitor the student while he or she is in a time-out room or other time-out area.** Some students are agitated in these circumstances. Do not discount the possibility of self-injury even when there is no obvious instrument for inflicting injury in time-out rooms.
- **Obtain parental consent prior to using time-out rooms.** The parents of a student with a disability must be notified, through the IEP process, that a time-out room or other time-out strategy will be utilized in order to assist the student in reducing negative behaviors. In addition, districts must obtain parental consent in order to utilize the more restrictive forms of time-out, specifically time-out rooms.
- **The duration of placement in a time-out room must be reasonable in light of factors such as student's age, sex, disability, cognitive functioning, and the nature of the student's misbehavior.** As a matter of best practice, a student should remain in a time-out room only until he or she becomes sufficiently self-controlled to rejoin classmates. A time-out is an opportunity for a student to regain his or her composure. Do not use timeout as a punishment for disruptive behavior.³
- **A student placed in a time-out room must be permitted to use the bathroom.** Staff must consider events that preceded the student's behavior (lunch, medications) that may result in the student needing to relieve him or herself.
- **The use of time-out must be consistent with the student's IEP and Behavioral Intervention Plan (BIP).** The IDEA restricts the use of time-out the same way it restricts the use of other in-school methods or teaching methods in general. It is a denial of a Free Appropriate Public Education (FAPE) if the use of time-out is inconsistent with the student's IEP and BIP.⁴
- **Districts must keep accurate records on students placed in time-out.** The records should include the date, time, length of placement, the basis for the placement, and the teacher who made the placement determination. In addition, the records should also indicate the assistance provided to help the student regain composure. This data collection will enable the district and/or school to determine the effectiveness of the more restrictive time-out strategies on improving student behavior.

³ See, e.g., *Orange v. County of Grundy*, 950 F. Supp. 1365 (E.D. Tennessee 1996).

⁴ See *OSEP Memorandum 95-16*, 22 531 (OSEP 1995).

In addition, IEP teams must consider the following conditions prior to including time-out rooms as an intervention in a student's BIP:

- Complete an evaluation to determine if the student's placement in a time-out room is in direct conflict with the student's psychological or physical health status.
- Determine the maximum amount of time a student will spend in a time-out room. The recommended amount of time a student spends in a time-out room typically corresponds with the student's age, but should not exceed 10-15 minutes. However, consideration should also be given to the level of the student's cognitive functioning.
- Identify and list the specific criteria for returning the student to the routine activities and the classroom environment.
- The IEP team should include a provision within the IEP for continuous monitoring by trained staff.

It is important to note that Section 504 governs the imposition of time-out for students with disabilities. **A district's time-out policy should follow the same guidelines and procedures for both disabled and non-disabled students.**

If you have additional questions regarding the use of time-out rooms please contact our office at (505) 827-6541 and ask to speak to an available consultant.