

ASSEMBLY BILL NO. 280—ASSEMBLYMEN BUCKLEY, CARPENTER, OHRENSCHALL, LESLIE, THOMAS, SEGERBLOM, PERKINS, GIUNCHIGLIANI, LEE, ARBERRY, PARKS, WILLIAMS, MANENDO, ANDERSON, PRICE, FREEMAN, GOLDWATER, GIBBONS, MCCLAIN, KOIVISTO, COLLINS, BACHE, TIFFANY, NEIGHBORS, NOLAN, HETTRICK AND EVANS

FEBRUARY 18, 1999

Referred to Committee on Health and Human Services

SUMMARY—Makes various changes relating to use of techniques of behavior modification and behavior management, including aversive interventions, on pupils with disabilities. (BDR 34-286)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to pupils with disabilities; prohibiting the use of aversion interventions as techniques of behavior management on pupils with disabilities in certain circumstances; requiring the board of trustees of each county school district and the governing body of each private school to establish a committee on behavior management; defining the duties of such a committee; requiring each such board of trustees and governing body to establish a plan for behavior management to identify policies and procedures for using, prohibiting and monitoring techniques of behavior modification and behavior management; and providing other matters properly relating thereto.

1 WHEREAS, Providing appropriate health and educational services to
2 persons with disabilities is essential to fulfilling this state's important goal
3 of ensuring equality of opportunity, full participation, independent living
4 and economic self-sufficiency for persons with disabilities; and

5 WHEREAS, A person with a disability who is receiving health or
6 educational services in this state should, wherever possible, receive those
7 services in an environment that is the least restrictive, as determined by his
8 disability, and is entitled to be treated with dignity and respect by the staff
9 of the facility or school where he is receiving services; and

1 WHEREAS, A person with a disability who is receiving health or
2 educational services in this state should, wherever possible, have a
3 comprehensive treatment or educational program that does not authorize
4 disciplinary measures when convenient for the members of the staff of the
5 facility or school; now, therefore,

6
7 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
8 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:
9

10 **Section 1.** Chapter 388 of NRS is hereby amended by adding thereto
11 the provisions set forth as sections 2 to 10, inclusive, of this act.

12 **Sec. 2.** *As used in sections 2 to 10, inclusive, of this act, unless the*
13 *context otherwise requires, the words and terms defined in sections 3, 4*
14 *and 5 of this act have the meanings ascribed to them in those sections.*

15 **Sec. 3.** *“Aversive intervention” means the intentional application of*
16 *any of the following to reduce or modify a specific behavior:*

- 17 1. *The use of noxious odors and tastes;*
- 18 2. *The use of water and other mists or sprays;*
- 19 3. *The use of blasts of air;*
- 20 4. *The use of electric shock;*
- 21 5. *The administration of chemical restraint to a person;*
- 22 6. *Requiring a person to obtain or maintain a physically extreme*
23 *position, excluding physical restraint;*
- 24 7. *Requiring a person to perform exercise under forced conditions;*
- 25 8. *Any intervention, technique or procedure that deprives a person of*
26 *the use of one or more of his senses, regardless of the length of the*
27 *deprivation;*
- 28 9. *The deprivation of necessities needed to sustain the health of a*
29 *person, regardless of the length of the deprivation;*
- 30 10. *The placement of a person alone in a room where release from*
31 *the room is prohibited by a mechanism, including, without limitation, a*
32 *lock, device or object positioned to hold the door closed or otherwise*
33 *positioned to prevent the person from leaving the room;*
- 34 11. *The use of mechanical restraints on a person for purposes other*
35 *than to provide proper body alignment to the person; or*
- 36 12. *The use of physical restraint.*

37 **Sec. 4.** *“Individualized education program” has the meaning*
38 *ascribed to it in 20 U.S.C. § 1414(d)(1)(A).*

39 **Sec. 5.** *“Individualized education program team” has the meaning*
40 *ascribed to it in 20 U.S.C. § 1414(d)(1)(B).*

41 **Sec. 6. 1.** *An aversive intervention may be used on a pupil with a*
42 *disability only if:*

1 (a) *The use of the aversive intervention is part of an individualized*
2 *plan for behavior modification designed for the pupil by an*
3 *individualized education program team; and*

4 (b) *Less intrusive or restrictive interventions have failed to modify the*
5 *behavior of the pupil or the behavior of the pupil is so severe that the use*
6 *of the aversive intervention is in his best interest.*

7 2. *A person shall not use an aversive intervention on a pupil with a*
8 *disability for the sole purpose of causing pain or discomfort to the pupil*
9 *with a disability or for the convenience of the person using the aversive*
10 *intervention.*

11 **Sec. 7. 1.** *The board of trustees of each county school district shall*
12 *form a committee on behavior management, consisting of at least one:*

13 (a) *School psychologist;*

14 (b) *Parent of a pupil with a disability attending a school within the*
15 *school district;*

16 (c) *Licensed school nurse; and*

17 (d) *Licensed teacher.*

18 2. *The committee on behavior management shall work in*
19 *consultation with a behavioral psychologist.*

20 **Sec. 8. 1.** *The board of trustees of each county school district shall*
21 *establish a plan for behavior management that identifies the policies and*
22 *procedures for using, prohibiting and monitoring the use of techniques*
23 *of behavior modification and behavior management, including the use of*
24 *aversive interventions. The plan must include, without limitation, a*
25 *procedure for reporting violations of the policies and procedures*
26 *established by the plan.*

27 2. *The plan for behavior management must:*

28 (a) *Promote the use of positive techniques of behavior modification;*

29 (b) *Provide guidelines concerning the relative restrictiveness of a*
30 *range of techniques of behavior modification, including aversive*
31 *interventions;*

32 (c) *Specify techniques of behavior management, including aversive*
33 *interventions, to be used as emergency interventions;*

34 (d) *Specify the programmatic use of techniques of behavior*
35 *modification, including aversive interventions;*

36 (e) *Prohibit the unauthorized use of techniques of behavior*
37 *management, including aversive interventions; and*

38 (f) *Set forth a process for reviewing violations of the policies and*
39 *procedures of the plan, and set forth corrective actions, including*
40 *disciplinary actions for willful violations.*

41 3. *A plan for behavior management established pursuant to this*
42 *section must be approved by the committee on behavior management*
43 *established by the school district pursuant to section 7 of this act.*

1 **Sec. 9.** *For the use of techniques of behavior management as*
2 *emergency interventions, a plan for behavior management established*
3 *pursuant to section 8 of this act must:*

4 1. *Specify the situations in which techniques of behavior*
5 *management may be used as emergency interventions. The use of*
6 *techniques of behavior management in such situations must be related to*
7 *the protection of the health and safety of:*

8 (a) *The pupil with a disability on whom the techniques are used; and*

9 (b) *The pupils, teachers and any other persons who are in the*
10 *immediate vicinity.*

11 2. *Specify which techniques of behavior management may be used in*
12 *each situation.*

13 3. *Specify which persons may authorize the application of techniques*
14 *of behavior management as emergency interventions and which persons*
15 *may apply such techniques.*

16 4. *Provide a procedure for the prompt reporting, in writing, of each*
17 *incident in which techniques of behavior management are used as*
18 *emergency interventions. Such reports must be made to the parents of the*
19 *pupil with a disability on whom the techniques were used and to the*
20 *person within the school district who is designated by the plan for*
21 *behavior management to receive such reports.*

22 5. *Provide for the regular review of reports of the use of techniques*
23 *of behavior management as emergency interventions, including:*

24 (a) *When applicable, the attachment to the reports of a statement*
25 *indicating any actions determined to be necessary to correct*
26 *inappropriate uses of any techniques of behavior management as*
27 *emergency interventions.*

28 (b) *The creation and maintenance of a cumulative record of the uses*
29 *of techniques of behavior management as emergency interventions. The*
30 *cumulative record may include any categories useful in tracking the use*
31 *of techniques of behavior management as emergency interventions,*
32 *including, without limitation, the type and frequency of emergency*
33 *interventions used per pupil, teacher, classroom or school.*

34 (c) *The submission of the cumulative reports, including the statement*
35 *of any corrective actions, to the committee on behavior management for*
36 *the school district not less often than quarterly.*

37 (d) *The submission of a report by the committee on behavior*
38 *management to the board of trustees of the school district at least once*
39 *each year, regarding the use of techniques of behavior management as*
40 *emergency interventions within the school district. The report may*
41 *include the recommendations of the committee for any changes in the*
42 *policies or procedures, or both, of the plan for behavior management,*
43 *relating to the use of such techniques as emergency interventions.*

1 **Sec. 10.** *For the programmatic use of techniques of behavior*
2 *modification that would use aversive interventions on a pupil with a*
3 *disability pursuant to an individualized plan for behavior modification*
4 *designed for that pupil, a plan for behavior management established*
5 *pursuant to section 8 of this act must:*

6 1. *Require that the target behavior to be modified be identified in the*
7 *current individualized education program of the pupil;*

8 2. *Require that the current individualized education program of the*
9 *pupil specify the reason that the target behavior must be modified;*

10 3. *Require that the current individualized education program of the*
11 *pupil describe previous plans for behavior modification that have been*
12 *applied to the target behavior and the results of those plans as applied;*

13 4. *Require that the current individualized education program team,*
14 *including the parent of the pupil, recommend the use of the aversive*
15 *intervention before it may be used to modify the target behavior of the*
16 *pupil; and*

17 5. *Specify that the individualized plan for behavior modification*
18 *using the aversive intervention for the pupil must:*

19 (a) *Be designed by a person qualified to design such a plan;*

20 (b) *Conform to the plan for behavior management approved by the*
21 *committee on behavior management;*

22 (c) *Be carried out by a person trained to conduct such a plan;*

23 (d) *Be monitored continuously, including requiring daily*
24 *documentation of the response of the pupil with a disability to the plan;*

25 (e) *Be reviewed at least monthly by persons qualified to design or*
26 *review such plans, and, if necessary, revised by the individualized*
27 *education program team; and*

28 (f) *Be reauthorized by the individualized education program team at*
29 *least quarterly.*

30 **Sec. 11.** NRS 388.440 is hereby amended to read as follows:

31 388.440 As used in NRS 388.440 to 388.520, inclusive ~~§~~, and
32 *sections 2 to 10, inclusive, of this act:*

33 1. “Gifted and talented pupil” means a person under the age of 18 years
34 who demonstrates such outstanding academic skills or aptitudes that he
35 cannot progress effectively in a regular school program and therefore needs
36 special instruction or special services.

37 2. “Pupil with a disability” means a person under the age of 22 years
38 who deviates either educationally, physically, socially or emotionally so
39 markedly from normal patterns that he cannot progress effectively in a
40 regular school program and therefore needs special instruction or special
41 services.

1 **Sec. 12.** Chapter 394 of NRS is hereby amended by adding thereto the
2 provisions set forth as sections 13 to 22, inclusive, of this act.

3 **Sec. 13.** *As used in sections 13 to 22, inclusive, of this act, unless the*
4 *context otherwise requires, the words and terms defined in sections 14 to*
5 *17, inclusive, of this act have the meanings ascribed to them in those*
6 *sections.*

7 **Sec. 14.** *“Aversive intervention” means the intentional application*
8 *of any of the following to reduce or modify a specific behavior:*

- 9 1. *The use of noxious odors and tastes;*
- 10 2. *The use of water and other mists or sprays;*
- 11 3. *The use of blasts of air;*
- 12 4. *The use of electric shock;*
- 13 5. *The administration of chemical restraint to a person;*
- 14 6. *Requiring a person to obtain or maintain a physically extreme*
15 *position, excluding physical restraint;*
- 16 7. *Requiring a person to perform exercise under forced conditions;*
- 17 8. *Any intervention, technique or procedure that deprives a person of*
18 *the use of one or more of his senses, regardless of the length of the*
19 *deprivation;*
- 20 9. *The deprivation of necessities needed to sustain the health of a*
21 *person, regardless of the length of the deprivation;*
- 22 10. *The placement of a person alone in a room where release from*
23 *the room is prohibited by a mechanism, including, without limitation, a*
24 *lock, device or object positioned to hold the door closed or otherwise*
25 *positioned to prevent the person from leaving the room;*
- 26 11. *The use of mechanical restraints on a person for purposes other*
27 *than to provide proper body alignment to the person; or*
- 28 12. *The use of physical restraint.*

29 **Sec. 15.** *“Individualized education program” has the meaning*
30 *ascribed to it in 20 U.S.C. § 1414(d)(1)(A).*

31 **Sec. 16.** *“Individualized education program team” has the meaning*
32 *ascribed to it in 20 U.S.C. § 1414(d)(1)(B).*

33 **Sec. 17.** *“Pupil with a disability” has the meaning ascribed to in*
34 *NRS 388.440.*

35 **Sec. 18. 1.** *An aversive intervention may be used on a pupil with a*
36 *disability only if:*

- 37 (a) *The use of the aversive intervention is part of an individualized*
38 *plan for behavior modification designed for the pupil by an*
39 *individualized education program team; and*
- 40 (b) *Less intrusive or restrictive interventions have failed to modify the*
41 *behavior of the pupil or the behavior of the pupil is so severe that the use*
42 *of the aversive intervention is in his best interest.*

1 2. A person shall not use an aversive intervention on a pupil with a
2 disability for the sole purpose of causing pain or discomfort to the pupil
3 with a disability or for the convenience of the person using the aversive
4 intervention.

5 **Sec. 19.** 1. The governing body of each private school shall form a
6 committee on behavior management, consisting of at least one:

- 7 (a) School psychologist;
- 8 (b) Parent of a pupil with a disability attending the private school;
- 9 (c) Licensed school nurse; and
- 10 (d) Licensed teacher.

11 2. The committee on behavior management shall work in
12 consultation with a behavioral psychologist.

13 **Sec. 20.** 1. The governing body of each private school shall
14 establish a plan for behavior management that identifies the policies and
15 procedures for using, prohibiting and monitoring the use of techniques
16 of behavior modification and behavior management, including the use of
17 aversive interventions. The plan must include, without limitation, a
18 procedure for reporting violations of the policies and procedures
19 established by the plan.

20 2. The plan for behavior management must:

- 21 (a) Promote the use of positive techniques of behavior modification;
- 22 (b) Provide guidelines concerning the relative restrictiveness of a
23 range of techniques of behavior modification, including aversive
24 interventions;
- 25 (c) Specify techniques of behavior management, including aversive
26 interventions, to be used as emergency interventions;
- 27 (d) Specify the programmatic use of techniques of behavior
28 modifications, including aversive interventions;
- 29 (e) Prohibit the unauthorized use of techniques of behavior
30 management, including aversive interventions; and
- 31 (f) Set forth a process for reviewing violations of the policies and
32 procedures of the plan, and set forth corrective actions, including
33 disciplinary actions for willful violations.

34 3. A plan for behavior management established pursuant to this
35 section must be approved by the committee on behavior management
36 established pursuant to section 19 of this act.

37 **Sec. 21.** For the use of techniques of behavior management as
38 emergency interventions, a plan for behavior management established
39 pursuant to section 20 of this act must:

40 1. Specify the situations in which techniques of behavior
41 management may be used as emergency interventions. The use of
42 techniques of behavior management in such situations must be related to
43 the protection of the health and safety of:

- 1 (a) *The pupil with a disability on whom the techniques are used; and*
- 2 (b) *The pupils, teachers and any other persons who are in the*
- 3 *immediate vicinity.*
- 4 2. *Specify which techniques of behavior management may be used in*
- 5 *each situation.*
- 6 3. *Specify which persons may authorize the application of techniques*
- 7 *of behavior management as emergency interventions and which persons*
- 8 *may apply such techniques.*
- 9 4. *Provide a procedure for the prompt reporting, in writing, of each*
- 10 *incident in which techniques of behavior management are used as*
- 11 *emergency interventions. Such reports must be made to the parents of the*
- 12 *pupil with a disability on whom the techniques were used and to the*
- 13 *person within the private school who is designated by the plan for*
- 14 *behavior management to receive such reports.*
- 15 5. *Provide for the regular review of reports of the use of techniques*
- 16 *of behavior management as emergency interventions, including:*
- 17 (a) *When applicable, the attachment to the reports of a statement*
- 18 *indicating any actions determined to be necessary to correct*
- 19 *inappropriate uses of any techniques of behavior management as*
- 20 *emergency interventions.*
- 21 (b) *The creation and maintenance of a cumulative record of the uses*
- 22 *of techniques of behavior management as emergency interventions. The*
- 23 *cumulative record may include any categories useful in tracking the use*
- 24 *of techniques of behavior management as emergency interventions,*
- 25 *including, without limitation, the type and frequency of emergency*
- 26 *interventions used per pupil, teacher, classroom or school.*
- 27 (c) *The submission of the cumulative reports, including the statement*
- 28 *of any corrective actions, to the committee on behavior management for*
- 29 *the private school not less often than quarterly.*
- 30 (d) *The submission of a report by the committee on behavior*
- 31 *management to the governing body of the private school at least once*
- 32 *each year, regarding the use of techniques of behavior management as*
- 33 *emergency interventions at the private school. The report may include*
- 34 *the recommendations of the committee for any changes in the policies or*
- 35 *procedures, or both, of the plan for behavior management, relating to the*
- 36 *use of such techniques as emergency interventions.*
- 37 **Sec. 22.** *For the programmatic use of techniques of behavior*
- 38 *modification that would use aversive interventions on a pupil with a*
- 39 *disability pursuant to an individualized plan for behavior modification*
- 40 *designed for that pupil, a plan for behavior management established*
- 41 *pursuant to section 20 of this act must:*
- 42 1. *Require that the target behavior to be modified be identified in the*
- 43 *current individualized education program of the pupil;*

1 2. *Require that the current individualized education program of the*
2 *pupil specify the reason that the target behavior must be modified;*

3 3. *Require that the current individualized education program of the*
4 *pupil describe previous plans for behavior modification that have been*
5 *applied to the target behavior and the results of those plans as applied;*

6 4. *Require that the current individualized education program team,*
7 *including the parent of the pupil, recommend the use of the aversive*
8 *intervention before it may be used to modify the target behavior of the*
9 *pupil; and*

10 5. *Specify that the individualized plan for behavior modification*
11 *using the aversive intervention for the pupil must:*

12 (i) *Be designed by a person qualified to design such a plan;*

13 (ii) *Conform to the plan for behavior management approved by the*
14 *committee on behavior management;*

15 (iii) *Be carried out by a person trained to conduct such a plan;*

16 (iv) *Be monitored continuously, including requiring daily*
17 *documentation of the response of the pupil with a disability to the plan;*

18 (v) *Be reviewed at least monthly by persons qualified to design or*
19 *review such plans, and, if necessary, revised by the individualized*
20 *education program team; and*

21 (vi) *Be reauthorized by the individualized education program team at*
22 *least quarterly.*

23 **Sec. 23.** The provisions of subsection 1 of NRS 354.599 do not apply
24 to any additional expenses of a local government that are related to the
25 provisions of this act.