

Paragraph (J) of Existing Rule 5123:2-1-02
(County Board Administration)
Effective March 21, 2002

(J) Behavior support policies and procedures

(1) Purpose

- (a) The county board shall develop and implement written policies and procedures that support and assist individuals receiving services from county board programs to manage their own behaviors.
- (b) These policies and procedures shall acknowledge that the purpose of behavior support is to promote the growth, development and independence of those individuals and promote individual choice in daily decision-making, emphasizing self-determination and self-management.
- (c) The county board superintendent shall appoint a committee to implement paragraph (J) of this rule through the development of behavior support policies and procedures.
- (d) The county board shall develop and implement written policies and procedures which shall:
 - (i) Focus on positive teaching and support strategies and encourage use of the least restrictive environment and least intrusive forms of services;
 - (ii) Specify a hierarchy of these teaching and support strategies, ranging from most positive or least intrusive to least positive or most intrusive, including approvals and review procedures; and
 - (iii) Be developed in accordance with department guidelines and relevant local, state and federal statutes and regulations.
- (e) As used in paragraph (J) of this rule, "provider" refers to all persons and entities that provide specialized services, as defined in section 5126.281 of the Revised Code, and that are subject to regulation by the department, regardless of source of payment, including:
 - (i) A contracting entity of a county board, as defined in section 5126.281 of the Revised Code.
 - (ii) A provider licensed under section 5123.19 of the Revised Code. For the purposes of paragraph (J) of this rule, "provider" does not mean an intermediate care facility for the mentally retarded (ICF/MR) certified under Title XIX of the "Social Security Act."

- (iii) A provider of supported living under section 5126.431 of the Revised Code.
 - (iv) A provider of respite care certified under sections 5123.171 and 5126.05 of the Revised Code.
 - (v) A provider approved to provide medicaid services under home and community-based services waivers administered by the department.
- (2) The county board shall ensure that:
- (a) Medical factors are considered in the development of behavior support plans.
 - (b) A behavior assessment is completed prior to implementation of any written behavior support plan to help identify the causes for a behavior and to determine the most appropriate teaching and support strategies. The behavior support plan shall be developed to follow the findings of the behavior assessment.
 - (c) Behavior support methods are integrated into individual plans and are designed to provide a systematic approach to helping the individual learn new, positive behaviors while reducing undesirable behaviors.
 - (d) Restraint and time-out, as defined in paragraph (J) of this rule, are only used with behaviors that are destructive to self or others and only when all other conditions required by paragraph (J) are met.
 - (e) Policies and procedures, including administrative resolution of complaints procedures in accordance with rule 5123:2-1-12 of the Administrative Code, are available to all staff, individuals receiving services from the county board, parents of minor children, legal guardians, and providers.
 - (f) Behavior support methods are employed with sufficient safeguards and supervision to ensure that the safety, welfare, due process, and civil and human rights of individuals receiving county board services are adequately protected.
 - (g) Aversive behavior support methods are never used for retaliation, for staff convenience, or as a substitute for an active treatment program (interdisciplinary team developed and approved per individual plans).
 - (h) Positive and less aversive teaching and support strategies are demonstrated to be ineffective prior to use of more intrusive procedures.
 - (i) Standing or as needed programs for the control of behavior are prohibited. A "standing or as needed program" refers to the use of a negative consequence or an emergency intervention as the standard response to an individual's behavior without

developing a behavior support plan for the individual as required by paragraph (J) of this rule.

- (j) A behavior support committee reviews and approves or rejects all plans that incorporate aversive methods, including restraint and time-out, and reviews ongoing plans that incorporate aversive methods, including restraint and time-out. The committee shall include persons knowledgeable in behavior support procedures, including administrators and persons employed by a provider who are responsible for implementing behavior support plans, but not those directly involved with the plan being reviewed. The authors of the behavior support plan may attend committee meetings to provide information and to facilitate incorporation of suggested changes.
- (k) A human rights committee reviews and prior approves or rejects all behavior support plans using aversive methods, including restraint and time-out, and those which involve potential risks to the individual's rights and protections. The human rights committee shall ensure that the rights of individuals are protected. The committee shall include, at least, one parent of a minor or guardian of an individual eligible to receive services from a county board, at least one staff member of the county board or provider convening the committee, an individual receiving services from a county board, qualified persons who have either experience or training in contemporary practices to support behaviors of individuals with developmental disabilities, and, at least, one member with no direct involvement in the county board's programs. One human rights committee may serve more than one county board or provider.
- (l) The behavior support committee and the human rights committee, which reviews the plan, is either those formed by the county board or those formed by the provider. In this situation, representatives of both agencies shall be involved. A county board or provider may establish one multi-purpose committee to fulfill all functions of the behavior support committee and the human rights committee. County boards and/or providers may jointly establish and share the operation of a behavior support committee, a human rights committee, or a multi-purpose committee.
- (m) A behavior support plan includes a case history (including medical information), results of a behavior assessment, baseline data, behaviors to be increased and decreased, procedures to be used, persons responsible for implementation, review guidelines, and signature/date blocks including space for dissenting opinions.
- (n) Training and experience required for staff who develop behavior support plans and for all persons employed by a provider who are responsible for implementing plans are specified and required training is documented.
- (o) Prior documented informed consent is obtained from the individual receiving services from the county board program, or guardian if the individual is eighteen years old or older, or from the parent or guardian if the individual is under eighteen years of age. When informed consent cannot be documented in writing at the time it is obtained, such consent shall be documented in writing within three days of implementation.

This written informed consent shall be updated at least annually. Any revisions to a behavior support plan requiring behavior support committee approval shall require written informed consent from the individual receiving services from the county board program, or guardian if the individual is eighteen years old or older, or from the parent or guardian if the individual is under eighteen years of age. "Informed consent" means an agreement to allow a proposed action, treatment or service to happen after a full disclosure of the relevant facts. The facts necessary to make the decision include information about the risks and benefits of the action, treatment or service; acceptable alternatives to such action, treatment or service; the consequences of not receiving such action, treatment or service; and the right to refuse such action, treatment or service. The behavior support plan shall be presented in a manner that can be understood by the individual or parent of a minor or guardian.

- (p) A regular review of all behavior support plans is held, at least, in conjunction with individual plan updates. Plans that incorporate aversive methods, including restraint and time-out, shall be reviewed as determined by the interdisciplinary team but at least every thirty days. Status reports on a plan that incorporates aversive methods, including restraint and time-out, shall be provided to the individual receiving services from the county board program, or guardian if the individual is eighteen years old or older, or the parent or guardian if the individual is under eighteen years of age. Additionally, for individuals who receive services from a provider, status reports shall be provided to the provider.
- (q) Prohibited actions are reported as major unusual incidents in accordance with rule 5123:2-17-02 of the Administrative Code. Prohibited actions shall include the following:
 - (i) Any physical abuse of an individual such as striking, spitting on, scratching, shoving, paddling, spanking, pinching, corporal punishment or any action to inflict pain.
 - (ii) Any sexual abuse of an individual.
 - (iii) Medically or psychologically contraindicated procedures.
 - (iv) Any psychological/verbal abuse such as threatening, ridiculing, or using abusive or demeaning language.
 - (v) Placing the individual in a room with no light.
 - (vi) Subjecting the individual to damaging or painful sound.
 - (vii) Denial of breakfast, lunch or dinner.
 - (viii) Squirting an individual with any substance as a consequence for a behavior.

- (ix) Time-out in a time-out room exceeding one hour for any one incident and exceeding more than two hours in a twenty-four hour period. Use of a time-out room requires the additional oversight specified in paragraphs (J)(3) and (J)(4) of this rule and the following safeguards:
 - (a) A time-out room shall not be key locked, but the door may be held shut by a staff person or by a mechanism that requires constant physical pressure from a staff person to keep the mechanism engaged.
 - (b) The room must be adequately lighted and ventilated, and provide a safe environment for the individual.
 - (c) An individual in a time-out room must be protected from hazardous conditions including, but not limited to, presence of sharp corners and objects, uncovered light fixtures, or unprotected electrical outlets.
 - (d) The individual must be under constant visual supervision by staff at all times.
 - (e) A record of time-out activities must be kept.
 - (f) Emergency placement (i.e., without a written plan) of an individual in a time-out room is not allowable.
- (x) Systematic, planned intervention using manual, mechanical, or chemical restraints, except when necessary to protect health, safety, and property and only when all other conditions required by paragraph (J) of this rule are met.
- (xi) Medication for behavior control, unless it is prescribed by and under the supervision of a licensed physician who is involved in the interdisciplinary planning process.
- (r) Behavior support policies and procedures adopted by the county board or the provider:
 - (i) Promote the growth, development and independence of the individual;
 - (ii) Address the extent to which individual choice will be accommodated in daily decision-making, emphasizing self-determination and self-management, to the extent possible;
 - (iii) Specify the individual's conduct to be allowed or not allowed;
 - (iv) Be available to all staff, the individual, parents of minor children, legal guardians, and providers;
 - (v) To the extent possible, be formulated with the individual's participation; and

(vi) Ensure that an individual must not discipline another individual, except as part of an organized system of self-government.

(s) The climate for behavior support is characterized by:

(i) Interactions and speech that reflect respect, dignity, and a positive regard for the individual;

(ii) The setting of acceptable behavioral limits for the individual;

(iii) The absence of group punishment;

(iv) The absence of demeaning, belittling or degrading speech or punishment;

(v) Staff speech that is even-toned made in positive and personal terms and without threatening overtones or coercion;

(vi) Conversations with the individual rather than about the individual while in the individual's presence;

(vii) Respect for the individual's privacy by not discussing the individual with someone who has no right to the information; and

(viii) The use of people-first language instead of referring to the individual by trait, behavior, or disability.

(3) Requirements for restraint and time-out

(a) The use of restraint and time-out, because of their possible adverse effects on health and safety, shall require additional oversight by the department. As used in paragraph (J) of this rule, the following definitions shall apply:

(i) "Restraint" means any one of the following:

(a) "Chemical restraint," which means a prescribed medication for the purpose of modifying, diminishing, controlling, or altering a specific behavior. "Chemical restraint" does not include the following:

(i) Medications prescribed for the treatment of a diagnosed disorder as found in the current version of the American psychiatric association's "Diagnostic and Statistical Manual" (DSM);

(ii) Medications prescribed for treatment of a seizure disorder.

(b) "Emerging methods and technology," which means new methods of restraint or seclusion that create possible health and safety risks for the individual,

including methods or technology that were not developed prior to the effective date of this rule.

- (c) "Manual restraint," which means a hands-on method that is used to control an identified behavior by restricting the movement or function of the individual's head, neck, torso, one or more limbs or entire body, using sufficient force to cause the possibility of injury.
 - (d) "Mechanical restraint," which means a device that restricts an individual's movement or function applied for purposes of behavior support, including a device used in any vehicle, except a seat belt of a type found in an ordinary passenger vehicle or an age-appropriate child safety seat.
 - (ii) "Time-out," which means confining an individual in a room and preventing the individual from leaving the room by applying physical force or by closing a door or other barrier, including placement in such a room when a staff person remains in the room with the individual.
- (b) Prior approval from the director must be obtained before using the following methods of restraint:
- (i) Any emerging methods and technology designated by the director as requiring prior approval; or
 - (ii) Any other extraordinary measures designated by the director as requiring prior approval, including brief application of electric shock to a part of the individual's body following an identified behavior.
- (c) Restraint or time-out shall be discontinued if it results in serious harm or injury to the individual or does not achieve the desired results as defined in the behavior support plan.
- (d) Any use of restraint or time-out in an unapproved manner or without obtaining required consent, approval, or oversight shall be reported as a major unusual incident pursuant to rule 5123:2-17-02 of the Administrative Code.
- (e) Any use of restraint or time-out that results in an injury that meets the definition of a major unusual incident or an unusual incident shall be reported as such pursuant to rule 5123:2-17-02 of the Administrative Code.
- (f) Within five working days after local approval of a behavior support plan using restraint or time-out, the county board or provider shall notify the department by facsimile or other electronic means in a format prescribed by the department. Upon request by the department, the county board or provider shall submit any additional information regarding the use of the restraint or time-out.

(4) Department oversight of behavior support plans

- (a) The department shall provide oversight of behavior support plans, policies, and procedures as deemed necessary to ensure individual rights and the health and safety of the individual.
- (b) The department shall select a sample of behavior support plans for additional review to ensure that the plans are written and implemented in a manner that adequately protects individuals' health, safety, welfare, and civil and human rights. These reviews may be conducted by department staff designated by the director or by any qualified entity selected by the department.
- (c) The department shall take immediate action, as necessary, to protect the health and safety of individuals served. Such action may include, as appropriate, the following:
 - (i) Suspension of any behavior support plan(s) not developed, implemented, documented, or monitored in accordance with paragraph (J) of this rule or where significant trends and patterns in data suggest the need for further review. When a behavior support plan is suspended, the department shall ensure that a new behavior support plan is developed and implemented in accordance with paragraph (J) of this rule.
 - (ii) Technical assistance in the development of a new behavior support plan.
 - (iii) Referral to the major unusual incident, licensure, or accreditation units of the department or to other state agencies or licensing bodies.
- (d) The department shall compile information about the use of behavior supports throughout the state and share the results with county boards, providers, advocates, family members, and other interested parties. The department shall use the information to study and report on patterns and trends in the use of behavior supports, including strategies for addressing problems identified.
- (e) By the effective date of this rule, the department shall establish a behavior support advisory committee made up of persons knowledgeable about behavior support and representatives of groups that have expressed an interest in the application of behavior support as specified in paragraph (J) of this rule. The behavior support advisory committee shall advise the department in the following matters:
 - (i) Trends and patterns in behavior support methods reported to the department;
 - (ii) Technical assistance needs throughout the state;
 - (iii) Behavior support issues raised by or referred to divisions or units of the department;

- (iv) Plans for improving the quality of behavior support throughout the state;
- (v) Any other pertinent issues related to implementation of this rule.