

3/15/2017

Health and Human Services Finance Committee  
200 State Office Building  
100 Rev. Dr. Martin Luther King Jr Boulevard  
St Paul, MN 55155

RE: Positive Supports Rule

Dear Members:

I have had a chance to review the Positive Supports Rule (“PSR”) including the training requirements for child care centers. New Horizon Academy has been serving Minnesota families since 1971 and we provide early learning educational services to a diverse number of families. We do not discriminate for or against any family on the basis of race, color, religion, creed, age, sex, national origin, marital status, pregnancy, disability, economic status or sexual orientation. We will attempt to reasonably accommodate any disability unless doing so would cause an undue hardship to our company. Based on my understanding of the PSR, any child care center that serves children with a developmental disability or related condition must provide the following training to its staff including management.

**Core Training (8 hours) covers:**

- A. de-escalation techniques and their value;
- B. principles of person-centered service planning and delivery, and how they apply to direct support services provided by staff;
- C. principles of positive support strategies, such as positive behavior supports, the relationship between staff interactions with the person and the person's behavior, and the relationship between the person's environment and the person's behavior;
- D. what constitutes the use of restraint, including chemical restraint, time out, and seclusion;
- E. the safe and correct use of manual restraint on an emergency basis;
- F. staff responsibilities related to prohibited procedures; why the procedures are not effective for reducing or eliminating symptoms or interfering behavior; and why the procedures are not safe;
- G. staff responsibilities related to restricted and permitted actions and procedures;
- H. the situations in which staff must contact 911 services in response to an imminent risk of harm to the person or others;
- I. the procedures and forms staff must use to monitor and report use of restrictive interventions that are part of a positive support transition plan;

- J. the procedures and requirements for notifying members of the person's expanded support team after the use of a restrictive intervention with the person;
- K. understanding of the person as a unique individual and how to implement treatment plans and responsibilities assigned to the license holder;
- L. cultural competence; and
- M. personal staff accountability and staff self-care after emergencies.

**Function-Specific Training (4 hours)** covers:

- A. functional behavior assessments;
- B. how to apply person-centered planning
- C. how to design and use data systems to measure effectiveness of care; and
- D. supervision, including how to train, coach, and evaluate staff and encourage effective communication with the person and the person's support team.

**Management Training (2 hours)** covers:

- A. how to include staff in organizational decisions;
- B. management of the organization based upon person-centered thinking and practices, and how to address person-centered thinking and practices in the organization; and
- C. evaluation of organizational training as it applies to the measurement of behavior change and improved outcomes for persons receiving services.

**Annual Refresher Training (4 hours)** covers:

Staff providing services to a person/child with a developmental disability or related condition, which includes all staff working for a program licensed under 245D, are required to complete four (4) hours of refresher training on an annual basis. The Refresher Training covers topics from the Core Training and Function-Specific Training. The rule requires staff to complete trainings that are applicable to their responsibilities.

Because the vast majority of children with a developmental disability or related condition require much lower staff-to-child ratios than required under MN licensing rules and regulations, most child care centers are unable to reasonably accommodate them due to the fact that the cost of hiring additional staff makes it unduly burdensome. As a result, family and licensed child care serve very few of children with this diagnosed disability. In fact, New Horizon is proud to be one of the only child care providers in the State that has been able provide services to children that likely meet this definition when we are reasonably able to do so. However, due to the new training requirements under the PSR, it will become unduly burdensome for us to reasonably accommodate these children. We have 68 centers in Minnesota serving over 9,000 children per day. Families are able to enroll and dis-enroll at any time. Because of the fluidity

of enrollment, we never know when we will have a child with a diagnosed disability enroll in one of our centers or in what age group. Accordingly, the only way that we can serve these children would be to require that all of our teaching staff complete 12 hours of training; our center management complete 14 hours of training; and thereafter, all staff must complete 4 hours of annual refresher training. With approximately 2,000 staff, this will cost our company approximately \$538,560.83 in year 1 and then approximately \$269,385.10 each year thereafter. As such, it is my legal opinion that a court would conclude that the cost to provide this training would be unduly burdensome for the significantly small of number of children that meet this definition and that we would not be legally obligated to enroll these children.

Furthermore, it is my understanding that the Positive Supports Rule is an administrative rule implemented as a result of the Jensen Settlement. The scope of the Jensen Settlement Agreement is limited to the Minnesota Extended Treatment Options (METO) program as well as all state operated locations serving people with developmental disabilities with severe behavioral problems or other conditions that would qualify for admission to METO, its Cambridge, Minnesota successor, or the two new adult foster care transitional homes.

The language specifically refers to "Facility" which is defined in the agreement as follows:

Facility means the Minnesota Extended Treatment Options ("METO") program, its Cambridge, Minnesota successor, and the two new adult foster care transitional homes to which residents of METO have been or may be transferred.

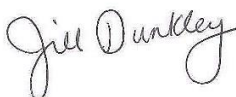
It also specifically defines "Scope" as follows:

The scope of DHS obligations regarding people with developmental disabilities in this Agreement pertain only to the residents of the Facility, with exception of the provisions of Recitals, Paragraph 7, and Section X, "Systemwide Improvements."

It even further states that "the State also agrees that its goal is to utilize the Rule 40 Committee and Olmstead Committee process described in this Agreement to extend the application of the provisions in this Agreement to all state operated locations serving people with developmental disabilities with severe behavioral problems or other conditions that would qualify for admission to METO, its Cambridge, Minnesota successor, or the two new adult foster care transitional homes."

Child care centers and family child are not affected by the settlement agreement. It appears that the Department of Human Services ("DHS") may have inadvertently extended the scope of this rule to apply to licensed child care providers. Since it is an Administrative Rule, Legislators have the authority to amend the application of the PSR to exclude licensed Rule 2 and Rule 3 providers without affecting the terms of the settlement agreement.

Sincerely,



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