

**NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES**  
**Developmental Disabilities Division**  
**October 14, 2021**

**PI-21-23**

**TO:** DD Licensed Service Providers  
DD Program Administrators & Managers  
ND Protection and Advocacy Project (P&A)  
Health Facilities, Department of Health

**FROM:** Tina Bay, Director  
Developmental Disabilities Division, DHS

**SUBJECT:** Behavior Support and Human Rights Committees.

**EFFECTIVE DATE:** October 1, 2021\*

This policy replaces PI-001 and PI-002

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All DD licensed providers in the State of North Dakota must have, as part of their agency policies, a Human Rights Committee (HRC) policy and a Behavior Support Committee (BSC) policy. An agency may have their own committee or may participate in a region/system-wide committee. These two committees are necessary to ensure the person's human, civil, and legal rights are protected; least restrictive techniques are utilized; and there is due process for rights and restrictive interventions. The committees are responsible to review their respective areas regarding right restrictions, behavior support plans with restrictive procedures, and the use of restraint for behavioral or medical purposes. Each agency must have standing committees operating to comply with licensing, administrative code, century code, Title XIX regulations, Home and Community Based Federal Regulations, or any accrediting body.

Restrictive interventions should be used with minimal amounts of intrusion to allow people and others around them to be safe. The team should rule out any communication, physical, medical, social, and environmental issues that may be contributing to a behavior. A Functional Behavior Assessment must be completed prior to the development of the Behavior Support Plan. The goal should be to eliminate restrictive interventions as soon as possible. In addition, there should be a plan for teaching alternative, replacement behaviors, and coping strategies. Agencies should have clearly defined procedures for training staff in implementing and monitoring the use of restrictive interventions. Restrictive interventions must be approved by the teams with informed consent and the appropriate committees approving the plans prior to implementing. Persons receiving supports and services should be monitored for adverse effects of all restrictive interventions authorized or implemented.

Regulations and standards:

State statutes pertinent to seclusion and/or restraint include NDCC 25-01.2-01 (3), NDCC 25-01.2-02, NDCC 25-01.2-08, NDCC 25-01.2-09, and NDCC 25-01.2-10 in chapter NDCC 25- 01.2 on Developmental Disabilities and NDCC 25-01.3-01 (1) and (14), which pertains to definitions of abuse and neglect in chapter NDCC 25-01.3 of the Committee on Protection & Advocacy.

Federal statutes include 42 U.S.C. § 15009 entitled Rights of Individuals with Developmental Disabilities and 42 U.S.C. § 290jj entitled Requirements Relating to the Rights of Residents of Certain Non-medical, Community-based Facilities for Children and Youth. Federal regulations include 42 C.F.R. 483.420 entitled Condition of participation: Client protections, 42 C.F.R. 483.440 entitled Condition of participation: Active treatment services, 42 C.F.R. § 483.450 entitled Condition of participation: Client behavior and facility practices, 45 C.F.R. § 1386.19 – entitled State System for Protection and Advocacy of the Rights of Individuals with Developmental Disabilities.

Policies adopted and promulgated by the ND DHS/DDD can be found on the DHS website: ND DHS bookshelf at <http://www.nd.gov/dhs/policymanuals/816/816.htm>

The DD Bill of Rights creates a fundamental determination of a person’s rights. Any modifications or discrepancies in this area are considered restrictive in nature, must be addressed by the team, included in the person’s plan, and must be taken through the appropriate committees to assure due process. (see Appendix A for the DD Bill of Rights)

Restrictive interventions should be developed with team members and are administered consistent with the person’s programs. The following information must be completed and documented in the person-centered service plans:

1. Identify a specific assessed need and a description for why the restrictive intervention is necessary; and
2. Assure that any restrictive interventions that the team agrees upon for the person will be identified individually in the person-centered service plans, including but not limited to the Behavior Support Plan, the Overall Service Plan, the Risk Assessment, etc.; and
3. Positive interventions and less intrusive methods that have been tried but were not successful; and
4. Regular data collection and review of data to measure the effectiveness and justify the continued need for the restrictive intervention; and
5. Establish time limits for reviews; and
6. Informed consent of the person and/or legal decision maker; and
7. Assurance that the restrictive interventions will “Do No Harm.” Teams should discuss and carefully weigh the harmful effects of the restrictive interventions against the harmful effects of the target behavior; and
8. Plan to fade the restrictive interventions.

**Committee Policy and Procedures:**

Each committee must have written policies and procedures that define membership, training, roles, responsibilities, procedures, etc. These need to be reviewed and updated at least annually for accuracy. The policies and procedures shall consist of the following:

1. Mission and Philosophy statement which outlines the committee’s role and responsibilities that focuses on the protection and promotion of rights.

2. Membership should include a diverse group of members who are knowledgeable and have experience in relevant areas to behavior change or the topic of rights (e.g., pharmacist, physician, nurse, advocate, psychologist, family member/legal decision makers, person receiving services, provider personnel, other community members, etc.). At least one-third of the membership is not affiliated with the agency. If you serve people living in an ICF/IID, you must comply with the tag W261 which addresses the membership of the committees.
3. Terms of membership.
4. Election of officer's procedures.
5. Duties of the committee members, chairperson(s) responsibilities, secretaries, and co-chairs where appropriate.
6. Member training and documentation:
  - Committee members must be trained initially and annually on the role of members, responsibilities of the committee they are on, the meaning of due process, the rights they have according to the UN Declaration of Human Rights or DD Bill of Rights or updates to any behavioral intervention supports processes.
  - Committee members must sign the Confidentiality Agreement annually to ensure that privacy is protected.
  - A copy of those in attendance at this training must be maintained by the committee for a period of 3 years.
7. Frequency of Meetings:
  - Each committee will be scheduled to meet at least once per month, and as needs arise, to assure timely approval of plans with rights and/or restrictive interventions.
8. Maintain a list of the members of the committees and their contact information.
9. Meeting components.
10. Voting rules:
  - Any member who has been involved in the development or approval of a person's proposed restrictive intervention must be excluded from the committee decision making for that person.
  - A quorum is the total number of your membership, divided by half, plus one (i.e., 51%)
  - The membership present for quorum must have at least 1/3 of the members present who are not affiliated with the organization.
11. Emergency/temporary approval procedures:
  - If an emergency procedure is used more than 3 times in a 6-month period, the team must meet to determine if changes are needed to the person's plan.
  - If an intervention was implemented in an emergency for health and safety, and an intervention needs to be implemented before the next committee meeting, the team must seek written emergency approval from the committee chair and members.
  - If emergency approval had been utilized, written authentication must be completed by the full committee as soon as possible and within 30 days.
  - Temporary approval from HRC/BSC committees must be obtained prior to someone moving into a new environment with the full approval of the committee within 30 days.
12. Committee responsibilities for reviewing rights and restrictive interventions:
  - Committees must maintain a record of activities, document the issues reviewed, actions taken, and follow-up. Records must be maintained for a period of at least 7 years at which time these can be shredded.

- Ensure/emphasize positive approaches, recommend alternative options, problem solve ways to avoid and eliminate restrictive interventions. Documentation that the Committees must review to ensure due process must include the following:
    - a. Why the restriction is necessary; and
    - b. Assure there is a current Functional Behavior Assessment/Functional Analysis that has been reviewed/updated annually to drive the plan; and
    - c. What else has been tried and what were the results; and
    - d. What type of training/teaching strategies has been provided; and
    - e. How have other causes been ruled out (e.g., health, environmental); and
    - f. Criteria/fading of restrictions; and
    - g. Collection of data to measure effectiveness; and
    - h. Informed consent.
  - Review abuse/neglect/exploitation incidents or other data that reveals the agency's practices in respect to human, civil, and legal rights, emergency procedures utilized.
13. A hierarchy of interventions and interventions that may not be used or prohibited in compliance with regulations. Define and list techniques that are used and available for use in order of hierarchy (relative degree of restriction) including positive interventions.

A statewide toolkit/guidebook was developed by a task force, led by NDCPD, that included various stakeholders, providers, psychologists, P&A, and DD Division staff. This toolkit is available as a resource to aid teams, agencies, and committees to perform the work required to comply with various licensing, certification, and accrediting bodies.

Early Intervention/Infant Development exception:

To comply with codes set forth by the department and any accrediting bodies, early intervention and infant development providers should have an HRC and BSC committee. The role of both committees may differ due to the service provider not being the primary caregiver. For Infant Development, the committees may be combined, and the role of the committees would be to periodically review policies, procedures, and information that relate to rights to assure this information is current and useful for families. The committees would also review incident reports, or those where child abuse or neglect is suspected.

## **HUMAN RIGHTS COMMITTEES (HRC):**

### **PURPOSE OF A HUMAN RIGHTS COMMITTEE:**

The rights of all people who are supported in the Developmental Disabilities service delivery system must be protected. As part of the due process steps associated with client rights, each Provider must ensure that there is a Human Rights Committee (HRC) in place to accomplish this mission. The HRC's role is to review, approve, and monitor individual programs designed to manage inappropriate behavior and other programs that, in the opinion of the committee, involve risks to client protection and rights.

“Human Rights Committee” (HRC) is the entity responsible for assuring that individual rights are supported and protected. Each provider agency may have its own HRC or may participate in a system wide HRC. The committee includes people served and/or their representatives and at least one-third of the committee’s members are not affiliated with the agency. All instances of alleged abuse, neglect, or exploitation of people served are reported to the Chairperson of the Human Rights Committee in accordance with agency policy, state law, and provisions of the appropriate DD Policy.

### **HRC RESPONSIBILITY:**

The Human Rights Committee is responsible to protect the due process rights of the person receiving services and supports. This committee must be held accountable to understand due process and to question every situation in which a person’s rights are restricted for any reason.

All incidents involving a person’s rights violations and/or restrictions must be reported to the Human Rights Committee by the provider. Providers who have an internal Protective Service Review Committee or quality assurance team that reviews all incident reports utilizing the Reporting Determination Guidelines have the option to report to the HRC only those incidents in which there are rights violations and/or restrictions as part of the allegation. If the incident does not involve a rights violation and/or restriction, the provider is not required to report the incident to the HRC. The Protective Service Review Committee/Quality Assurance Team will be responsible to review the incident report according to the requirements of this policy.

Providers must document whether the incident was reported to the HRC; and if the incident was reported to HRC, the date of notification. This can be accomplished by noting it on the Investigative Action Level Checklist or documenting it in the internal investigation report (GER).

If no rights are restricted, no notification is necessary. Providers must document when a restriction has been reported to the HRC committee, who was contacted, and then maintain a copy of this approval for all restrictions. If the Chairperson of the HRC has a conflict in that they oversee or write the plans, they cannot sign off on these restrictions. These must be approved by a non-agency affiliated member of the committee acting as a co-chair for approval.

Plans that are taken through the HRC must be approved at least annually or sooner if the committee feels that the restriction can be faded or may not be necessary for the year (i.e., approval for door chimes but the roommate who needs it will be moving out and these will go with them when they leave).

## **QUALITY IN PRACTICE**

### **Role of the Human Rights Committee**

- A Human Rights Committee (HRC) is active about ensuring that persons supported have full access to their rights as citizens. The role of the committee should ensure that the person supported is informed of their rights and can fully exercise these unless restrictions are necessary.
- Educate the person supported, families/legal decision makers, and staff members about the structure and purpose of the Human Rights Committee.
- Develop and implement policies and practices that address the roles and responsibilities of committee members and ensure that all relevant aspects of human rights and advocacy are addressed.

### **Membership of the Human Rights Committee**

The Committee membership may include members of facility staff, parents, legal guardians, person receiving services, qualified persons who have either experience or training in contemporary practices to change person behavior, and persons with no ownership or controlling interest in the facility/agency.

- People with expertise in the issues that will come before the committee including, but not limited to: alternatives to guardianship, positive behavioral supports, the use of psychotropic medication, various mental health diagnoses, and due process.
- Eliminate conflict of interest issues by assuring that HRC members are not employed by the organization. Staff members may provide information to committee members but should not be charged with making decisions.
- Provide adequate training and discussion time for members of the HRC on relevant topics (those listed above), as well as issues regarding personal freedom – having privacy for phone calls, private email accounts, enjoying alcoholic beverages, smoking, engaging in sexual behaviors, etc.
- All \*members of the Committee will have training or experience with issues and decisions regarding human rights and behavioral supports. The Committee members will be required to participate in yearly training on human rights and behavioral support issues as well as the function of the committee. Members with experience are defined as those who have training or direct experience in supporting the rights of persons who are vulnerable. Committee members with rights experience may include judges, advocates, attorneys, members of the clergy, ethicist, or those with prior experience with human rights and behavioral support committees, etc.

\*If the committee member is an agency representative from one of the Provider agencies, that member cannot, at any time, be involved in planning, hold team membership, or participation in implementation of procedures with the plan.

### **Meetings of Human Rights Committee**

- Assure that persons whose rights may be restricted are present at the Human Rights Committee meeting and have the opportunity to present their wishes. Offer the person the opportunity to be accompanied by the person of their choosing to assist them in expressing their wishes.
- Assure that the HRC meets regularly and has adequate time and support (someone to keep minutes, send out notices, develop agendas, etc.) to complete the work before it.
- Each person's program developed to decrease behavior, and which involves potential risk to rights and protections must be reviewed, and approved, by the committee prior to the program's implementation.
- Maintain documentation of committee discussions, decisions, and recommendations in a manner that readily identifies the issues reviewed, the decisions reached, and the follow-up that is necessary.

- The conduct of the meetings will be governed by an accepted parliamentary procedure. Once a quorum is declared, the members will review the disposition of all rights & business issues, which is determined by a simple majority of the members present. A majority quorum is required for passage of any proposal or procedure.

#### **Deliberations of Human Rights Committee**

- Assure that all appropriate issues are referred to the HRC for review. These issues should include, but not be limited to:
  - ✓ rights restrictions (money management, freedom of movement, privacy)
  - ✓ restrictive behavior support plans
  - ✓ allegations and the review of investigations of abuse, neglect, and exploitation
  - ✓ any use of psychotropic medication used for behavior management
  - ✓ issues of informed consent
- Assure that due process is followed in every situation that involves a restriction of rights.
- Assure that any plan that restricts rights includes a plan for restoring those rights and that all rights restrictions are time limited.

#### **Rights Restriction Approval Process**

Upon presentation regarding the specifics of a program plan and rights restrictions, the HRC must review, approve, and monitor programs designed to manage inappropriate behavior and other programs that, in the opinion of the committee, involve risks to the person's protection and rights. A plan for restrictions to be removed must also be in place.

Approval timelines for physical interventions and medications used for behavioral support cannot exceed a period of six months. Timelines for approval for other rights restrictions cannot exceed one year.

In order to limit any rights, an individual has:

1. The risk to the person by allowing them full recognition of this right outweighs the risk the limitation would have on the person.
2. The person will clearly benefit from the limitation (versus convenience for others).
3. All other options/alternatives (that are less restrictive) have been examined/attempted/documented.
4. Due process is adhered to.
5. The OSP/IEP/person-centered plan indicates:
  - how the right will be reinstated; and
  - when the right will be reinstated; and
  - the expectations of the individual and the staff.
6. Consent is required (person receiving services &/or guardian, BMC, HRC, Administration, etc.)

Elements of Consent:

- The person's decision must be voluntary.
- The person must be thoroughly informed of the risks and potential impacts of the decision.
- The person has capacity to make decisions on their behalf

#### **Complaints against committee members if:**

- A. The member is an agency team member:

1. If there is a complaint alleging a violation of a person's right to confidentiality, the member(s) allegedly breaching confidentiality will be immediately suspended from participating in activities of the Committee.
2. The HRC Chairperson will notify the committee member's supervisor of a breach in confidentiality.
3. The agency(s) internal risk management committee will investigate and determine the validity of the allegation.
4. Upon determination of the allegation, the policies and procedures will be reviewed, and recommendations will be made to the person, as deemed necessary.
5. The HRC Chairperson will be notified in writing, by the member of the risk management committee, as to whether the person will be returning to the committee.

B. The member is a community member representative:

1. If there is a complaint alleging a violation of a person's right to confidentiality, the member(s) allegedly breaching confidentiality will be immediately suspended from participating in activities of the Committee.
2. The Chairperson will meet with the community member representative to investigate the allegation. The findings of the allegation will be presented to the HRC at the next scheduled meeting. The accused member has the right to be present at this meeting in order to defend him/herself against the allegation.
3. The Committee will determine the validity of the allegation, and if the allegation is determined to be true, will determine appropriate actions to be taken. The member may be asked to leave while the committee decides the actions to be taken.

C. The member is a person receiving services:

1. If there is a complaint alleging a violation of a person's right to confidentiality, the member(s) allegedly breaching confidentiality will be immediately suspended from participating in activities of the Committee.
2. The HRC Chairperson will notify the Program Coordinator (PC), QDDP, Case Manager (CM), etc. The PC, QDDP, or CM will meet with the person served to investigate the allegation. The PC, QDDP, or CM will report the findings of the allegation to the HRC at the next scheduled meeting. The accused member has the right to be present at this meeting in order to defend him/herself against the allegation.

The Committee will determine the validity of the allegation, and if the allegation is determined to be true, will determine appropriate actions to be taken. The member may be asked to leave while the committee decides the action to be taken.



## **BEHAVIOR SUPPORT COMMITTEE (BSC):**

### **PURPOSE OF A BEHAVIOR SUPPORT COMMITTEE**

The Behavior Support Committee (BSC) is committed to positive behavioral supports and to ensure the principles of learning used are the most efficient and effective on behalf of the person served. It is understood that the purpose to any behavior is communication, and it is the responsibility of the interdisciplinary team to ensure that a plan is in place to assist the person in communicating more positively. It is the responsibility of the BSC to assure that the interdisciplinary team has identified the meaning of the behavior and there is a mechanism in place that can help the individual to learn a new way to communicate the meaning of their behavior. Behavior support refers to efforts to increase socially adaptive behaviors. The goal is to teach behaviors and skills that are adaptive and socially productive. Teaching behavior change is the responsibility of all team members.

Each team member working with individuals served must commit themselves to treating people with dignity and respect and be able to accept people for who they are, unconditionally. It is the intent of the BSC to ensure that all interventions refrain from incorporating punishing techniques, and the most positive approaches are being utilized. Natural consequences may occur.

“Peer Review of Behavior Supports Committee” (variously titled Behavior Management, Behavior Intervention, or Positive Behavior Supports) is the agency or regional committee responsible to review individual programs designed to eliminate maladaptive behavior and replace them with behaviors and skills that are adaptive and socially productive. Programs that call for any restrictive procedures must be submitted to the behavior management committee for review prior to implementation to ensure that the proposed intervention is likely to produce the desired effect, and that any risks to the person receiving services are outweighed by the risks of the behavior. At least one third of the committee’s members are not affiliated with the agency.

All plans that are being implemented to modify or change a person’s behaviors must have a Functional Behavior Assessment completed that will drive what will be implemented in a Behavior Support Plan. All plans that are attempting to modify/change a behavior or involve techniques that involve restraints (physical, mechanical, or chemical) must have the person’s team and BSC approval prior to the implementation of the plan. Behavior plans, which include restrictive techniques, should be reviewed at least every 6 months or sooner, if needed.

All behavior support plans with restrictions must be taken through both committees, with the HRC reviewing last. The two committees must act independently of each other, and agencies will need to seek approval from both committees before implementing the plan.

The Behavior Support review committee should review the following items prior to approval:

- ✓ Have the restrictions been identified?
- ✓ Is the function(s) of the person's behavior(s) clearly defined (has a functional behavior assessment (FBA) or analysis been completed; reviewed annually, and updated as needed)?
- ✓ Have other factors been considered or ruled out as causes for the behavior (medical, environmental, psychiatric, etc.)?
- ✓ Are they based on an assessment of the function of the behavior, including, but not limited to, the communicative intent of behavior?

- ✓ Does the person have a Positive Behavior Support Plan, Behavior Plan, or a similar plan of strategies that include techniques from an approved curriculum to help the person to be more successful?
  - ✓ Is the use of psychoactive psychotropic medication based on specific psychiatric diagnoses?
  - ✓ Does the person take medication for behavior management? (e.g., Is the use of psychotropic medications for behavior support recognized as a chemical restraint and considered highly intrusive/restrictive?)
  - ✓ Are formal behavior support plans implemented only after the team has ruled out physical and environmental issues contributing to a person's behavior?
  - ✓ Do behavior support plans include teaching alternative communication and coping strategies that can help the person to learn a new way to communicate the meaning of their behavior?
  - ✓ Does the proposed plan incorporate the least restrictive approach, and includes a plan to fade, and review of the proposed restrictive procedures or medications?
  - ✓ Is there clear evidence that less restrictive/intrusive procedures have been tried and not been effective?
  - ✓ Are behavior intervention plans that include highly intrusive procedures or other restrictive techniques implemented only with the prior written, informed consent of the person or the person's legally authorized representative?
  - ✓ Is the committee convinced that the proposed plan is the least restrictive approach for this person?
- Any methods which incorporate restrictive techniques (e.g., restraints, medication to manage behavior, restrictions on community access, etc.) have been reviewed and approved by the committee prior to implementation and training of staff.

### **Membership of the Behavior Support Committee (BSC)**

The Committee membership may include members of facility staff, parents, legal guardians, person receiving services, qualified persons who have either experience or training in contemporary practices to change person behavior, and persons with no ownership or controlling interest in the facility/agency.

- People with expertise in the issues that will come before the committee including, but not limited to; positive behavioral supports, the use of psychotropic medication, the use of restrictive interventions, various mental health diagnoses, etc.
- Eliminate conflict of interest issues by assuring that BSC members are not employed by the organization. Staff members may provide information to committee members but should not be charged with making decisions.
- Provide adequate training and discussion time for members of the BSC on relevant topics (those listed above),
- All \*members of the Committee will have training or experience with issues and decisions regarding behavioral supports and interventions. The Committee members will be required to participate in yearly training on behavioral support issues as well as the function of the committee. Members with experience are defined as those who have training or direct experience in supporting persons who may be experiencing some struggles and may be vulnerable. Committee members with experience may include judges, advocates, attorneys, pharmacists, psychologists, behavioral analysts, or those with prior experience with behavioral support committees, etc.

\*If the committee member is an agency representative from one of the Provider agencies or a Behavioral Analyst that works with the person being reviewed, those members cannot, at any

time, be involved in planning, hold team membership, or participation in implementation of procedures with the plan.

## Appendix A – DD Bill of Rights

### **NDCC 25-01.2      DD Bill of Rights**

A person with a developmental disability has constitutional, civil, and legal rights which include, but are not limited to the following:

#### **The RIGHT to:**

1. Treatment, services, and habilitation in the least restrictive appropriate setting.
2. Be presumed competent until a court of law determines otherwise.
3. Vote.
4. Free exercise of religion.
5. Free association, including association with the opposite sex.
6. Confidential handling of person and medical records.
7. Receive, possess, use, and have secure lawful personal property.
8. Reasonable access to mail, telephone, and visitors.
9. Be paid the value of work performed, to freely deposit earnings and other funds, and to retain all accumulated funds, including wages earned from the service provider.
10. Approve or disapprove services providers as payee of the person's social security, pension, annuity trust fund, or any other direct payment or assistance.
11. Receive appropriate and adequate medical and dental care if living in an institution or residential facility.
12. Be free from chemical restraints and to receive only properly prescribed and promptly recorded drugs and medications.
13. Be free from corporal punishment.
14. Be free from isolation and physical restraints, except in emergencies (defined as imminent danger of causing harm to oneself or others).
15. Be free from psychosurgery, sterilization, and medical research, if receiving services at an institution or community facility.
16. Be free from shock therapy.
17. Be checked at least once every 30 minutes when properly placed in restraints or isolated for program purposes.
18. An adequate and sufficient diet planned by a dietician, if residing in an institution or residential facility.
19. A free and appropriate public education in the least restrictive, appropriate public-school setting or vocational setting, if between the ages of 3 through 21.
20. An individual habilitation or education plan within 30 days after admission to a program, to be reviewed at least annually.
21. Refuse treatment unless required to prevent serious harm to oneself or others.
22. Enforce these rights in a court of law or appropriate administrative proceedings.

## **Appendix B: Definitions:**

**“Behavior Support Committee” (BSC)** is the committee responsible to review the persons programs designed to eliminate maladaptive behavior and replace them with behaviors and skills that are adaptive and socially productive. Programs that call for any restrictive procedures must be submitted to the behavior support committee for review **prior** to implementation to ensure that the proposed intervention is likely to produce the desired effect, and that any risks to the person receiving services are outweighed by the risks of the behavior. The BSC should be composed of people with technical expertise, usually in a behavioral science, who can evaluate the merits of the proposed program (behavioral analyst, psychologist, or psychiatrist, all non-prescribing/non-affiliated). It would be beneficial to have a pharmacist or nurse on this committee to monitor the effectiveness of the medications the person is currently being prescribed.

**“Functional Analysis”** can only be conducted by a qualified professional (Licensed ABA or Psychologist) if it is within their scope of practice, after a Behavior Support Plan has been determined to be unsuccessful in changing or modifying a person’s behavior, and a Functional Behavior Assessment (FBA) has been completed prior to the BSP being implemented. If an FBA is inadequate for determining the function of the target behavior, and individualized behavioral strategies based on that hypothesized function found in the FBA are ineffective, then the team should consult with a qualified professional to conduct a Functional Analysis.

**“Functional Behavior Assessment (FBA)”** is defined as a systemic method (process) of obtaining information related to the purpose (function) of a behavior. Indirect methods to gather the information is to include structured interviews, checklists, rating scales or questionnaires completed by someone who knows the person who engages in target behaviors and is based on their recollection of the behaviors over time. Direct methods include observations of the behaviors in relation to events that occur within the environment and include both descriptive methods (narrative), checklist method (data collected at the time the behavior takes place) or continuous data recording and scatterplots. This document must be completed prior to a Behavior Support Plan being implemented. The Functional Behavior Assessment includes ALL antecedents, behaviors and possible consequences that are part of the person’s historical and current plan.

**“Human Rights Committee” (HRC)** is the committee responsible for assuring that the person’s rights are supported and protected. Each provider agency may have its own HRC or may participate in a system wide HRC. The committee includes persons served and/or their representatives and at least one-third of the committee’s members are not affiliated with the agency. All instances of alleged abuse, neglect, or exploitation where there is a violation of someone’s rights are reported to the Chairperson of the Human Rights Committee in accordance with agency policy, state law, and provisions of this policy. Members of this committee will have training or experience with issues and decisions regarding human rights and behavioral supports. These may include, and are not limited to, judges, consumer advocates, attorneys, members of the clergy, ethicist, or other persons with prior experiences with human rights and behavioral support committees.

**“ND HRC/BSC Provider Toolkit”** is the toolkit that was put together from various stakeholders for the benefit of the agency, and their respective committees, to use for training and guidance as HRC/BSC processes are reviewed and updated. There are other tools, forms, and guidance in this toolkit.

**“Quorum”** is the total membership divided by half plus one (i.e., 51% must be present; or there are 8 members total and half of that is  $4 + 1 = 5$  needed for quorum) and  $1/3$  of the voting members must not be affiliated with the agency reviewing and approving the plans.

### **Appendix C: ADEQUATE DUE PROCESS PROCEDURES\***

Organizations are responsible for ensuring that the rights of persons supported are protected. When rights are limited, it is typically due to the person's specific needs but sometimes a person's rights may be limited due to formal or informal practices, lack of resources, or a desire to keep the person safe or to mitigate risk. Whenever there is a rights limitation or restriction, the organization must follow strict safeguards to promote and protect the person's rights:

- Limitations/Restrictions are based on a specific need as demonstrated by the person.
- Persons supported are informed of options, the expected outcomes of each option, and the risks of each option.
- The person and the legally authorized representative, if there is one, give informed consent.
- The organization demonstrates that less intrusive interventions were tried but were not successful.
- The organization ensures each restriction is temporary.
- There is a plan to promote skill development or other strategies to reduce the need for, or reliance on, the restriction.
- The organization demonstrates that the restriction will cause no harm.
- The person has a fair and impartial hearing. Typically, this is accomplished by inviting the person to a Human Rights Committee (HRC) meeting. At the time of the meeting, at least one-third of the members are not affiliated with the agency, persons supported must be an active member of the committee, and there should be a least one person with prior experience with rights (e.g., legal, religion, advocacy, or civil rights.)

### **Suggested Questions for Those Who Know the Person Best**

#### **\*INFORMATION GATHERING AND QUESTIONS ABOUT INDIVIDUALIZED SUPPORTS:**

Use the following questions to guide your discussion with the person and those who know the person and their supports best. You may ask all of these, some of these, or none of these questions. Your goal is to be able to answer the decision-making questions.

- How is the person supported to learn about his or her rights?
- Does the person need support to exercise rights?
- If so, what are the supports and who provides them?
- Are there any barriers that affect the outcome for the person?
- How do you assist the person to overcome barriers to this outcome?
- What organizational practices, values, and activities support this outcome for the person?

#### **\*SUGGESTED QUESTIONS FOR THE PERSON:**

- What do you know about your rights as a citizen?
- Do you have access to information about your rights as a citizen? As an employee? As a person receiving services?
- What rights are most important to you?
- Are you able to exercise your rights without difficulty?
- What information or support do you need to help you to exercise your rights?
- With whom can you talk about your questions or concerns regarding rights?

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