



Q&A

Point and Level Systems

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Q. Are point and level systems an effective treatment therapy for children and adolescents? If not, what strategies are available to challenge this practice?

A. Point and level systems are not an effective treatment therapy. Although the literature on the topic is relatively limited, it is nonetheless strongly critical. There are several legal approaches available to challenge these ineffective, non-evidence-based, behavior management methods.

I. INTRODUCTION

Residential treatment facilities, inpatient psychiatric units, and juvenile justice facilities across the country frequently utilize a “motivational” programming structure, known as point or level systems.¹ They primarily are used as a management tool. In such systems children all starting at the bottom tier, are required to “earn” privileges and opportunities for liberty by conforming their behavior to certain specified and standardized criteria that primarily are overseen by direct care staff. This Q&A will focus on the limitations of point and level systems used with children and adolescents.²

Point and level systems are familiar to most P&A advocates. Although the particulars of the systems vary from program to program, it is common for staff members to continually monitor and periodically calculate children’s behavior. Generally, points are assigned at periodic intervals, often hourly or upon

¹ Wanda K. Mohr, et al., *Beyond Point and Level Systems: Moving Toward Child-Centered Programming*, 79 *American Journal of Orthopsychiatry* 8 (2009), <http://uofthenet.org/alliant/Ablon/InPatient-Mohr.pdf>.

² While they are used primarily with children and adolescents, point and level systems are also used in some cases with young adults (in the juvenile justice context), and in a modified capacity with adults. See, e.g., M-Power, Rights regarding hospital privileges, http://www.m-power.org/rights_regarding_hospital_privileges.

completion of an activity. Attaining a certain number of points corresponds with securing certain levels. The lowest levels offer the fewest privileges to children; when levels are raised, privileges are correspondingly increased. Point and level systems may be explained in detailed policy and procedure manuals, which are provided to children and their parents.³

Point and level systems in all likelihood are an outgrowth of the “token economies,” based on a conditioning principle developed by the behavioral psychologist B. F. Skinner in the 1950s.⁴ Despite their popularity in treatment settings, there has been surprisingly little study of the efficacy of point and level systems.⁵ Even less research has been done to evaluate whether they promote

³ Mohr, *supra* note 1 at 8. For examples of such programs, see Juvenile Justice Center, The Court of Common Pleas, Northampton Cnty., Pennsylvania, <http://www.nccpa.org/divs/jdc.html> (“[A] behavior modification point/level system [will] reward juveniles who comply with rules and discipline them for inappropriate behavior.”); Juvenile Court Services, San Juan County Washington, Skagit Cnty. Juvenile Detention Rules, Detention Point and Level System, <http://sanjuanco.com/JuvCourt/Detention.aspx#anchor251392> (“The better your behavior, the more points you earn, the higher your level, the more recreation and out of room time you will be allowed. You will be graded, or awarded points, each day”); Children’s Voice, Residential Treatment in Transition, <http://www.cwla.org/voice/ND09residential.html> (describing Cobb Center residential program decision to end the use of point and level systems). The systems are also commonly used in educational settings. See, e.g., Midwest Symposium for Leadership in Behavior Disorders, Resources, http://www.mslbd.org/resources_teacher_point_level_systems.htm. It is worth noting that in some places, they may not call a behavior management plan a point and level system, but it effectively operates the same.

⁴ Mohr et al., *supra* note 1 at 8 (abstract), 10. “On the surface, [point and level systems] appear to be a straight-forward contingency management tool that is based on social learning theory and operant principles. How such programming found its way into today’s child inpatient and residential treatment units and transmuted in the present point and level systems in these facilities is unclear.”); Peter Tompkins-Rosenblatt & Karen VanderVen, *Perspectives on Point and Level Systems in Residential Care: A Responsive Dialogue*, 22(3) *Residential Treatment for Children & Youth* 1, 7-8 (2005), http://www.haydonyouthservices.com/downloads/Perspectives_on_Point_and_Level_Systems.pdf (an exchange of letters regarding the use of point and level systems in residential settings) (“[M]ost point and level systems are not systematically derived from an empirical and theoretical knowledge base, e.g., applied behavior analysis. They are not even representative of the much less accepted Skinnerian approaches to behavior modification [as many are built on negative, not positive, reinforcement].”).

⁵ Mohr et al., *supra* note 1 at 10. With that said, Karen VanderVen is a predominant scholar on point and level systems and has been publishing on its ineffectiveness since 1995. See, e.g., Karen VanderVen, *Point and Level Systems: Another Way to Fail Children and Youth*, 24 (6) *Child and Youth Care Forum*, 345 (1995); Karen VanderVen, *Cultural Aspects of Point and Level Systems*, 9 (1) *Reclaiming Children and Youth* 53 (2000).

long-term behavioral change.⁶ Much of the research and commentary available supports the proposition that these systems are not treatment; rather, they are at best behavior management tools founded on basic behavioral conditioning.⁷ Nevertheless, despite the existence of successful treatment alternatives,⁸ point and level systems remain popular and very common⁹

II. Point and Level Systems are Not Effective

Critics argue that point and level systems are potentially “counterproductive, non therapeutic, and may result in unintended consequences.”¹⁰ In addition, their implementation can be punitive, unnecessarily provocative, inconsistent with individual treatment, and overly generalized.¹¹ Some of the problems associated with this approach are briefly reviewed below.

A. Points and Level Systems are Non-Evidence-Based

Little, if any, research exists to support the use of point and level systems. Further, studies that focus on the use of rewards in managing behavior in children show that “extrinsic motivators . . . are not merely ineffective over the long haul but counterproductive with respect to the things that concern us most: desire to learn, commitment to good values, and so on.”¹² “Reward” systems,

⁶ Mohr et al., *supra* note 1 at 10. Moreover, “[d]espite their roots in experimental psychology, token economies have not been demonstrated to be of proven lasting benefit when examined critically.” *Id.*

⁷ *Id.*

⁸ Karen VanderVen advocates for extensive activity programming because activity develop self-worth. Karen VanderVen, *Transforming the milieu and lives through the power of activity: theory and practice*, 82 *Cyc-Online* (2005), <http://www.cyc-net.org/cyc-online/cycol-1105-vanderven.html>; Tompkins-Rosenblatt & VanderVen, *supra* note 4 at 7 (“Activities in which young people develop new interests and skills are ideal ways to enable them to develop true self-esteem.”). Also, collaborative problem solving has been a successful alternative to point and level systems. Keith Marshall, *Collaborative Problem Solving Model*, NSW Dept. of Education & Training Scholarship (2009), <https://www.det.nsw.edu.au/media/downloads/.../marshall.doc> (studying multiple locations in the U.S.).

⁹ Mohr et al., *supra* note 1 at 10. “Once [point and levels systems] ‘take root’ and become part of a unit’s explicit operating procedures and covert working culture, they can be very hard to replace with other models of care.” *Id.* at 13. One successful program was implemented at the Yale Child Study Center. See *Think: Kids, The Approach*, Evidence Base for the Approach, <http://www.thinkkids.org/approach/approach.aspx>.

¹⁰ Mohr et al., *supra* note 1 at 10.

¹¹ See Mohr et al., *supra* note 1 at 10-12.

¹² Ron Brandt, *Punished by Rewards? A Conversation with Alfie Kohn*, 53 (1) *Educational Leadership* (1995), <http://www.alfiekohn.org/teaching/pdf/Punished%20by%20Rewards.pdf>. “Another group of studies shows that when people are offered a reward for doing a task that involves

like point and level systems, are often criticized as a type of manipulation.¹³ That is, what is passed as a form of “motivation” is merely a means of imposing control and achieving compliance.

B. Points and Level Systems Ignore Individual and Cultural Differences

Children in hospitals or in facilities are not a homogenous group; they have different histories, backgrounds, behaviors, and capacities.¹⁴ “Programming that is designed for a group is bound to fail because it does not take into account differences among the group members. Such programs fly in the face of individual treatment. Individual treatment should address any patient’s, resident’s, or client’s unique needs and challenges, and should be dynamic and responsive to status changes over time.”¹⁵ Instead, point and level systems impose a one-size fits all approach that limits the degree of liberty to which residents are subjected. Opportunities for independence and integration need to be “earned” and are not recognized as a right of the resident. Further, point and level systems fail to adapt to individual cognitive or developmental differences.¹⁶

“In culturally competent treatment, equal treatment is not necessarily equivalent treatment.”¹⁷ Given that there is little research showing that generic level systems are effective, they cannot be assumed to be effective for diverse youth.¹⁸

C. Points and Level Systems are Counterproductive

With point and level systems, children are rewarded for behavior that conforms to the group norm. The reward occurs regardless of whether compliance would be appropriate in a situation where a noncompliant response is the healthier response. In addition to earning points for appropriate behavior, there is the likelihood that points are also earned for not engaging in inappropriate behaviors.¹⁹ By rewarding the lack of a specific behavior, however, other unwanted behaviors can be reinforced.²⁰

some degree of problem solving or creativity – or for doing it well – they will tend do lower quality work than those offered no reward.” *Id.*

¹³ See Brandt, *supra* note 14 (“[N]o kid deserves to be manipulated with extrinsics so as to comply with what others want.”).

¹⁴ Mohr et al., *supra* note 1 at 12.

¹⁵ *Id.*

¹⁶ Mohr et al., *supra* note 1 at 13.

¹⁷ *Id.*

¹⁸ Mohr et al., *supra* note 1 at 13.

¹⁹ Mohr et al., *supra* note 1 at 10.

²⁰ *Id.* For instance, if a child is rewarded for a lack of aggression toward a peer, they may instead choose to mumble aggressive utterances beneath his or her breath or another more subtle behavior. As a result, the emotional issue is not addressed and the child may have learned a new unwanted behavior.

Further, point and level systems usually focus on the negative. That is, they focus on wrong behavior (taking points and levels away) as opposed to “teaching and demonstrating the value of positive behaviors and working to strengthen them. Thus, the complexity of the child’s dynamics is lost in the struggle to control behavior or trying to teach the child to ‘behave.’”²¹ Moreover, these interventions are not individualized, there is no functional analysis of a child’s behavior, nor is there an individualized treatment that builds on the positive behavioral interventions. A functional analysis of an individual’s behavior and the design and utilization of individualized interventions are the foundation of Applied Behavior Analysis, which is a validated evidence-based practice.²²

Point and level systems also lack consistency and result in subjective evaluations made by direct care staff. Staff members rotate through the day or change due to turnover or leave-time. These changes may result in staff who are unfamiliar and uninformed about the clients or program and who may have inconsistent values, frustration levels, backgrounds, and educations.²³ Given these variables, point and level systems are frequently not objectively and, consistently implemented.²⁴

D. Points and Level Systems are Punitive

“Young people rarely state, ‘I earned a [level] 1’; instead, they state, ‘she gave me a 1.’”²⁵ By definition, point and level systems where children are assessed negative points or demoted levels, are punitive.²⁶ Staff are often “put in the position of being those who ‘catch’ the child being inappropriate, issue the response cost (taking away points or decreasing their level) and may become, by association, a conditioned punisher.”²⁷ This contributes to an undesirable and

²¹ Mohr et al., *supra* note 1 at 11.

²² See, for example, the Blue Cross Blue Shield of Tennessee’s description of Applied Behavioral Analysis, http://www.bcbst.com/mpmanual/Applied_Behavioral_Analysis_ABA.htm, and various ABA program descriptions, <http://www.bacffl.com/>; <http://www.crec.org/ss/divisionunits/coltsville/approach.php>.

²³ Mohr et al., *supra* note 1 at 13; Tompkins-Rosenblatt & VanderVen, *supra* note 4 at 8,9 (“Child and adolescent care workers, in their utilization of points and levels, often rely a great deal on their own individual values, judgments, and for some, regrettably, power striving.”). Further, one staff member may view one child’s argumentative response as utilizing reasoning skills while another may see it as purely argumentative and inappropriate. *Id.* at 9. In addition, another question around the effectiveness of point and level systems is that of superficial compliance: whether the child is adhering to behavior requirements just to achieve points and levels or because they see the value in the behavior. *Id.*

²⁴ Tompkins-Rosenblatt & VanderVen, *supra* note 4 at 10.

²⁵ *Id.*

²⁶ See Mohr et al., *supra* note 1 at 11.

²⁷ *Id.*

presumably unintended consequence of staff not only as punisher but also as jailer.

Moreover, point and level systems create a punitive cycle in that “rules” are not applied consistently. This cycle can lead to conflicts between staff and youth over fairness, youth become frustrated over the lack of fairness, which “can escalate into unnecessary physical aggression” and more behavioral issues that will, in turn, be addressed via the point and level system.²⁸ “The end result is that children are often on the receiving end of more coercive punishment, such as seclusion or restraint resulting from unproductive arguments over the assignment of points.”²⁹ It is not uncommon for children to spend longer in settings that employ these practices, not because their clinical condition requires their continued incarceration, but because they are unable or unwilling to succeed in the level system.

E. Points and Level Systems Cause Particular Problems for Youth with Disabilities

Youth with disabilities may have particular problems navigating point and level systems. Some behaviors for which points are assigned may be beyond the capacity of some youth.³⁰ Some youth with developmental or intellectual disabilities or brain injuries may have a difficult time conforming to and understanding point and level systems.³¹ Information processing disorders, learning disabilities, and difficulties in decoding oral information are common among youth in facilities and programs. These youth may be penalized by point and level systems as they work to overcome these disabilities.³² Moreover, point systems may punish behavior that is a manifestation of a disability or even a side effect of medication intended to treat the disability.³³

III. Legal Challenges to the Use of Point and Level Systems

²⁸ Mohr et al., *supra* note 1 at 11-12; Tompkins-Rosenblatt & VanderVen, *supra* note 4 at 11.

²⁹ Mohr et al., *supra* note 1 at 12.

³⁰ Tompkins-Rosenblatt & VanderVen, *supra* note 4 at 12.

³¹ See, e.g., Joanne M. McGee, *Traumatic Brain Injury in Prisons: A Review*, http://www.brainline.org/content/2009/05/traumatic-brain-injury-in-prisons-a-review_pageall.html; *TBI: A Guide*, *supra* note 1; see also Centers for Disease Control and Prevention, National Center for Injury Prevention & Control: Traumatic Brain Injury, Long-Term Outcomes, <http://www.cdc.gov/TraumaticBrainInjury/outcomes.html>; Centers for Disease Control and Prevention, National Center for Injury Prevention & Control: Traumatic Brain Injury, Severe Traumatic Brain Injury, <http://www.cdc.gov/traumaticbraininjury/severe.html>; Centers for Disease Control and Prevention, National Center for Injury Prevention & Control: Traumatic Brain Injury, Concussion & Mild TBI, Recognition, http://www.cdc.gov/concussion/signs_symptoms.html.

³² Tompkins-Rosenblatt & VanderVen, *supra* note 4 at 11.

³³ Tompkins-Rosenblatt & VanderVen, *supra* note 4 at 12-13.

There are legal consequences that result from the reliance on point and level systems. Children are denied adequate, including individualized, treatment, and their discharge from a facility may depend on achieving a certain level or status. Youth who are being punished may be denied appropriate educational opportunities as they may not be at a sufficient level or have enough points to be able to leave a ward or go out of a building. For those with disabilities, this may violate the Individuals with Disabilities Education Act (IDEA). Youth without disabilities may have claims under state educational laws. Legal challenges may be possible.

A. Substantive Due Process

The Supreme Court, in *Youngberg v. Romeo*, held that due process requires that an institution provide its residents with a minimal level of training or "habilitation."³⁴ It is now understood that children and adolescents have a right to minimally adequate care, treatment, and protection from harm.³⁵

The use of point and level systems violates the federal right to minimally adequate treatment because, as discussed above, there is a lack of individualization. The First Circuit, considering a challenge to a standardized behavioral plan process at an institution for sex offenders, has held that treatment must be individualized.³⁶

B. The ADA, Section 504 of the Rehabilitation Act & *Olmstead* Violations

Title II of the Americans with Disabilities Act (ADA) prohibits discrimination by public entities against "qualified individuals with disabilities" in the "provision of

³⁴ *Youngberg v. Romeo*, 457 U.S. 307. In *Youngberg*, the Supreme Court concluded that "[t]he mere fact that Romeo has been committed under proper procedures does not deprive him of all substantive liberty interests under the Fourteenth Amendment." *Id.* at 315. The Court further concluded that the "respondent is entitled to minimally adequate training. In this case, the minimally adequate training required by the Constitution is such training as may be reasonable in light of respondent's liberty interests in safety and freedom from unreasonable restraints." *Id.* at 322.

³⁵ See *Gary H. v. Hegstrom*, 831 F. 2d 1430, 1432 (9th Cir. 1987) ("[T]he more protective fourteenth amendment standard applies to conditions of confinement when detainees, whether or not juveniles, have not been convicted." (citing *Youngberg v. Romeo*, 457 U.S. 307 (1982); *Bell v. Wolfish*, 441 U.S. 520, 535 n. 16 (1979) (adult pretrial detainees); *Ingraham v. Wright*, 430 U.S. 651 (1977) (students disciplined at school); *Alexander S. v. Boyd*, 876 F. Supp. 773, 782 (D.S.C. 1995) (holding that the due process clause governs and, in part, that juveniles had constitutional right to personal safety, medical services, and minimally adequate program services designed to teach them the basic principles essential to correcting their conduct), *aff'd in part and rev'd in part on other grounds*, 113 F.3d 1373 (4th Cir. 1997), *cert. denied*, 118 S. Ct. 880 (1998).

³⁶ *Cameron v. Tomes*, 990 F.2d 14 (1st Cir. 1993).

services, programs, or activities of a public entity, or be subject to discrimination by any such entity.”³⁷ To assert a discrimination claim under Title II of the ADA or Section 504 of the Rehabilitation Act (Section 504),³⁸ a plaintiff must allege that he or she is a qualified individual with a disability, who was excluded from participation in or otherwise discriminated against with regard to a public entity’s services programs or activities, and that the exclusion or discrimination was by reason of his disability. For a Section 504 claim, the plaintiff must also show that the entity receives federal funds.³⁹

With respect to the use of point and level systems, there are potential claims for (1) failure to accommodate or provide modifications because children with disabilities may need accommodations in order to meaningfully participate in the point and level systems; (2) unlawful methods of administration in that the structure and implementation of the point and level system is discriminatory against those with disabilities affecting comprehension, language, and behavior; and (3) facial discrimination as policies could exist that omit certain children with disabilities from participating in point and level systems thereby omitting them from certain rewards and activities.

Assuming it is supported by the facts, an argument could be made that because point and level systems function as a means to determine whether a child is able to leave a facility or hospital, there is a possible *Olmstead* violation.⁴⁰ In short, children may be unnecessarily institutionalized because, as a consequence of their disabilities, they cannot successfully reach a necessary level despite being otherwise eligible to leave.

C. The Individuals with Disabilities Education Act (IDEA)

Legal implications may arise under the IDEA when point and level systems are implemented in a uniform, standardized fashion for all children. This non-individualization arguably constitutes a violation of a student’s right to a Free and Appropriate Public Education (FAPE) and an Individual Education Plan (IEP) regardless of where he or she receives the education. Moreover, as discussed earlier in this section, manifestations of a child’s illness that result in restrictions under a point and level system must not impede his or her access to education.

³⁷ 42 U.S.C. § 12132.

³⁸ Numerous courts have held that ADA claims are identical to Section 504 claims. *Vinson v. Thomas*, 288 F.3d 1145, 1152 n. 7 (9th Cir. 2002).

³⁹ 29 U.S.C. § 794; *Lovell v. Chandler*, 303 F.3d 1039, 1052 (9th Cir. 2002), *cert. denied* 537 U.S. 1105 (2003).

⁴⁰ In *Olmstead v. L.C.*, 527 U.S. 581 (1999), the Supreme Court held that Title II prohibits the unjustified segregation of individuals with disabilities. Public entities are required to provide community-based services to persons with disabilities when (a) such services are appropriate; (b) the affected persons do not oppose community-based treatment; and (c) community-based services can be reasonably accommodated, taking into account the resources available to the entity and the needs of others who are receiving disability services from the entity. *Id.*

Such restrictions can, and should, be challenged under these educational entitlements.

IV. Conclusion

“One of the most worrisome aspects of point and level systems is the way that [point and level systems] penalize those youth who may not understand them, may not have the resources to conform to them, may be undermined or scapegoated by other youth (as well as staff members) and cause them to lose hope.”⁴¹ There are, however, other options for programming that avoid these worries. If facilities cannot be persuaded to abandon or limit the use of point and level systems, litigation should be considered.

CPR will address these alternatives and potential remedies in a future Q&A.

⁴¹ Tompkins-Rosenblatt & VanderVen, *supra* note 4 at 5.