

Date of Hearing: June 12, 2024

ASSEMBLY COMMITTEE ON EDUCATION
Al Muratsuchi, Chair
SB 483 (Cortese) – As Introduced February 14, 2023

SENATE VOTE: 39-0

SUBJECT: Pupil rights: prone restraint

SUMMARY: Prohibits the use of prone restraint by local educational agencies (LEAs), charter schools, nonpublic schools and agencies (NPS/A), and the State Special Schools for the Blind and the Deaf. Specifically, **this bill:**

- 1) Eliminates the authorization to use prone restraint by trained personnel as a limited emergency intervention, thereby prohibiting an educational provider at LEAs, charter schools, NPS/As, and the State Special Schools for the Blind and the Deaf from authorizing, ordering, consenting to, or paying for the use of prone restraint, or any other interventions similar to or like prone restraint.
- 2) Amends the definition of prone restraint to include the application of a behavioral restraint on a student in a facedown position for any period of time, including the procedure known as prone containment.
- 3) Makes conforming changes.

EXISTING LAW:

- 1) Permits an educational provider from using seclusion or behavioral restraint only to control behavior that poses a clear and present danger of serious physical harm to the student or others that cannot be immediately prevented by a response that is less restrictive. (EC 49005.4)
- 2) Requires educational providers to avoid, whenever possible, the use of seclusion or behavioral restraint techniques. (EC 49005.6)
- 3) In federal law, defines LEA to include a public board of education or other public authority legally constituted within a state for either administrative control or direction of, or to perform a service function for, public schools; charter schools; and educational service agencies, defined as entities authorized by state law to develop, manage, and provide services or programs to LEAs. (Section 300.28 of Title 34 of the Code of Federal Regulations)
- 4) Requires LEAs that meet the definition of a “local educational agency” specified in Section 300.28 of Title 34 of the Code of Federal Regulations to collect and, no later than three months after the end of a school year, report to the California Department of Education (CDE) annually on the use of behavioral restraints and seclusion for students enrolled in or served by the LEA for all or part of the prior school year. (Education Code (EC) 49006)
- 5) Requires that this data be available as a public record and include all of the following information, disaggregated by race or ethnicity, and gender, with separate counts for students with Section 504 plans, individualized education programs (IEPs), and those without IEPs:

- a) The number of students subjected to mechanical restraint;
 - b) The number of students subjected to physical restraint;
 - c) The number of students subjected to seclusion;
 - d) The number of times mechanical restraint was used on students;
 - e) The number of times physical restraint was used on students; and
 - f) The number of times seclusion was used on students. (EC 49006)
- 6) Requires that, no later than three months after the report is due to the CDE, the CDE post the data from the report annually on its website. (EC 49006)
- 7) Require LEAs to annually post on their websites the data on seclusions and restraints of students which is currently reported to the CDE.
- 8) States that the data collection and reporting is in compliance with federal data reporting requirements and shall not be construed to impose a new program or higher level of service on LEAs or non-public, nonsectarian schools (NPSs) or nonpublic agencies (NPAs). (EC 49006.2)
- 9) Defines the following terms:
- a) “Behavioral restraint” means “mechanical restraint” or “physical restraint,” used as an intervention when a student presents an immediate danger to self or to others. This does not include postural restraints or devices used to improve a student’s mobility and independent functioning rather than to restrict movement.
 - b) “Educational provider” means a person who provides educational or related services, support, or other assistance to a student enrolled in an educational program provided by an LEA or NPS/A;
 - c) “Local educational agency” means a school district, county office of education, charter school, the California Schools for the Deaf, and the California School for the Blind.
 - d) “Mechanical restraint” means the use of a device or equipment to restrict a student’s freedom of movement, as specified.
 - e) “Physical restraint” means a personal restriction that immobilizes or reduces the ability of a student to move the student’s torso, arms, legs, or head freely. “Physical restraint” does not include a physical escort, which means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location.
 - f) “Prone restraint” means the application of a behavioral restraint on a student in a facedown position.
 - g) “Seclusion” means the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. “Seclusion” does not include a timeout, which is a behavior management technique that is part of an approved program,

that involves the monitored separation of the student in a nonlocked setting, and is implemented for the purpose of calming. (EC 49005.1)

10) Prohibits an educational provider from doing any of the following:

- a) Using seclusion or a behavioral restraint for the purpose of coercion, discipline, convenience, or retaliation;
- b) Using locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room;
- c) Use a physical restraint technique that obstructs a student's respiratory airway or impairs the student's breathing or respiratory capacity, including techniques in which a staff member places pressure on a student's back or places his or her body weight against the student's torso or back;
- d) Use a behavioral restraint technique that restricts breathing, including, but not limited to, using a pillow, blanket, carpet, mat, or other item to cover a student's face;
- e) Place a student in a facedown position with the student's hands held or restrained behind the student's back; and
- f) Use a behavioral restraint for longer than is necessary to contain the behavior that poses a clear and present danger of serious physical harm to the student or others. (EC 49005.8)

11) Requires an educational provider to:

- a) Keep constant, direct observation of a student who is in seclusion, which may be through observation of the student through a window or another barrier, through which the educational provider is able to make direct eye contact with the student. Prohibits observation through indirect means, including through a security camera or a closed-circuit television;
- b) Afford to students who are restrained the least restrictive alternative and the maximum freedom of movement, and shall use the least number of restraint points, while ensuring the physical safety of the student and others; and
- c) Ensure that, if prone restraint techniques are used, a staff member observes the student for any signs of physical distress throughout the use of prone restraint. States that, whenever possible, the staff member monitoring the student shall not be involved in restraining the student. (EC 49005.8)

FISCAL EFFECT: According to the Senate Appropriations Committee:

- By eliminating the use of the prone restraint technique on students, including those students with exceptional needs, this bill could result in the requirement for school districts to establish new procedures and provide training to employees on the use of alternative restraint techniques or de-escalation practices. The associated one-time costs are unknown but could be in the hundreds of thousands of dollars statewide. These activities could be deemed to be reimbursable by the state.

- It is unclear what implications this bill could have on student placements in nonpublic schools and whether it could lead to students being turned away for liability concerns if they are unable to utilize prone restraint techniques in emergency situations.

COMMENTS:

Need for the bill. The author states, “SB 483 would prohibit in all California schools the use of ‘prone restraint,’ a technique that physically or mechanically restrains students in a face-down position.

The U.S. Department of Education recommends banning the use of prone restraints, and over thirty other states have prohibited this form of physical restraint on all students. Prone restraint is one of the most dangerous forms of restraint used in a school setting; it is a technique that restricts a student’s airway. Restraint in schools has resulted in serious injury as well as death. In 2018, a 13-year-old student with autism died at an El Dorado Hills school after being held in a prone restraint for over an hour.

In 2019, the Sacramento Bee found that prone restraints are often used on students with special needs and used at a higher rate for Black students. Several school districts in California have used dangerous restraint techniques on students hundreds of times during a single school year, rather than positive behavior interventions.”

Number of students restrained or secluded in California. Data posted on CDE’s website for 2022-23 shows an unduplicated count of 53,659 students restrained and 5,742 students secluded in all educational environments, including all public schools, and NPSs. The total count of physical restraints was over 179,000. Data were redacted for many LEAs to comply with privacy protections in state and federal law.

Current law requires LEA data on seclusion and restraint to be collected and posted on the CDE website. Data on seclusion and restraint is currently collected and reported pursuant to state and federal law. Current law also requires LEAs to collect and, no later than three months after the end of a school year, report to the CDE annually on the use of behavioral restraints and seclusion for students enrolled in or served by the LEA. Current law requires that, no later than three months after the report is due to the CDE, the CDE post the data from the report annually on its website.

This data must include the following, disaggregated by race or ethnicity, and gender, with separate counts for students with Section 504 plans, IEPs, and those without IEPs:

- The number of students subjected to mechanical restraint;
- The number of students subjected to physical restraint;
- The number of students subjected to seclusion;
- The number of times mechanical restraint was used on students;
- The number of times physical restraint was used on students; and
- The number of times seclusion was used on students.

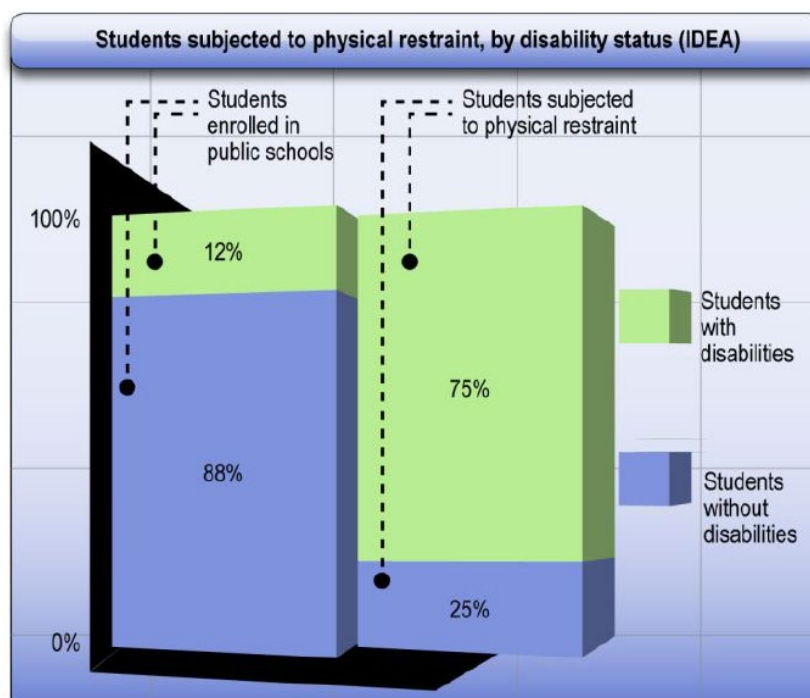
The CDE collected restraint and seclusion data for the first time from LEAs as part of the 2019–20 CALPADS annual data submission. The CDE provided extensive technical assistance to

LEAs regarding this new data collection and the submission of these data, including notices to the field, meetings with stakeholders, and numerous data collection trainings and webinars. To certify the accuracy of the data, LEAs were required to review and approve the information displayed in the CALPADS incident and incident results reports.

The dangers of seclusion and restraint have been known for years. In 2014, the federal Office of Civil Rights (OCR) within the U.S. Department of Education (USDOE) reported the following statistics, collected for its biennial Civil Rights Data Collection, for nationwide use of seclusion and restraint in public schools in 2011-12:

- Students with disabilities represent 12% of the national student population, but 58% of those placed in seclusion and 75% of those subjected to physical restraint. In California, 81% of students exposed to physical restraint are students with IEPs; and
- African American students represent 19% of students with disabilities served with IDEA, but 36% of those subjected to mechanical restraint, defined as the use of devices or equipment to restrict a student’s movement.

In 2018, the U.S. Government Accountability Office (GAO) released a report entitled *K-12 Education: Discipline Disparities for Black Students, Boys, and Students with Disabilities*, in which it shows that in 2013-14, African American students represented 15% of the national population of public school students, but 33% of students subjected to mechanical restraint, 25% of students subjected to physical restraint, and 22% of students placed in seclusion. The GAO also found that African American boys constitute 8% of public school students, but 23% of students subjected to mechanical restraint. The GAO stated, “Teachers and staff sometimes have discretion to make case-by-case decisions about whether to discipline, and the form of discipline to impose in response to student behaviors...Studies show that these decisions can result in certain groups of students being more harshly disciplined than others.”



After investigating case studies involving seclusion and restraint use in schools throughout the nation, the GAO concluded in 2009 that certain types of restraint are more dangerous than others, particularly for children. Specifically, the GAO stated that certain techniques are “dangerous because they may involve physical struggling, pressure on the chest, or other interruptions in breathing.” The GAO also found that children are subjected to restraint or seclusion at higher rates than adults and are at greater risk for injury. Prone restraints, in which students

are placed face-down on the ground, and restraints that impede breathing were identified as having the greatest risk of death.

In 2016, OCR issued a “Dear Colleague” letter to explain the limits that federal civil rights laws impose on the use of seclusion and restraint in public schools. OCR stated that a “school district discriminates on the basis of disability in its use of restraint or seclusion by (1) unnecessarily treating students with disabilities differently from students without disabilities; (2) implementing policies, practices, procedures, or criteria that have an effect of discriminating against students on the basis of disability or defeating or substantially impairing accomplishment of the objectives of the school district’s program or activity with respect to students with disabilities; or (3) denying the right to a free appropriate public education.”

Federal and state actions on seclusion and restraint in schools. In 2009, the Education and Labor Committee in the U.S. House of Representatives held a hearing to examine the misapplication of seclusion and restraint in schools; the same day, the GAO issued a report entitled *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers*. GAO summarizes its findings as follows: “[We found] hundreds of cases of alleged abuse and death related to the use of [seclusion and restraint] on school children during the past two decades. Examples of these cases include a 7-year old purportedly dying after being held face-down for hours by school staff, 5-year olds allegedly being tied to chairs with bungee cords and duct tape by their teacher and suffering broken arms and bloody noses, and a 13-year old reportedly hanging himself in a seclusion room after prolonged confinement...GAO could not find a single website, federal agency, or other entity that collects information on the use of these methods or the extent of their alleged abuse.”

Following the hearing and GAO report release, the U.S. Secretary of Education sent a letter to Chief State School Officers advising them to review their state policies on seclusion and restraint. In his statement, he advocated for a two-pronged approach for reducing injuries and deaths resulting from seclusion and restraint: widespread implementation of Positive Behavioral Interventions and Support (PBIS) and implementation of state regulations that “limit the use of seclusion and restraint under most circumstances.”

The GAO stated that there are no federal laws restricting the use of seclusion and restraint in public and private schools. However, in 2012 the DOE released guidance on seclusion and restraint, in which it lists 15 principles that it developed in collaboration with the federal Substance Abuse and Mental Health Services Administration, to help states develop a framework of policies that ensure “restraint or seclusion in schools does not occur, except when there is a threat of imminent danger of serious physical harm to the student or others.”

In 2018, AB 2756 (Weber), Chapter 998, Statutes of 2018, prohibited the use of restraint or seclusion on any student in California, except in specified circumstances, established parameters and procedures for situations in which restraint or seclusion may be used, and required data collection and reporting to the CDE, and posting of the data on the CDE website. Additionally, AB 1466 (Akilah Weber), Chapter 582, Statutes of 2023, requires LEAs, as defined, to annually post on their websites data on seclusions and restraints of students which is currently reported to the CDE.

GAO report highlights problems in federal data collection on seclusion and restraint. Every two years, the OCR requires nearly all school districts to report incidents of restraint and

seclusion. A 2020 report by the federal GAO found that the OCR's quality control processes for data it collects from public school districts on incidents of restraint and seclusion were largely ineffective or did not exist, according to GAO's analysis of school year 2015-16 federal restraint and seclusion data. The GAO report found that data quality control processes were insufficient to detect problematic data. For example, one rule used to check the quality of data submitted only applied to very large school districts, although GAO and USDOE's own analyses found erroneous reporting in districts of all sizes. USDOE also had no rules that flagged outliers that might warrant further exploration, such as districts reporting relatively low or high rates of restraint or seclusion. The GAO tested for these outliers and found patterns in some school districts of relatively low and high rates of restraint or seclusion.

The GAO made six recommendations, including that the USDOE expand its data system business rules to cover all districts, develop additional quality controls to address misreporting, address factors underlying misreporting, and refine and clarify its definitions. USDOE agreed with these recommendations.

Arguments in support. Disability Rights California writes, "Even without any other contributing factors, simply restraining a person prone restricts the ability to breathe, thereby lessening the supply of oxygen to meet the body's demands. The U.S. Department of Education has long recommended that prone restraints never be used in schools because they can cause serious injury or death.

Sadly, there have been many examples of injuries and even death from prone restraints in schools. For example, on November 28, 2018, a thirteen-year-old Davis Unified School District student with autism died following prolonged prone restraint at his nonpublic school. DRC continues to receive intakes and complaints from families whose children have been injured or traumatized from a prone restraint in school. Given these examples and the extreme danger from prone restraint in any situation, DRC's position is that only a total and complete ban on all prone restraint techniques – including prone containment – will ensure the safety of students. If California were to enact SB 483, it would join the over thirty other states that ban the use of prone restraints in their schools."

Related legislation. AB 1466 (Akilah Weber), Chapter 582, Statutes of 2023, requires LEAs to annually post on their websites data on seclusions and restraints of students which is currently reported to the CDE.

AB 611 (Akilah Weber), Chapter 64, Statutes of 2023, requires a contracting LEA to inform parents and guardians of students who attend a NPS/A of the change in its certification status within 14 days of becoming aware of any change to the certification status. This bill was held in the Senate Education Committee.

AB 1172 (Frazier), Chapter 454, Statutes of 2019, requires that LEAs that send students to NPSs conduct on-site monitoring visits; requires that NPSs notify the CDE of any student-involved incident in which law enforcement is contacted; requires the CDE, if an investigation conducted by the CDE results in a finding that student health or safety has been compromised, to immediately suspend or revoke the school's certification; requires that an NPS serving students with significant behavioral needs to have an individual on site who is qualified to implement behavior interventions, and requires that administrators of NPSs hold or be working toward

specified credentials or licenses; requires that NPSs train specified staff in evidence-based practices and interventions specific to students' unique behavioral needs

AB 216 (Shirley Weber) of the 2019-20 Session would have prohibited educational providers from authorizing, or requiring a parent to consent to, the use of physical restraint or seclusion as a planned intervention in a student's education plan, individual safety plan, behavioral plan, or IEP. This bill was held in the Senate Education Committee.

AB 2756 (Shirley Weber), Chapter 998, Statutes of 2018, prohibits the use of restraint or seclusion on any student, except in specified circumstances; establishes parameters and procedures for situations in which restraint or seclusion may be used; requires data collection and reporting to the CDE.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
 Alameda County Office of Education
 Alliance Against Seclusion and Restraint
 Alliance for Boys and Men of Color
 Alliance for Children's Rights
 American Academy of Pediatrics, California
 Autism Society Inland Empire
 Autism Society Inland Empire 1.3.24
 Cal-tash
 California Association for Behavior Analysis
 California Association for Behavior Analysis 1.4.23
 California Community Living Network
 California Foundation for Independent Living Centers
 California State Pta
 California Youth Empowerment Network
 Californians for Justice
 Civil Rights Enforcement and Education Center (CREEC)
 Collier Socks Llp
 Community Advisory Committee for Special Education, Selva Iv, Santa Clara County
 Davis Joint Unified School District
 Disability Rights California
 Disability Rights Education & Defense Fund
 Disability Voices United
 Educate. Advocate.
 Ella Baker Center for Human Rights
 Equal Justice Society
 Grupo De Autismo Angeles INC.
 Include California
 LA Defensa
 Legal Services for Prisoners With Children
 Los Angeles County Office of Education
 Mental Health America of California

Oakland Privacy
Placer Independent Resource Services
Port View Preparatory
Pragnya
Respectability
Rios Eubanks Llp
San Francisco Public Defender
Scdd
Sister Warriors Freedom Coalition
Special Needs Network
Spire Autism
Western Center on Law & Poverty
Youth Justice Education Clinic, Center for Juvenile Law and Policy, Loyola Law School

Opposition

None on file

Analysis Prepared by: Tanya Lieberman / ED. / (916) 319-2087