

Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 2657 (Weber) – As Introduced February 15, 2018

SUBJECT: Pupil discipline: restraint and seclusion

SUMMARY: Prohibits educational providers from using behavioral restraint or seclusion in certain circumstances, including for the purposes of coercion, discipline, convenience, or retaliation; prohibits the use of certain types of seclusion and restraint techniques; authorizes the use of behavioral restraint in cases of emergency; requires educational providers to schedule a debriefing meeting after a behavioral restraint is used. Specifically, **this bill:**

- 1) Defines “educational provider” as an entity or person that does both of the following:
 - a) Receives support in any form from a program supported in whole or in part with funds appropriated by CDE.
 - b) Provides educational or related services, support, or other assistance to individuals in a public or private elementary or secondary school.
- 2) Defines an “educational provider” to include all local educational agencies (LEAs), including school districts, county offices of education (COEs), charter schools, the California School for the Deaf, the California School for the Blind, nonpublic schools, and nonpublic agencies, including both in-state and out-of-state nonpublic schools and nonpublic agencies.
- 3) Defines “behavioral restraint” as “mechanical” or “physical” restraint, used as an intervention when pupils present an immediate danger to themselves or to others.
- 4) Specifies that “behavioral restraint” does not include postural restraints or devices used to improve a student’s mobility and independent functioning.
- 5) Defines “mechanical restraint” as the use of a device or equipment to restrict a pupil’s movement, including the use of handcuffs by law enforcement when a pupil is not under arrest.
- 6) Specifies that “mechanical restraint” does not include instances in which trained personnel or pupils use devices prescribed by medical or related services personnel, when those devices are used for their intended purpose. Such devices include adaptive or mechanical supports used to achieve proper body position, vehicle safety restraints, restraints for medical immobilizations, and orthopedically-prescribed devices.
- 7) Defines “physical restraint” as a personal restriction that immobilizes or reduces the ability of a pupil to move his or her torso, arms, legs, or head freely.
- 8) Specifies that “physical restraint” does not include a physical escort, defined as temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a pupil, who is acting out, to walk to a safe location.

- 9) Defines “seclusion” as the involuntary confinement of a pupil alone in a room or area, from which the pupil is physically prevented from leaving.
- 10) Specifies that “seclusion” does not include the use of a timeout, a behavior management technique that is used as part of an approved program for the purpose of calming a student, and that involves the monitored separation of the pupil in a non-locked setting.

Use of Behavioral Restraints and Seclusion

- 11) Specifies that pupils have the right to be free from the use of seclusion and behavioral restraints of any type—including administration of a drug to control a pupil’s behavior or restrict a pupil’s movement, if the drug is not a standard treatment for the pupil’s medical or psychiatric condition—when imposed as a means of coercion, discipline, convenience, or retaliation by staff.
- 12) Authorizes educational providers to use seclusion or behavioral restraints only if a student’s behavior presents imminent danger of serious physical harm to the student or others.
- 13) Requires educational providers to use early intervention techniques in order to avoid, whenever possible, the use of seclusion or behavioral restraints.
- 14) Prohibits educational providers from doing any of the following:
 - a) Using seclusion or behavioral restraints for the purpose of coercion, discipline, convenience, or retaliation.
 - b) Using a physical restraint technique that obstructs a student’s airway or impairs a student’s ability to breathe, including techniques in which a staff member places pressure on a pupil’s back or places his or her body weight against a pupil’s torso or back.
 - c) Using a behavioral restraint technique that restricts breathing, including covering a student’s face with a pillow, blanket, or other item.
 - d) Using a behavioral restraint on a student who has a known medical or physical condition, if there is reason to believe that using the restraint would endanger the student’s life or seriously exacerbate the student’s medical condition.
 - e) Using prone restraints (in which a pupil is placed face down on the ground) on a student at risk for positional asphyxiation as a result of one of the following risk factors that is known to the educational provider:
 - i) Obesity
 - ii) Preexisting heart disease
 - iii) Respiratory conditions
 - iv) Pregnancy
 - v) Exposure to pepper spray

- vi) Cocaine, methamphetamine, or alcohol intoxication
 - f) Placing students in a face down position with their hands restrained behind their backs.
 - g) Using behavioral restraints for more than 15 consecutive minutes, except when the restraint conforms to the educational provider's safety plan and it is necessary to protect the immediate health and safety of the pupil or others from imminent, serious physical harm.
- 15) Requires a staff member to observe a student for signs of physical distress throughout the use of prone restraint in emergency situations, and encourages providers to ensure that the monitoring staff member is not involved in restraining the student.
- 16) Requires educational providers to maintain constant, face-to-face human observation of a pupil who is in seclusion.
- 17) Requires educational providers to provide restrained pupils with the least restrictive alternative and the maximum freedom of movement, using a technique that requires the least number of restraint points, while ensuring the physical safety of the pupil and others.

Debriefing Sessions Following an Incident

- 18) Requires educational providers to schedule, no later than two school days after the use of seclusion or a behavioral restraint, a debriefing meeting that includes the student's parent or guardian, the staff members involved in the incident, and the educational provider's administrator, for the purpose of discussing methods for avoiding similar incidents in the future. Requires the pupil's participation in the meeting to be voluntary.
- 19) Requires the purposes of the debriefing meeting to include:
- a) Assisting staff in understanding the events that precipitated the incident.
 - b) Developing alternative methods for helping the pupil avoid or cope with those events.
 - c) Assessing whether the use of the seclusion or behavioral restraint was necessary, and whether it was implemented in a manner that was consistent with staff training and policies of the educational provider.
 - d) Helping staff devise positive behavioral support interventions to address the root cause and consequences of the incident, and to modify the student's educational plan.
- 20) Requires that during the debriefing meeting, the educational provider provides the pupil, the pupil's parents or guardian, and staff with an opportunity to discuss the events that precipitated the use of seclusion or a behavioral restraint, and strategies that could prevent its future use.
- 21) Requires staff to document the debriefing meeting's occurrence, and changes to the student's education plan resulting from the meeting, in the student's record.

Reporting and Data Collection Requirements

- 22) Defines an “IDEA pupil” as a pupil who receives services under the Individuals with Disabilities Education Act (IDEA).
- 23) Defines a “nondisabled pupil” as a pupil who does not receive services under IDEA or Section 504 of the federal Rehabilitation Act of 1973.
- 24) Requires an educational provider to annually collect and report to CDE, no later than three months after the school year ends, data on the use of behavioral restraints and seclusion for students enrolled in or served by the educational provider for all or part of the prior school year.
- 25) Requires the data report to be publicly available, notwithstanding any other law, and to include the following information, disaggregated by gender and race or ethnicity:
 - a) The number of pupils subjected to seclusion and behavioral restraint, disaggregated by mechanical and physical restraint techniques, with separate counts for Section 504, IDEA, and nondisabled pupils.
 - b) The number of times that seclusion and behavioral restraints, disaggregated by mechanical and physical restraint techniques, were used on pupils, with separate counts for Section 504, IDEA, and nondisabled pupils.
- 26) Requires CDE to annually post data from the report on its website, no later than three months after the report is due to the department.
- 27) Declares the Legislature’s intent that the data collection and reporting requirements of this section will impose no new duties on LEAs, and that these requirements will be conducted in compliance with existing federal requirements enforced by the United States Department of Education’s Office for Civil Rights.

EXISTING LAW:

- 1) Requires the Superintendent of Public Instruction (SPI) to repeal regulations, no longer authorized by statute, that governed the use of behavioral interventions for individuals receiving special education, as they existed on January 10, 2013 (EC 56523).
- 2) Requires LEAs to implement the statutory provisions relating to behavioral interventions, without the development or adoption of additional regulations by the SPI and State Board of Education (EC 56523).
- 3) Authorizes the SPI to monitor LEA compliance with Chapter 5.5 of the Education Code and to take appropriate action, including fiscal sanctions, if an LEA fails to comply substantially with corrective action orders issued by CDE, or if an LEA fails to implement the decisions of a due process hearing officer, where noncompliance interfered with the free appropriate public education for an individual with exceptional needs (EC 56523).
- 4) Requires the SPI to explore, with representatives of institutions of higher education and the Commission on Teacher Credentialing, current training requirements for teachers, for the

purpose of ensuring that adequate training in appropriate behavioral interventions is available to individuals entering the field of education (EC 56524).

- 5) Prohibits the Commission on State Mandates (CSM) from identifying state-mandated costs if a state statute or executive order imposes a requirement that is mandated by a federal law or regulation, unless the statute or executive order mandates costs that exceed the mandate in federal law or regulation (Government Code 17556).

General Provisions for Discipline in the General Education Environment

- 6) Defines “corporal punishment” as the willful infliction of, or willfully causing the infliction of, physical pain on a pupil (EC 49001).
- 7) Prohibits actions using an amount of force that is reasonable and necessary from being construed as “corporal punishment,” if they are used by a person employed by or engaged in a public school to address a physical threat to persons or property, for self-defense, or to obtain dangerous objects or weapons from a pupil (EC 49001).
- 8) Prohibits persons employed by or engaged in a public school from inflicting, or causing to be inflicted, corporal punishment upon a pupil (EC 49001).

Requirements, Prohibitions, and Authorizations for the Use of Emergency Interventions for Students with Exceptional Needs

- 9) Establishes the following authorizations, prohibitions, and requirements for public schools, nonpublic schools, and California Schools for the Deaf (EC 56521.1):
 - a) Authorizes the use of emergency interventions only for controlling unpredictable, spontaneous behavior that threatens serious physical harm to an individual with exceptional needs or others, when those behaviors cannot be immediately prevented by a response that is less restrictive than the temporary application of a technique to contain the behavior.
 - b) Prohibits the use of emergency interventions as substitutes for a systematic behavioral intervention plan that is designed to change, replace, modify, or eliminate a targeted behavior.
 - c) Prohibits the use of an emergency intervention for longer than is necessary to contain the behavior.
 - d) Requires staff to seek assistance from a schoolsite administrator or law enforcement agency when emergency interventions are used for prolonged periods of time.
 - e) Defines emergency interventions to not include:
 - i) Locked seclusion, unless it occurs in a facility that is licensed or otherwise permitted by state law to use a locked room.
 - ii) Use of devices, materials, or objects that simultaneously immobilize all four limbs, unless these are used to facilitate prone restraint performed by trained staff.

- iii) Use of an amount of force that exceeds what is reasonable and necessary.
- 10) Prohibits LEAs, nonpublic schools, or agencies serving individuals with exceptional needs from authorizing, ordering, consenting to, or paying for interventions that (EC 56521.2):
- a) Are designed or likely to cause physical pain, including, but not limited to, electric shock.
 - b) Involve the release of noxious, toxic, or unpleasant sprays, mists, or substances near the face of an individual.
 - c) Deny adequate sleep, food, water, shelter, bedding, physical comfort, or access to bathroom facilities.
 - d) Are designed to subject individuals to verbal abuse, ridicule, or humiliation, or that can be expected to cause excessive emotional trauma.
 - e) Are restrictive and involve use of devices, materials, or objects to simultaneously immobilize all four extremities, including the use of prone restraints unless implemented as an emergency intervention by trained personnel.
 - f) Place students in locked seclusion, unless it is in a facility that is licensed or permitted by state law to use a locked room.
 - g) Preclude adequate supervision of the individual.
 - h) Deprive an individual of one or more of his or her senses.

Reporting Requirements Following Emergency Interventions Involving Students with Exceptional Needs

- 11) Requires that a parent, guardian, and residential care provider, if appropriate, be notified within one school day if an emergency intervention is used or serious property damage occurs, in order to prevent emergency interventions from being used in place of planned, systematic behavioral interventions (EC 56521.1).
- 12) Requires a behavioral emergency report to be completed immediately and maintained in the file of a student with exceptional needs (EC 56521.1).
- 13) Requires a behavioral emergency report to include all of the following (EC 56521.1):
- a) The name and age of the individual with exceptional needs.
 - b) The setting and location of the incident.
 - c) The name of the staff or other persons involved.
 - d) A description of the incident and the emergency intervention used, and whether the individual with exceptional needs currently has a systematic behavioral intervention plan.

- e) Details of injuries sustained during the incident by the individual with exceptional needs or others, including staff.

14) Requires behavioral emergency reports to be immediately forwarded to, and reviewed by, a designated administrator (EC 56521.1).

Debriefing and Follow-Up after a Behavioral Emergency Incident for Students with Exceptional Needs

15) Requires the designated administrator to schedule an individualized education program (IEP) team meeting within two days of a behavioral emergency incident to review the incident report, when incidents involve students who do not have behavioral intervention plans. Requires the IEP team to determine the necessity for a functional behavioral assessment and an interim plan, and, if applicable, to document its reasons for not performing a functional behavioral assessment or developing an interim plan (EC 56521.1).

16) Requires the IEP team to review and determine if an incident warrants modification of a positive behavioral intervention plan, for students who have a positive behavioral intervention plan prior to an incident (EC 56521.1).

17) Requires, in state and federal law, the IEP team to consider the use of positive behavioral interventions and supports to address behaviors that impede the learning of the child or others (U.S.C. 1414(d)(3)(B)(i), EC 56521.2).

18) Authorizes Board Certified Behavior Analysts, recognized by the national Behavior Analyst Certification Board, to conduct behavior assessments and provide behavioral intervention services for individuals with exceptional needs (EC 56525).

19) States that school districts, special education local plan areas (SELPAs), or county offices of education (COEs) are not required to use Board Certified Behavior Analysts to conduct behavior assessments and provide behavioral intervention services for individuals with exceptional needs (EC 56525).

20) Requires, in federal law, recipients of federal financial assistance to keep records and submit to the United States Department of Education (DOE) complete and accurate compliance reports containing information the DOE deems necessary to assess their compliance with federal law (34 C.F.R. 100.6(b)).

FISCAL EFFECT: This bill has been keyed a state-mandated local program by the Office of Legislative Counsel.

COMMENTS:

Need for the bill. The author's office states, "Current law does not provide guidance on types of restraints or the use of seclusion. Underreporting is potentially very high, and only comes to light after a complaint is made, followed by an investigation. For example, in one case a single complaint on behalf of "Jane Doe" led to an investigation that showed the district was out of compliance with respect to thirteen additional students. Jane Doe was restrained 43 times in about a month, and 25 of those incidents involved predictable behavior.

AB 2657 is modeled after current law that governs the use of restraint and seclusion in health and community facilities. It permits teachers or staff to use behavioral restraints or seclusion only if the student's behavior presents an imminent danger of serious harm to the student or others. Restraints and seclusion are prohibited for the purpose of coercion, discipline, convenience or retaliation. If restraint or seclusion is used, this bill requires debriefing with the student's parent or guardian, and consistent with DOE requirements, data reporting to DOE."

Student trauma and deaths caused by seclusion and restraint. In 2014, the DOE's Office for Civil Rights (OCR) 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:

- 1) Students with disabilities represent 12 percent of the national student population, but 58 percent of those placed in seclusion and 75 percent of those subjected to physical restraint (Fig. 1). In California, 81 percent of students exposed to physical restraint are IDEA pupils.
- 2) African American students represent 19 percent of students with disabilities served with IDEA, but 36 percent of those subjected to mechanical restraint, defined as the use of devices or equipment to restrict a student's movement (Fig. 2).

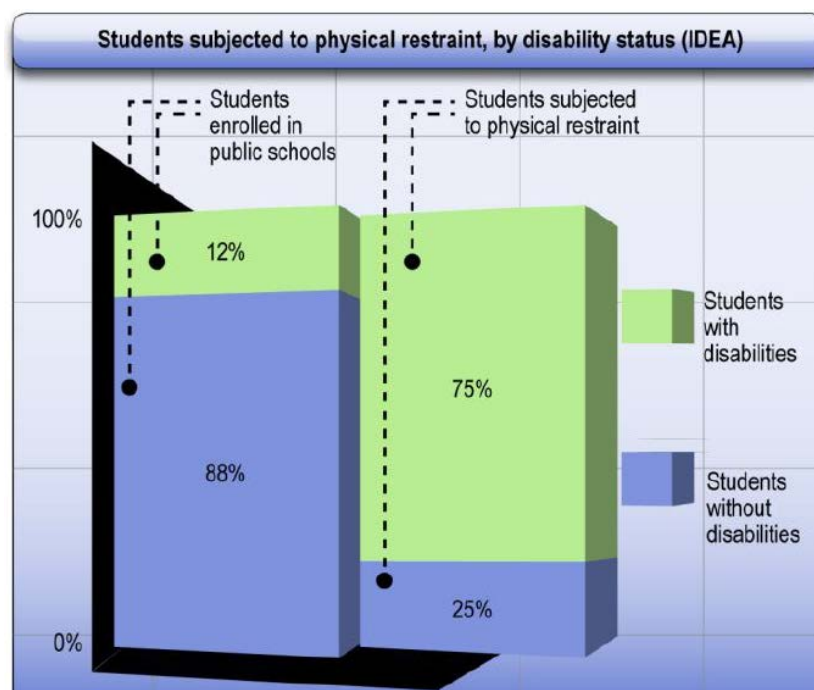


Figure 1. U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2011-12.

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 percent of the national population of public school students, but 33 percent of students subjected to mechanical restraint, 25 percent of students subjected to physical restraint, and 22 percent of students placed in seclusion. The GAO also found that African American boys constitute 8 percent of public school students, but 23 percent of students subjected

to mechanical restraint. The GAO states, "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 states 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.”

From 1990-2013, regulations required behavioral intervention plans to help reduce emergency interventions.

California statutes enacted in 1990, frequently referred to as the “Hughes Bill” (AB 2586, Chapter 959, Statutes of 1990), required the SPI to develop regulations governing the use of appropriate behavioral interventions for students with disabilities receiving special education and related services. The intent of the laws and regulations was to support the use of positive behavioral interventions that were consistent with each pupil’s individualized needs, for the purpose of reducing the use of more restrictive interventions. Law and regulations pursuant to the Hughes Bill required development and implementation of positive behavioral intervention plans (BIPs) for pupils with disabilities who exhibited serious behavioral problems. Implementing regulations of the Hughes Bill required special education local plan area (SELPA) plans to include procedures governing the systematic use of behavioral and emergency interventions, as well as the qualifications and training required of personnel designated as behavioral intervention case managers.

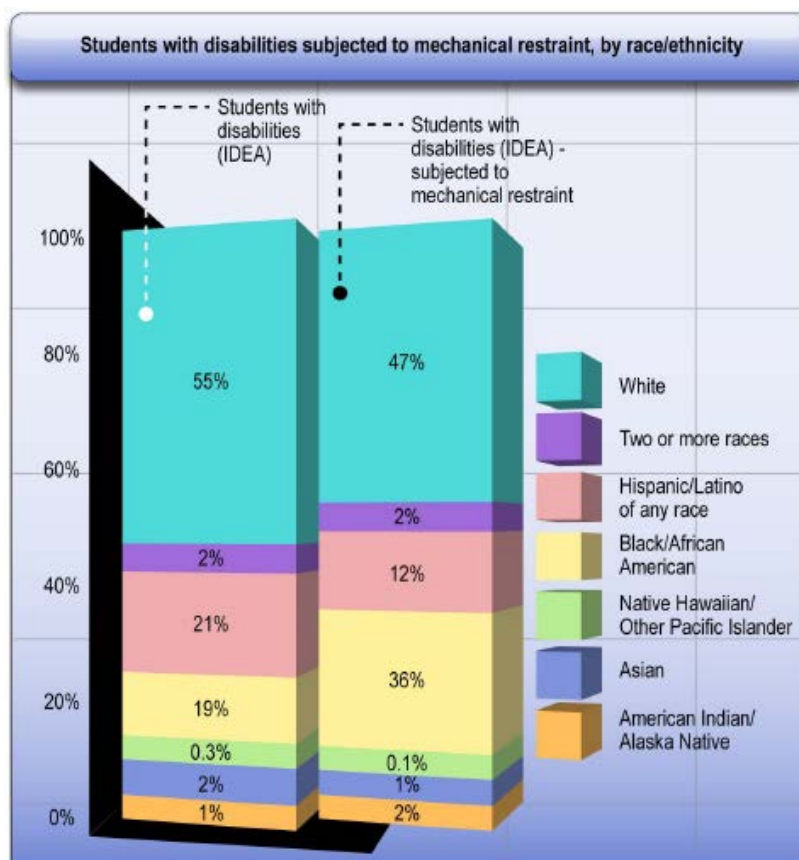


Figure 2. U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2011-12.

The Hughes bill and regulations also provided guidance for staff responding to emergency situations, to help them “control unpredictable, spontaneous behavior which [posed] clear and

present danger of serious physical harm to the individual or others and which [could not] be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior.” In cases where the pupil had a BIP and an emergency intervention was implemented, Hughes bill regulations required the IEP team to review and determine whether the incident constituted a need to modify the BIP. In cases where an emergency intervention was implemented for a pupil who did not have a BIP, Hughes regulations required scheduling an IEP meeting to determine the necessity for assessment and for an interim BIP. Regulations provided protections against the use of aversive techniques and stated that "behavioral emergency interventions shall not be used as a substitute for behavioral intervention plans" and required notification of the pupil's parent within one school day when an emergency intervention was used.

There are notable differences between this bill and the implementing regulations of the Hughes Bill. First, this bill does not require the development of a BIP. Secondly, unlike this bill, statutes and implementing regulations for the Hughes Bill did *not* prohibit particular types of behavioral restraints (aside from prone restraints involving the use of devices or materials to immobilize all four limbs), or prohibit school personnel from using restraint when students had specified health conditions. Other differences, as well as a timeline for changes in laws relevant to seclusion and restraint, are summarized in the tables below.

The cost of the BIP mandate: Ensuing litigation and subsequent repeal of implementing regulations. Regulations adopted by the State Board of Education in 1993 to implement the Hughes Bill exceeded federal law, as they included detailed and prescriptive requirements for districts and SELPAs regarding the development and implementation of BIPs, functional analysis assessments, development and implementation of emergency interventions, and due process hearings. Neither federal law nor regulations provided criteria or procedures for considering positive behavioral interventions for pupils with disabilities. While there is a requirement for the IEP team to consider the use of positive behavioral interventions, there is no specification of particular interventions, supports, or strategies that the federal law dictates must be used.

The San Diego Unified School District, Butte COE, and San Joaquin COE (Hughes Claimants) filed a BIP mandated cost test claim with the California Commission on State Mandates (CSM) in 1994 and asked the state to reimburse LEAs for the costs of implementing the requirements of the Hughes Bill and its implementing regulations. On September 28, 2000, the CSM stated that the Hughes Bill imposed a reimbursable state mandate on school districts by requiring very specific activities that are not mandated by federal law. In 2003, the Department of Finance (DOF) challenged the CSM decision in the California Supreme Court, alleging that the Hughes Bill was not a reimbursable state mandate because it was required by federal law and it did not exceed those requirements. In December 2008, DOF and the Hughes Claimants reached a settlement agreement to resolve the contentious BIP test claim.

The issue of whether the state should reimburse LEAs for costs relative to the BIP provision for pupils with disabilities was pending in the mandate reimbursement process and the courts for over fourteen years before AB 661 (Torlakson) was introduced in the 2009-10 Session. This bill attempted to resolve the issue by implementing a settlement agreement, but the bill died in the Assembly Appropriations Committee.

Ultimately, the Legislature addressed the issue in AB 86, the Education Omnibus Trailer Bill of 2012-13, in which it repealed the costliest portions of the implementing regulations, including the BIP mandate, and codified the regulatory provisions surrounding emergency interventions.

	Seclusion and Restraint	BIP Mandate	Data Reporting	Debriefing Required	Applies to:
1990-2013	Prohibited: 1) Any intervention designed to, or likely to, cause physical pain. 2) Noxious, toxic, or otherwise unpleasant sprays, mists, or substances in proximity to the individual’s face. 3) Denial of adequate sleep, food, water, shelter, bedding, physical comfort, or access to bathroom facilities. 4) Verbal abuse, ridicule, humiliation, or other procedures expected to cause excessive emotional trauma. 5) Physical restraint by a device, material, or object that simultaneously immobilized all four extremities, including prone containment or similar techniques, unless the restraint was used by trained personnel and it was used only as an emergency intervention. 6) Locked seclusion, unless it was in a facility otherwise licensed or permitted by state law to use a locked room. 7) Any intervention that left a student without adequate supervision. 8) Any intervention that deprived the student of one or more of the senses.	Yes	Yes, required SELPAs to annually report number of behavioral emergency reports to CDE; also, federal OCR began requiring information on restraint and seclusion in its biennial data collection, beginning in 2009.	Yes, individualized education program (IEP) meeting required after an incident to determine how to reduce problematic behavior.	Students with exceptional needs
<i>2013: 14 year court case, brought by districts seeking reimbursement for BIP mandate, culminates in AB 86, which repeals the mandate, but codifies provisions on emergency interventions.</i>					
2013-present	Above protections codified into state law.	No	Yes, to designated administrator, and federal OCR requirements	For students without a BIP: requires IEP meeting to be scheduled within 2 days of incident	Students with exceptional needs

	Seclusion and Restraint	BIP Mandate	Data Reporting	Debriefing Required	Applies to:
This bill	<p>1) Authorizes seclusion/behavioral restraint only during emergencies involving imminent risk of harm to student or others. 2) Prohibits use of seclusion/restraint to discipline or punish students. 3) Bans restraints that impede breathing, or endanger the lives of students with medical conditions. 4) Bans prone restraints on students at risk for suffocation due to one of several risk factors. 5) Bans restraint lasting more than 15 minutes, unless necessary for safety reasons. 6) Requires continuous observation of pupil in seclusion. 7) Requires staff to observe restrained pupil for signs of distress.</p>	No	Yes, to CDE, but not intended to exceed federal OCR reporting requirements.	Must be scheduled within 2 days of incident, to help pupil, parents, and educational staff understand what precipitated the event, and how to prevent it from recurring.	All students

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 Web site, federal agency, or other entity that collects information on the use of these methods or the extent of their alleged abuse.”

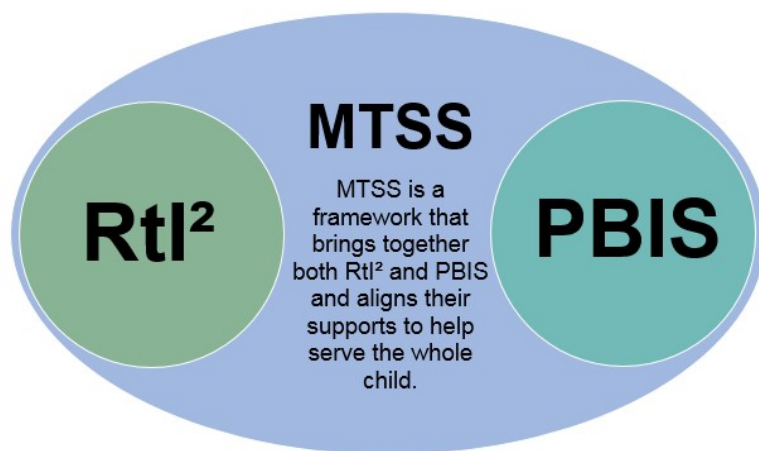
Following the hearing and GAO report release, U.S. Education Secretary Arne Duncan sent a letter to Chief State School Officers advising them to review their state policies on seclusion and restraint. In his statement, he advocated for a two-pronged approach for reducing injuries and deaths resulting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

The GAO states 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.” Many of the provisions in this bill mirror DOE’s 15 principles.

Possible outcomes. Existing laws prohibit certain types of interventions, but provide little guidance regarding what permissible forms of seclusion and restraint should look like. This bill supplements existing law with more specific provisions regarding when, how, and under what circumstances seclusion and restraint may be used. As described above, reports issued by the federal government include recommendations mirrored in this bill, for the purpose of enhancing student safety and reducing the incidence of death and trauma resulting from excessive application of seclusion and restraint. However, one possible outcome of restricting the use of seclusion and restraint is that it may discourage school personnel from intervening when students display behaviors that endanger themselves or others, due to fears of litigation or uncertainty regarding legally-permissible interventions.

Other possible outcomes from these restrictions may include increased disruptions to the learning environment, increased reliance on police intervention in schools, or increased reliance on suspensions and expulsions when students display persistent behavioral issues. **The Committee may wish to consider** how to weight these possible unintended outcomes against the potential safety benefits of reducing the use of seclusion and restraint techniques that have been associated with student injuries, trauma, and deaths.



Evidence-based educational frameworks that minimize seclusion and restraint. To reduce the use of seclusion and restraint, the DOE supports the use of an approach known as Positive Behavioral Interventions and Supports (PBIS), which is now recognized, along with another theory known as Response to Instruction and Intervention (RtI²), as a component of a comprehensive educational framework called Multi-Tiered Systems of Support (MTSS).

This merged framework is depicted in the adjacent figure, produced by CDE.

The National Education Association (NEA) states that although MTSS was originally developed to provide alternatives to aversive interventions for students with disabilities, this framework is now recognized as an effective means for improving educational outcomes for *all* students. According to the NEA, MTSS facilitates data-driven changes in schoolwide practices that help school personnel identify and expand effective, evidence-based practices throughout the entire school community; identify and improve inefficient practices; and collaboratively address problematic student behaviors before they escalate to a level requiring emergency intervention. According to the Technical Assistance Center on PBIS (funded through DOE’s Office of Special Education Programs) MTSS is a prevention strategy that minimizes seclusion and restraint incidents, in part because it includes multiple, tiered opportunities for intervention that can be tailored to a student’s individual needs. NEA identifies these tiers as primary (school-wide), secondary (classroom), and tertiary (individual) systems of support.

The Legislature has supported implementation of MTSS in schools statewide by allocating \$30 million—through the Education Omnibus Trailer Bills AB 104 (Chapter 13, Statutes of 2015) and AB 86 (Chapter 48, Statutes of 2013)—to the development of the “California MTSS,” an initiative led by Orange County’s Department of Education. According to Orange County’s Department of Education, California’s MTSS “is a comprehensive framework designed to provide effective technical assistance for districts and schools that supports them in addressing each and every student’s academic, behavioral, and social-emotional needs in the most inclusive and equitable learning environment.” Orange County’s Department of Education states that although scaling MTSS for statewide implementation is a challenge, the first two training cohorts included 320 LEAs and applications for participation in the last cohort, slated to begin training in Fall 2018, has already surpassed 300 LEAs. The department also states that it is developing an online California MTSS training module that will be available to all LEAs at no charge, beginning in July 2018. According to Orange County’s Department of Education, trainings on California MTSS are fully funded through cohort three, but additional funds will be needed to facilitate school-level implementation of the framework.

The intent of this bill is to reduce seclusion and restraint in both the general and special education student populations. Because MTSS is recognized as a means for facilitating systemwide improvements in education for all students, *the Committee may wish to consider* the benefits of additional investment in the California MTSS, particularly as it pertains to reducing seclusion and restraint.

Diagnostic Centers provide trainings for providers serving special education students with challenging behaviors. CDE maintains three Diagnostic Centers, each serving a different region (northern, central, and southern) of California. CDE states that these centers “can help LEAs with their most difficult-to-serve special education students, ages 2.9 through 22 years” by providing a variety of services—including student assessments and professional development opportunities for families and educators—when students are not making progress, even after all local resources have been exhausted, or when students display “complex behavioral and/or learning profiles.” Services are provided by interdisciplinary teams—which may include educational specialists, school psychologists, pediatricians, and speech/language specialists—and are designed to support school districts by providing specialized strategies, interventions, and programming options. Professional development opportunities vary across the centers, but generally consist of seminars and workshops that are often offered to school personnel through their SELPAs and last for several hours. For 2017-19, two of the three centers offered or will offer seminars on PBIS and/or MTSS, and all three centers offer workshops discussing approaches for reducing challenging behaviors; none of the centers include trainings that explicitly address seclusion, restraint, or emergency interventions in their professional development listings.

Recommended amendments. Staff recommends the following amendments:

- 1) The definition of “educational provider” states that it can be either an individual or an “entity,” to include school districts, county offices of education, and charter schools. This definition is too broad and makes it unclear whether decisions would be made by the LEA or by one individual, and who should be held accountable for ensuring compliance with the provisions in this bill. ***Staff recommends*** changing the definition of an “educational provider” to mean an individual who provides educational or related services, support, or other assistance to students, and adding a new definition for LEA, to represent the

organizational entities that would be responsible for specified provisions in the bill, such as ensuring that a debriefing meeting is scheduled following an incident.

- 2) Clarify that “face-to-face” visual observation of a pupil in seclusion requires school personnel to be able to see the student directly, not that personnel must be in the same room as a student.
- 3) This bill prohibits the use of behavioral and prone restraints when pupils have health conditions that may predispose them to injury or death during restraint. Clarify that this prohibition applies only if the person performing the restraint, or the person directing another to perform the restraint, knows about the student’s health condition prior to the intervention.
- 4) This bill currently states that the data reporting requirements are not *intended* to exceed federal reporting requirements. However, OCR’s Civil Rights Data Collection has in the past, and may again in the future, change its data reporting requirements. This would create misalignment between federal and state reporting, potentially making schools submit their information according to differing state and federal rules. *Staff recommends* replacing the bill’s intent language with a mandate that the data reporting requirements shall not exceed federal requirements.

Previous legislation. SB 828 (Education Omnibus Trailer Bill), Chapter 29, Statutes of 2016 appropriated \$20 million to the SPI for allocation to the Orange County Department of Education, for the purpose of directly funding services or practices aligned to the California MTSS framework at participating LEAs.

AB 104 (Education Omnibus Trailer Bill), Chapter 13, Statutes of 2015 appropriated \$10 million to the SPI, to allocate to a designated COE or jointly-applying COEs for the purpose of developing and disseminating statewide resources that encourage and assist LEAs and charter schools in establishing and aligning schoolwide, data-driven systems of learning and behavioral supports, to meet the needs of California’s diverse learners in the most inclusive environments possible.

AB 86 (Education Omnibus Trailer Bill), Chapter 48, Statutes of 2013 repealed the implementing regulations for the Hughes Bill, including the BIP mandate, but codified regulatory provisions dealing with emergency interventions.

AB 519 (Hernández) of the 2011-12 Session would have prohibited an educational provider from using chemical and mechanical restraints, and limited the use of physical restraint and seclusion in specified circumstances. This bill died in the Assembly Education Committee.

AB 661 (Torlakson) of the 2009-10 Session would have required the SPI to revise the special education funding model to provide for a permanent increase in funding and appropriated specified amounts from the General Fund for this and other purposes, as stipulated in a pending mandate claim settlement agreement. This bill died in the Assembly Appropriations Committee.

AB 1538 (Ma and Chesbro) of the 2009-10 Session proposed prohibition of certain types of restraint, including restraint used for the purposes of punishment, coercion, convenience, or retaliation by staff, as well as chemical restraint, mechanical restraint, or any technique that interferes with a pupil’s ability to breathe. This bill would have also authorized physical restraint during emergencies and as a component of a student’s behavioral intervention plan if certain

conditions were met, including prior staff training in proper restraint techniques, tracking of the frequency of physical restraint use, and use of restraint in the continuous presence of a staff member responsible for observing the pupil for signs of distress or impaired breathing. This bill would have expanded upon and codified the implementing regulations associated with the Hughes Bill. AB 1538 died on third reading in the Assembly.

SB 1515 (Kuehl) of the 2007-08 Session would have prohibited an educational provider from using chemical restraint or seclusion, and limited the use of specified types of behavioral, physical, and mechanical restraints. This bill was vetoed by Governor Schwarzenegger with the following veto message:

The safety of California students is of the utmost importance. The California Constitution and state law provide for the protection and safety of all California students. While undue seclusion and restraints, including physical, chemical and mechanical on students are never acceptable, the provisions of this bill are too prescriptive.

Unfortunately, this bill could result in inhibiting school employees from intervening in an emergency situation and place more students at risk of potential harm. I am concerned that it may have unintended consequences that can be detrimental to the best interest of all students. I encourage school districts to be more conscious of maintaining a fair balance between protecting the safety of all their teachers and students, while using reasonable, common sense standards in ensuring that seclusion and restraints are not overly applied in a way that may harm the welfare of specific students.

REGISTERED SUPPORT / OPPOSITION:

Support

Disability Rights California (sponsor)
 The Arc and United Cerebral Palsy California Collaboration
 California Alliance of Child and Family
 California Youth Empowerment Network
 Common Sense Kids Action
 Disability Rights and Education Defense Fund
 East Bay Developmental Disabilities Legislative Coalition
 Learning Rights Law Center
 Mental Health Advocacy Services, Inc.
 Mental Health America of California
 Port View Preparatory Schools
 State Council on Developmental Disabilities
 Transformative Justice in Education Center—University of California, Davis

Opposition

Peace Officers Research Association of California

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