



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

*A Joint Powers Authority
serving school and college
districts throughout the
state.*

5350 Skylane Boulevard
Santa Rosa, CA 95403

Tel: (707) 524-2690
Fax: (707) 578-0517
santarosa@sclscal.org
www.sclscal.org

General Counsel
Carl D. Corbin

Attorneys
Ellie R. Austin
Monica D. Batanero
Jennifer Henry
Sarah Hirschfeld-Sussman
Nancy L. Klein
Damara L. Moore
Jennifer E. Nix
Steven P. Reiner
Loren W. Soukup
Erin E. Stagg
Frank Zotter, Jr.

Of Counsel
Robert J. Henry
Margaret M. Merchat
Patrick C. Wilson

LEGAL UPDATE

October 31, 2018

To: Superintendents, Member School Districts (K-12)
**From: Jennifer E. Nix *JEN*
Associate General Counsel**
**Subject: New Law Requires Schools to Limit Use of Restraint and
Seclusion for All Students and to Collect Related Data
Memo No. 37-2018**

Governor Brown recently signed into law Assembly Bill 2657, also known as the Weber Law. AB 2657, which is attached to this Legal Update, added sections 49005 through 49006.4 to the Education Code.

New law prohibits use of behavioral restraints by any educational providers¹ unless it is necessary to control student behavior that poses a clear and present danger of serious physical harm to the student or others, and that harm cannot be immediately prevented by a response that is less restrictive.² This bill applies to all students, not only students with disabilities.³

AB 2657 provides that restraint and seclusion of students should be used as a “last resort,” and can never be used as punishment or discipline or for staff convenience. Newly added section 49005.8 of the Education Code details what actions are now impermissible as to all students. Of note is the explicit requirement that no student can be held in a prone (facedown) restraint if his or her hands are held or restrained behind his or her back.

For purposes of this law, “behavioral restraints” includes both mechanical and physical restraints. Mechanical restraints do not include adaptive devices or restraints used by peace officers or security officers for detention or public safety purposes. Physical restraints include any action that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head. However, an

¹ “Educational providers” is defined to include any person who provides educational or related services, support, or other assistance to any student enrolled in a local educational agency, nonpublic school, or nonpublic agency.

² Existing law prohibited corporal punishment of students.

³ This bill did not amend the portions of the Education Code related to behavioral interventions and students with disabilities, located at Education Code §§ 56520 to 56525.



educational provider is still permitted to physically escort a student who is acting out for the purpose of inducing that student to walk to a safe location, which can involve temporarily touching or holding that student's hand, wrist, arm, shoulder, or back.

For purposes of this law, "seclusion" includes any involuntary confinement of a child by himself or herself, where the child is physically prevented from leaving. Educational providers may continue to use "timeout" so long as the timeout is monitored, not locked, and is used only for the purpose of calming.

The new law also requires annual reporting of the use of behavioral restraints and seclusion. All school districts, county offices of education, and charter schools are required to report to the CDE the number of behavioral restraints and seclusions for students enrolled in or served by the local educational agency. This reporting must be disaggregated into the both the number of times and the number of students, and separate counts must be provided in each category for students with Individualized Education Plans, students with 504 plans, and all other students. This reporting must include information on students placed in non-district programs, such as nonpublic schools.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

© 2018 School and College Legal Services of California

All rights reserved. However, SCLS grants permission to any current SCLS client to use, reproduce, and distribute this Legal Update in its entirety for the client's own non-commercial purposes.

Assembly Bill No. 2657

CHAPTER 998

An act to add Article 5.2 (commencing with Section 49005) to Chapter 6 of Part 27 of Division 4 of Title 2 of the Education Code, relating to pupil discipline.

[Approved by Governor September 30, 2018. Filed with
Secretary of State September 30, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2657, Weber. Pupil discipline: restraint and seclusion.

Existing law prohibits a person employed by or engaged in a public school to inflict, or cause to be inflicted, corporal punishment upon a pupil.

This bill would authorize an educational provider, as defined, to use behavioral restraints, which includes physical and mechanical restraints, or seclusion, as defined, only to control behavior that poses a clear and present danger of serious physical harm to the pupil or others that cannot be immediately prevented by a response that is less restrictive, and if other specified conditions are met. The bill would prohibit an educational provider from using a behavioral restraint or seclusion in certain circumstances, including, but not limited to, using seclusion or a behavioral restraint for the purpose of coercion, discipline, convenience, or retaliation, and would prohibit the use of certain restraint and seclusion techniques. The bill would require a local educational agency that meets a specified federal definition to collect and, no later than 3 months after the end of a school year, report to the State Department of Education annually on the use of behavioral restraints and seclusion for pupils enrolled in or served by the local educational agency for all or part of the prior school year, as specified. The bill would require that the data collection and reporting requirements be conducted in compliance with specified federal law, and would prohibit those requirements from being construed to impose a new program or higher level of service on local educational agencies or nonpublic schools or agencies.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Article 5.2 (commencing with Section 49005) is added to Chapter 6 of Part 27 of Division 4 of Title 2 of the Education Code, to read:

Article 5.2. Restraint and Seclusion

49005. The Legislature finds and declares all of the following:

(a) While it is appropriate to intervene in an emergency to prevent a student from imminent risk of serious physical self-harm or harm of others, restraint and seclusion are dangerous interventions, with certain known practices posing a great risk to child health and safety.

(b) United States Department of Education guidelines specify that the use of restraint and seclusion must be consistent with the child's right to be treated with dignity and to be free from abuse.

(c) Restraint and seclusion should only be used as a safety measure of last resort, and should never be used as punishment or discipline or for staff convenience.

(d) Restraint and seclusion may cause serious injury or long lasting trauma and death, even when done safely and correctly.

(e) There is no evidence that restraint or seclusion is effective in reducing the problem behaviors that frequently precipitate the use of those techniques.

(f) Students with disabilities and students of color, especially African American boys, are disproportionately subject to restraint and seclusion.

(g) Well-established California law already regulates restraint techniques in a number of settings, including general acute care hospitals, acute psychiatric hospitals, psychiatric health facilities, crisis stabilization units, community treatment facilities, group homes, skilled nursing facilities, intermediate care facilities, community care facilities, and mental health rehabilitation centers. These minimal protections should be provided to all students in schools.

(h) It is the intent of the Legislature to ensure that schools foster learning in a safe and healthy environment and provide adequate safeguards to prevent harm, and even death, to children in school.

(i) This article is intended to be read to be consistent with, and does not change any requirements, limitations, or protections in, existing law pertaining to students with exceptional needs.

(j) It is the intent of the Legislature to prohibit dangerous practices. Restraint and seclusion, as described in this article, do not further a child's education. At the same time, the Legislature recognizes that if an emergency situation arises, the ability of education personnel to act in that emergency to safeguard a student or others from imminent physical harm should not be restricted.

49005.1. The following definitions apply to this article:

(a) "Behavioral restraint" means "mechanical restraint" or "physical restraint," as defined in this section, used as an intervention when a pupil

presents an immediate danger to self or to others. “Behavioral restraint” does not include postural restraints or devices used to improve a pupil’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 pupil enrolled in an educational program provided by a local educational agency or a nonpublic school or agency.

(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) (1) “Mechanical restraint” means the use of a device or equipment to restrict a pupil’s freedom of movement.

(2) (A) “Mechanical restraint” does not include the use of devices by peace officers or security personnel for detention or for public safety purposes.

(B) “Mechanical restraint” does not include the use of devices by trained school personnel, or by a pupil, prescribed by an appropriate medical or related services professional, if the device is used for the specific and approved purpose for which the device or equipment was prescribed, which shall include, but not be limited to, all of the following:

(1) Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports.

(2) Vehicle safety restraints when used as intended during the transport of a pupil in a moving vehicle.

(3) Restraints for medical immobilization.

(4) Orthopedically prescribed devices that permit a pupil to participate in activities without risk of harm.

(e) “Nonpublic school or agency” means any nonpublic school or nonpublic agency, including both in-state and out-of-state nonpublic schools and nonpublic agencies.

(f) (1) “Physical restraint” means a personal restriction that immobilizes or reduces the ability of a pupil to move his or her 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 pupil who is acting out to walk to a safe location.

(2) “Physical restraint” does not include the use of force by peace officers or security personnel for detention or for public safety purposes.

(g) “Prone restraint” means the application of a behavioral restraint on a pupil in a facedown position.

(h) “Pupil” means a pupil enrolled in preschool, kindergarten, or any of grades 1 to 12, inclusive, and receiving educational services from an educational provider.

(i) “Seclusion” means the involuntary confinement of a pupil alone in a room or area from which the pupil 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 pupil in a nonlocked setting, and is implemented for the purpose of calming.

49005.2. A pupil has the right to be free from the use of seclusion and behavioral restraints of any form imposed as a means of coercion, discipline, convenience, or retaliation by staff. This right includes, but is not limited to, the right to be free from the use of a drug administered to the pupil in order to control the pupil's behavior or to restrict the pupil's freedom of movement, if that drug is not a standard treatment for the pupil's medical or psychiatric condition.

49005.4. An educational provider may use seclusion or a behavioral restraint only to control behavior that poses a clear and present danger of serious physical harm to the pupil or others that cannot be immediately prevented by a response that is less restrictive.

49005.6. An educational provider shall avoid, whenever possible, the use of seclusion or behavioral restraint techniques.

49005.8. (a) An educational provider shall not do any of the following:

(1) Use seclusion or a behavioral restraint for the purpose of coercion, discipline, convenience, or retaliation.

(2) Use locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room.

(3) Use a physical restraint technique that obstructs a pupil's respiratory airway or impairs the pupil's breathing or respiratory capacity, including techniques in which a staff member places pressure on a pupil's back or places his or her body weight against the pupil's torso or back.

(4) 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 pupil's face.

(5) Place a pupil in a facedown position with the pupil's hands held or restrained behind the pupil's back.

(6) 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 pupil or others.

(b) An educational provider shall keep constant, direct observation of a pupil who is in seclusion, which may be through observation of the pupil through a window, or another barrier, through which the educational provider is able to make direct eye contact with the pupil. The observation required pursuant to this subdivision shall not be through indirect means, including through a security camera or a closed-circuit television.

(c) An educational provider shall afford to pupils 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 pupil and others.

(d) If prone restraint techniques are used, a staff member shall observe the pupil for any signs of physical distress throughout the use of prone restraint. Whenever possible, the staff member monitoring the pupil shall not be involved in restraining the pupil.

49006. (a) A local educational agency that meets the definition of a “local educational agency” specified in Section 300.28 of Title 34 of the Code of Federal Regulations shall collect and, no later than three months after the end of a school year, report to the department annually on the use of behavioral restraints and seclusion for pupils enrolled in or served by the local educational agency for all or part of the prior school year.

(b) The report required pursuant to subdivision (a) shall include all of the following information, disaggregated by race or ethnicity, and gender:

(1) The number of pupils subjected to mechanical restraint, with separate counts for pupils with a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), pupils with an individualized education program, and pupils who do not have a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) or an individualized education program.

(2) The number of pupils subjected to physical restraint, with separate counts for pupils with a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), pupils with an individualized education program, and pupils who do not have a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) or an individualized education program.

(3) The number of pupils subjected to seclusion, with separate counts for pupils with a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), pupils with an individualized education program, and pupils who do not have a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) or an individualized education program.

(4) The number of times mechanical restraint was used on pupils, with separate counts for the number of times mechanical restraint was used on pupils with a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), pupils with an individualized education program, and pupils who do not have a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) or an individualized education program.

(5) The number of times physical restraint was used on pupils, with separate counts for the number of times physical restraint was used on pupils with a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), pupils with an individualized education program, and pupils who do not have a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) or an individualized education program.

(6) The number of times seclusion was used on pupils, with separate counts for the number of times seclusion was used on pupils with a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), pupils with an individualized education program, and pupils who do not have a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) or an individualized education program.

(c) Notwithstanding any other law, the data collected and reported pursuant to this section shall be available as a public record pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(d) No later than three months after the report is due to the department pursuant to subdivision (a), the department shall post the data from the report annually on its Internet Web site.

49006.2. Notwithstanding Section 49006, the data collection and reporting requirements contained in this article shall be conducted in compliance with the requirements of the Civil Rights Data Collection of the United States Department of Education’s Office for Civil Rights imposed pursuant to Sections 100.6(b) and 104.61 of Title 34 of the Code of Federal Regulations, and shall not be construed to impose a new program or higher level of service on local educational agencies or nonpublic schools or agencies.

49006.4. (a) This article applies with regard to all pupils, including individuals with exceptional needs. For an individual with exceptional needs, if a behavioral restraint or seclusion is used, the procedures for follow-up contained in subdivisions (e), (f), (g) and (h) of Section 56521.1 shall also apply.

(b) For purposes of this section, “individual with exceptional needs” has the same meaning specified in Section 56026.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act implements a federal law or regulation and results in costs mandated by the federal government, within the meaning of Section 17556 of the Government Code.