

AMENDED IN ASSEMBLY MAY 13, 2009

AMENDED IN ASSEMBLY APRIL 29, 2009

AMENDED IN ASSEMBLY APRIL 20, 2009

AMENDED IN ASSEMBLY APRIL 15, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1538

Introduced by Assembly Members Ma and Chesbro

February 27, 2009

An act to add Chapter 5.6 (commencing with Section 56526) to Part 30 of Division 4 of Title 2 of, the Education Code, relating to pupil discipline.

LEGISLATIVE COUNSEL'S DIGEST

AB 1538, as amended, Ma. Pupil discipline: restraint.

Existing law requires the Superintendent of Public Instruction to develop, and the State Board of Education to adopt, regulations governing the use of behavioral interventions with individuals with exceptional needs receiving special education and related services.

This bill would prohibit an educational provider from using physical restraint, as defined, on a pupil who is an individual with exceptional needs for the purpose of coercion, punishment, convenience, or retaliation by staff, or as an extended procedure beyond an immediate emergency, and would specify conditions under which an educational provider would be authorized to use physical restraint.

The bill would also prohibit an educational provider from using chemical restraint, as defined, except as otherwise licensed to prescribe and administer medication, or mechanical restraint, as defined.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. *The Legislature finds and declares all of the*
2 *following:*

3 (a) *Schools have a responsibility to ensure that all pupils are*
4 *treated with respect and dignity in an environment that provides*
5 *for the physical safety and security of pupils and staff.*

6 (b) *Restraint may cause trauma and injury to both the pupil*
7 *subjected to restraint and the staff executing the restraint.*

8 (c) *Restraint should be used only to ensure the immediate safety*
9 *of the pupil, other pupils, and staff when a pupil poses an imminent*
10 *risk of serious physical harm to himself or herself or others.*

11 ~~SECTION 1.~~

12 SEC. 2. Chapter 5.6 (commencing with Section 56526) is added
13 to Part 30 of Division 4 of Title 2 of the Education Code, to read:

14
15 CHAPTER 5.6. RESTRAINT ~~AND SECLUSION~~

16
17 ~~56526. The Legislature finds and declares all of the following:~~

18 ~~(a) Schools have a responsibility to ensure that all pupils are~~
19 ~~treated with respect and dignity in an environment that provides~~
20 ~~for the physical safety and security of pupils and staff.~~

21 ~~(b) Restraint may cause trauma and injury to both the individual~~
22 ~~subjected to these techniques and the personnel executing them.~~

23 ~~(c) Restraint should be used only to ensure the immediate safety~~
24 ~~of the pupil, other pupils, and staff when a pupil poses an imminent~~
25 ~~risk of serious physical harm to himself or herself or others.~~

26 ~~56527.~~

27 56526. For purposes of this chapter, the following definitions
28 apply:

29 (a) “Chemical restraint” means the administration of a drug or
30 medication to manage a pupil’s behavior that is not a standard
31 treatment and dosage for the pupil’s medical or psychiatric
32 condition.

33 (b) “Department” means the State Department of Education.

34 (c) (1) “Educational provider” means an entity or a person that
35 does both of the following:

1 (A) Receives support in any form from a program supported in
2 whole or in part with funds appropriated by the department.

3 (B) Provides educational or related services, supports, or other
4 assistance to individuals in a public or private elementary or
5 secondary school.

6 (2) Educational provider includes all local educational agencies,
7 including charter schools, the California School for the Deaf, the
8 California School for the Blind, nonpublic schools, and nonpublic
9 agencies, including both in-state and out-of-state nonpublic schools
10 and nonpublic agencies.

11 (d) “Mechanical restraint” means the use of a mechanical device,
12 material, or equipment attached or adjacent to the pupil’s body
13 that he or she cannot easily remove that restricts the freedom of
14 movement of all or part of a pupil’s body, or restricts normal access
15 to, or normal function of, the pupil’s body. Mechanical restraint
16 does not include mechanical devices, material, or equipment used
17 for postural support, during transportation, or used to improve the
18 mobility and independent functioning of a pupil rather than to
19 restrict movement.

20 (e) “Physical restraint” means the use of a manual hold to restrict
21 freedom of movement of all or part of a pupil’s body, or to restrict
22 normal access to the pupil’s body. Physical restraint is a
23 staff-to-pupil physical contact in which the pupil unwillingly
24 participates. Physical restraint does not include briefly holding a
25 pupil without undue force in order to calm or comfort or to prevent
26 unsafe behavior, such as running into traffic or engaging in a
27 physical altercation, or physical contact intended to gently assist
28 or prompt a pupil in performing a task, to provide instruction, or
29 to guide or assist a pupil from one area to another.

30 (f) “Pupil” means an individual with exceptional needs as
31 defined in Section 56026.

32 ~~56528.~~

33 56527. (a) An educational provider shall not use physical
34 restraint for the purpose of coercion, punishment, convenience, or
35 retaliation by staff, or as an extended procedure beyond an
36 immediate emergency.

37 (b) An educational provider shall avoid the use of prone restraint
38 techniques whenever possible.

1 ~~56529.~~

2 56528. An educational provider shall not use any of the
3 following:

4 (a) A physical restraint technique that inhibits or impedes a
5 pupil's ability to breathe, including a staff member placing pressure
6 on a pupil's back or his or her body weight against the pupil's
7 torso or back, a pillow, blanket, or other item covering the pupil's
8 face as part of a physical restraint, or placing a pupil in a facedown
9 position with the pupil's hands held or restrained behind his or her
10 back.

11 (b) A physical restraint technique when there is reason to believe
12 that its use would endanger the pupil's life or seriously exacerbate
13 the medical, psychological, or physical condition of the pupil.
14 Known risk factors include obesity, agitated or excited syndromes,
15 preexisting heart disease, and respiratory conditions, including
16 bronchitis or asthma.

17 (c) Chemical restraint, except as otherwise licensed to prescribe
18 and administer medication.

19 (d) Mechanical restraint or any improvised restraint device,
20 such as a sheet or belt.

21 ~~56530.~~

22 56529. (a) An educational provider may use physical restraint
23 in an emergency situation if all of the following conditions are
24 met, *unless otherwise stated in a pupil's individualized education*
25 *program and approved behavioral intervention plan*:

26 (1) Physical restraint is required to prevent imminent serious
27 physical harm to the pupil, staff, or others.

28 ~~(2) The educational provider has determined that less-Less~~
29 restrictive alternatives are ineffective.

30 (3) Physical restraint is not employed for longer or with more
31 force than is necessary to prevent the imminent serious physical
32 harm.

33 (4) A staff member is continuously present and keeps the pupil
34 under constant face-to-face observation for signs of distress or
35 difficulty breathing.

36 (5) The staff member applying the restraint is trained in
37 emergency interventions, including the use of physical restraint,
38 and applies the techniques consistent with district-approved
39 procedures or training.

1 (b) An educational provider may use physical restraint as a
2 component of a pupil's behavioral intervention plan if all of the
3 following conditions are met:

4 (1) The behavioral intervention plan has been developed and
5 approved by the pupil's individualized education program team
6 following a functional analysis assessment pursuant to Section
7 3052 of Title 5 of the California Code of Regulations.

8 (2) Physical restraint is required to prevent a targeted and
9 imminent dangerous behavior that poses serious physical harm to
10 the pupil, staff, or others.

11 (3) Physical restraint is not to be employed for longer or with
12 more force than is necessary to prevent the targeted dangerous
13 behavior.

14 (4) A staff member is continuously present and keeps the pupil
15 under constant face-to-face observation for signs of distress or
16 difficulty breathing.

17 (5) The staff member applying the restraint is trained in
18 implementation of the pupil's behavioral intervention plan,
19 including the use of physical restraint, and applies the physical
20 restraint consistent with district-approved procedures or training.

21 (6) The individualized education program team reviews data
22 regarding the frequency of the targeted behavior and the use of
23 physical restraint.

24 (c) *If physical restraint is used as provided in this section, the*
25 *educational provider shall ensure that professional personnel and*
26 *support personnel are adequately trained in behavioral or*
27 *emergency interventions and procedures, as appropriate.*

28 ~~56534.~~

29 56530. (a) It is the intent of the Legislature that, except where
30 this chapter may grant more protections, this chapter shall be
31 interpreted as being consistent with Chapter 5.5 (commencing with
32 Section 56520) of Part 30 and its implementing regulations
33 commencing with Section 3052 of Title 5 of the California Code
34 of Regulations.

35 (b) It is also the intent of the Legislature to monitor the
36 implementation of this chapter and to encourage stakeholders,
37 including, but not limited to, disability rights advocacy groups,
38 representatives of ~~education~~ educational providers, and ~~education~~
39 educational organizations to voluntarily make recommendations

- 1 for future legislation and budget augmentations on the topic of
- 2 seclusion.

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