

ASSEMBLY BILL

No. 519

Introduced by Assembly Member Roger Hernández

February 15, 2011

An act to amend Section 32282 of, and to add Article 5.5 (commencing with Section 49010) to Chapter 6 of Part 27 of Division 4 of Title 2 of, the Education Code, relating to pupil discipline.

LEGISLATIVE COUNSEL'S DIGEST

AB 519, as introduced, Roger Hernández. 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 prohibit an educational provider from using chemical restraint, as defined, mechanical restraint, as defined, physical restraint, as defined, or seclusion, as defined, for the purpose of coercion, discipline, convenience, or retaliation by staff. The bill would provide that the prohibition regarding physical restraint only applies to the use of physical restraint on individuals with exceptional needs, as defined, who receive special education and related services. The bill would limit the use of physical restraint, and would specify conditions under which an educational provider would be authorized to use physical restraint. The bill would provide that those limitations and conditions only apply to the use of physical restraint on individuals with exceptional needs, as defined, who receive special education and related services. The bill would allow, until January 1, 2014, nonpublic, nonsectarian schools, and certain district-designated alternative programs, to use seclusion if specified conditions are met.

Existing law requires a schoolsite council to write and develop a comprehensive school safety plan, except in the case of a small school district, as defined, that develops a districtwide comprehensive school safety plan that is applicable to each schoolsite in the district. The comprehensive school safety plan is required to include the rules and procedures on school discipline.

This bill would authorize the comprehensive school safety plan also to include the rules and procedures regarding the use of restraint and seclusion.

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. Section 32282 of the Education Code is amended
2 to read:
3 32282. (a) The comprehensive school safety plan shall include,
4 but not be limited to, both of the following:
5 (1) Assessing the current status of school crime committed on
6 school campuses and at school-related functions.
7 (2) Identifying appropriate strategies and programs that will
8 provide or maintain a high level of school safety and address the
9 school's procedures for complying with existing laws related to
10 school safety, which shall include the development of all of the
11 following:
12 (A) Child abuse reporting procedures consistent with Article
13 2.5 (commencing with Section 11164) of *Chapter 2 of* Title 1 of
14 Part 4 of the Penal Code.
15 (B) Disaster procedures, routine and emergency, including
16 adaptations for pupils with disabilities in accordance with the
17 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101
18 et seq.). The disaster procedures shall also include, but not be
19 limited to, both of the following:
20 (i) Establishing an earthquake emergency procedure system in
21 every public school building having an occupant capacity of 50
22 or more pupils or more than one classroom. A district or county
23 office may work with the California Emergency Management
24 Agency and the Seismic Safety Commission to develop and
25 establish the earthquake emergency procedure system. The system
26 shall include, but not be limited to, all of the following:

1 (I) A school building disaster plan, ready for implementation
2 at any time, for maintaining the safety and care of pupils and staff.

3 (II) A drop procedure whereby each pupil and staff member
4 takes cover under a table or desk, dropping to his or her knees,
5 with the head protected by the arms, and the back to the windows.
6 A drop procedure practice shall be held at least once each school
7 quarter in elementary schools and at least once a semester in
8 secondary schools.

9 (III) Protective measures to be taken before, during, and
10 following an earthquake.

11 (IV) A program to ensure that pupils and both the certificated
12 and classified staff are aware of, and properly trained in, the
13 earthquake emergency procedure system.

14 (ii) Establishing a procedure to allow a public agency *or*
15 *nonprofit organization*, including the American Red Cross, to use
16 school buildings, grounds, and equipment for mass care and welfare
17 shelters during disasters or other emergencies affecting the public
18 health and welfare. The district or county office shall cooperate
19 with the public agency *or nonprofit organization* in furnishing and
20 maintaining the services as the district or county office may deem
21 necessary to meet the needs of the community.

22 (C) Policies pursuant to subdivision (d) of Section 48915 for
23 pupils who committed an act listed in subdivision (c) of Section
24 48915 and other school-designated serious acts which would lead
25 to suspension, expulsion, or mandatory expulsion recommendations
26 pursuant to Article 1 (commencing with Section 48900) of Chapter
27 6 of Part 27 of *Division 4 of Title 2*.

28 (D) Procedures to notify teachers of dangerous pupils pursuant
29 to Section 49079.

30 (E) A discrimination and harassment policy consistent with the
31 prohibition against discrimination contained in Chapter 2
32 (commencing with Section 200) of Part 1.

33 (F) The provisions of any schoolwide dress code, pursuant to
34 Section 35183, that prohibits pupils from wearing “gang-related
35 apparel,” if the school has adopted that type of a dress code. For
36 those purposes, the comprehensive school safety plan shall define
37 “gang-related apparel.” The definition shall be limited to apparel
38 that, if worn or displayed on a school campus, reasonably could
39 be determined to threaten the health and safety of the school
40 environment. Any schoolwide dress code established pursuant to

1 this section and Section 35183 shall be enforced on the school
2 campus and at any school-sponsored activity by the principal of
3 the school or the person designated by the principal. For the
4 purposes of this paragraph, “gang-related apparel” shall not be
5 considered a protected form of speech pursuant to Section 48950.

6 (G) Procedures for safe ingress and egress of pupils, parents,
7 and school employees to and from school.

8 (H) A safe and orderly environment conducive to learning at
9 the school.

10 (I) The rules and procedures on school discipline adopted
11 pursuant to Sections 35291 and 35291.5.

12 (J) Hate crime reporting procedures pursuant to Chapter 1.2
13 (commencing with Section 628) of Title 15 of Part 1 of the Penal
14 Code.

15 *(b) The comprehensive school safety plan may include the rules
16 and procedures regarding the use of restraint and seclusion
17 pursuant to Article 5.5 (commencing with Section 49010) of
18 Chapter 6 of Part 27 of Division 4 of Title 2.*

19 ~~(b)~~

20 (c) It is the intent of the Legislature that schools develop
21 comprehensive school safety plans using existing resources,
22 including the materials and services of the partnership, pursuant
23 to this chapter. It is also the intent of the Legislature that schools
24 use the handbook developed and distributed by the School/Law
25 Enforcement Partnership Program entitled “Safe Schools: A
26 Planning Guide for Action” in conjunction with developing their
27 plan for school safety.

28 ~~(c)~~

29 (d) Grants to assist schools in implementing their comprehensive
30 school safety plan shall be made available through the partnership
31 as authorized by Section 32285.

32 ~~(d)~~

33 (e) Each schoolsite council or school safety planning committee
34 in developing and updating a comprehensive school safety plan
35 shall, where practical, consult, cooperate, and coordinate with
36 other schoolsite councils or school safety planning committees.

37 ~~(e)~~

38 (f) The comprehensive school safety plan may be evaluated and
39 amended, as needed, by the school safety planning committee, but
40 shall be evaluated at least once a year, to ensure that the

1 comprehensive school safety plan is properly implemented. An
2 updated file of all safety-related plans and materials shall be readily
3 available for inspection by the public.

4 (f)

5 (g) The comprehensive school safety plan, as written and
6 updated by the schoolsite council or school safety planning
7 committee, shall be submitted for approval under subdivision (a)
8 of Section 32288.

9 SEC. 2. Article 5.5 (commencing with Section 49010) is added
10 to Chapter 6 of Part 27 of Division 4 of Title 2 of the Education
11 Code, to read:

12
13 Article 5.5. Restraint and Seclusion

14
15 49010. The Legislature finds and declares all of the following:

16 (a) Seclusion and restraint may cause trauma and injury to both
17 the individual subjected to these techniques and the personnel
18 executing them.

19 (b) Interventions using seclusion and restraint when a pupil
20 poses an imminent risk of serious physical harm to self or others
21 are not therapeutic or educational. Their use does not positively
22 change behavior and is limited to emergency interventions.

23 49011. For purposes of this article, the following definitions
24 apply:

25 (a) "Chemical restraint" means the administration of a drug or
26 medication to manage a pupil's behavior or restrict a pupil's
27 freedom of movement that is not a standard treatment and dosage
28 for the pupil's medical or psychiatric condition.

29 (b) "Department" means the State Department of Education.

30 (c) (1) "Educational provider" means an entity or a person that
31 does both of the following:

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

34 (B) Provides educational or related services, support, or other
35 assistance to individuals in a public or private elementary or
36 secondary school.

37 (2) Educational provider includes all local educational agencies,
38 including charter schools, the California School for the Deaf, the
39 California School for the Blind, nonpublic schools, and nonpublic

1 agencies, including both in-state and out-of-state nonpublic schools
2 and nonpublic agencies.

3 (d) “Mechanical restraint” means the use of a mechanical device,
4 material, or equipment attached or adjacent to the pupil’s body
5 that he or she cannot easily remove that restricts the freedom of
6 movement of all or part of a pupil’s body, or restricts normal access
7 to the pupil’s body. Mechanical restraint does not include
8 mechanical devices, material, or equipment used for postural
9 support, during transportation, or used to improve the mobility
10 and independent functioning of a pupil rather than to restrict
11 movement.

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

22 (f) “Seclusion” means the involuntary confinement of a pupil
23 alone in a room or area, which the pupil is physically prevented
24 from leaving. “Seclusion” does not mean a supervised timeout, in
25 which an adult is continuously present in the room with the pupil.

26 49012. (a) An educational provider shall not use seclusion,
27 chemical restraint, mechanical restraint, or physical restraint for
28 the purpose of coercion, discipline, convenience, or retaliation by
29 staff of the educational provider.

30 (b) The prohibition specified in subdivision (a) regarding
31 physical restraint shall apply only to the use of physical restraint
32 on individuals with exceptional needs, as defined in Section 56026,
33 who receive special education and related services.

34 49013. (a) An educational provider shall not use any of the
35 following:

36 (1) A physical restraint technique that obstructs a pupil’s
37 respiratory airway or impairs the pupil’s breathing or respiratory
38 capacity, including techniques in which a staff member places
39 pressure on a pupil’s back or places his or her body weight against
40 the pupil’s torso or back.

1 (2) A pillow, blanket, or other item covering the pupil's face as
2 part of a physical restraint.

3 (3) An improvised restraint device, such as a sheet or belt.

4 (4) A physical restraint on a pupil who has a known medical,
5 psychological, or physical condition, and where there is reason to
6 believe that the use would endanger the pupil's life or seriously
7 exacerbate the medical, psychological, or physical condition of
8 the pupil. Known risk factors include a history of trauma or abuse,
9 obesity, agitated or excited syndromes, preexisting heart disease,
10 and respiratory conditions, including bronchitis or asthma.

11 (5) Placement of a pupil in a facedown position with the pupil's
12 hands held or restrained behind his or her back.

13 (6) Physical restraint as an extended procedure beyond the
14 immediate emergency.

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

17 (c) An educational provider may use physical restraint only if
18 all of the following conditions are met:

19 (1) It is an emergency situation and physical restraint is required
20 to prevent imminent serious physical harm to the pupil, staff, or
21 others.

22 (2) The educational provider has determined that less restrictive
23 alternatives and positive behavioral supports are ineffective.

24 (3) A staff member is continuously present and keeps the pupil
25 under constant face-to-face observation for signs of distress or
26 difficulty breathing.

27 (d) This section shall apply only to the use of physical restraint
28 on individuals with exceptional needs, as defined in Section 56026,
29 who receive special education and related services.

30 49014. An educational provider shall not use chemical restraint,
31 except as otherwise licensed to prescribe and administer
32 medication.

33 49015. An educational provider shall not use mechanical
34 restraint.

35 49016. (a) Beginning January 1, 2014, an educational provider
36 shall not use seclusion.

37 (b) Until January 1, 2014, an educational provider shall not use
38 seclusion unless all of the following conditions are met:

39 (1) The educational provider is a nonpublic, nonsectarian school,
40 as defined in Section 56034, with intensive behavioral supports

1 or a district-designated alternative program with intensive
2 behavioral supports that is an alternative to a nonpublic,
3 nonsectarian school.

4 (2) The pupil placed in seclusion is an individual with
5 exceptional needs, as defined in Section 56026, has a current
6 individualized education program, and has the ability to understand
7 the purpose of seclusion and the directives given by the school
8 personnel regarding the seclusion.

9 (3) The pupil has a behavioral intervention plan or interim
10 behavioral intervention plan, while a functional analysis
11 assessment, pursuant to Section 3052(b) of Title 5 of the California
12 Code of Regulations, is being completed, and that plan takes into
13 account a pupil's developmental level and individual history of
14 trauma and abuse and includes the pupil's expressed preference
15 of emergency intervention. The plan shall be reviewed after every
16 incident of seclusion.

17 (4) The pupil placed in seclusion exhibits behavior that poses
18 an imminent risk of serious physical harm to school personnel, or
19 is in a facility otherwise licensed or permitted by the state to use
20 seclusion when the pupil poses an imminent risk of serious physical
21 harm to school personnel or others, and the behavior cannot be
22 addressed by a less restrictive intervention.

23 (5) During the use of seclusion, a staff member, who is free
24 from other responsibilities at the time, is continually present and
25 keeps the pupil under constant direct visual observation. A pupil
26 cannot be deprived of sleep, food, water, shelter, physical comfort,
27 or access to bathroom facilities.

28 (6) The period of seclusion shall not exceed 15 minutes except
29 as indicated below:

30 (A) A behavioral intervention case manager or, in the absence
31 of the behavioral intervention case manager, a site administrator
32 with training in behavioral intervention may approve continuation
33 of seclusion for a total duration not to exceed 30 minutes for any
34 one continuous seclusion event, after observing the pupil's behavior
35 while secluded and determining that the pupil continues to exhibit
36 behavior consistent with the conditions described in paragraph (4).

37 (B) A qualified mental health professional, as defined in Section
38 60020(j) of Title 2 of the California Code of Regulations, may
39 approve continuation of seclusion in a facility otherwise licensed
40 to use seclusion under Title 22 of the California Code of

1 Regulations for a total duration not to exceed 60 minutes for any
2 one continuous seclusion event, after observing the pupil's behavior
3 while secluded and determining that the pupil continues to exhibit
4 behavior consistent with the conditions described in paragraph (4).

5 (7) The seclusion room meets all of the following requirements:

6 (A) It is not used for another purpose, including use as a storage
7 room, bathroom, or utility room.

8 (B) It is not used without a fire clearance from the local fire
9 authority.

10 (C) It does not prevent exiting by the use of locking or jamming
11 devices, including devices that allow for immediate release upon
12 removal of a staff member's foot, hand, or body from a magnetic
13 engagement pad or button, unless in a facility otherwise licensed
14 or permitted by state law to use a locked room.

15 (D) It is safe and free of hazards, including objects or fixtures
16 that can be broken or used by a pupil to inflict injury.

17 49017. (a) It is the intent of the Legislature that, except where
18 this article may grant more protections, this article shall be
19 interpreted as being consistent with Chapter 5.5 (commencing with
20 Section 56520) of Part 30 and its implementing regulations
21 commencing with Section 3052 of Title 5 of the California Code
22 of Regulations.

23 (b) It is also the intent of the Legislature to monitor the
24 implementation of this article and to encourage stakeholders,
25 including, but not limited to, disability rights advocacy groups,
26 representatives of education providers, and education organizations
27 to voluntarily make recommendations for future legislation and
28 budget augmentations on the topic of seclusion and restraint.