

AMENDED IN ASSEMBLY APRIL 27, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

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~~) 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.

LEGISLATIVE COUNSEL'S DIGEST

AB 519, as amended, 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.

The bill would also authorize the State Department of Education to use federal funds to provide professional and education support staff who work with pupils with exceptional needs and pupils receiving special education services professionally recognized or accepted training in evidence-based emergency interventions.

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 *school* 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~~-yes. 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:

- 1 (i) Establishing an earthquake emergency procedure system in
2 every public school building having an occupant capacity of 50
3 or more pupils or more than one classroom. A district or county
4 office may work with the California Emergency Management
5 Agency and the Seismic Safety Commission to develop and
6 establish the earthquake emergency procedure system. The system
7 shall include, but not be limited to, all of the following:
- 8 (I) A school building disaster plan, ready for implementation
9 at any time, for maintaining the safety and care of pupils and staff.
 - 10 (II) A drop procedure whereby each pupil and staff member
11 takes cover under a table or desk, dropping to his or her knees,
12 with the head protected by the arms, and the back to the windows.
13 A drop procedure practice shall be held at least once each school
14 quarter in elementary schools and at least once a semester in
15 secondary schools.
 - 16 (III) Protective measures to be taken before, during, and
17 following an earthquake.
 - 18 (IV) A program to ensure that pupils and both the certificated
19 and classified staff are aware of, and properly trained in, the
20 earthquake emergency procedure system.
- 21 (ii) Establishing a procedure to allow a public agency or
22 nonprofit organization, including the American Red Cross, to use
23 school buildings, grounds, and equipment for mass care and welfare
24 shelters during disasters or other emergencies affecting the public
25 health and welfare. The district or county office shall cooperate
26 with the public agency or nonprofit organization in furnishing and
27 maintaining the services as the district or county office may deem
28 necessary to meet the needs of the community.
- 29 (C) Policies pursuant to subdivision (d) of Section 48915 for
30 pupils who committed an act listed in subdivision (c) of Section
31 48915 and other school-designated serious acts which would lead
32 to suspension, expulsion, or mandatory expulsion recommendations
33 pursuant to Article 1 (commencing with Section 48900) of Chapter
34 6 of Part 27 of Division 4 of Title 2.
 - 35 (D) Procedures to notify teachers of dangerous pupils pursuant
36 to Section 49079.
 - 37 (E) A discrimination and harassment policy consistent with the
38 prohibition against discrimination contained in Chapter 2
39 (commencing with Section 200) of Part 1.

1 (F) The provisions of any schoolwide dress code, pursuant to
2 Section 35183, that prohibits pupils from wearing “gang-related
3 apparel,” if the school has adopted that type of dress code. For
4 those purposes, the comprehensive school safety plan shall define
5 “gang-related apparel.” The definition shall be limited to apparel
6 that, if worn or displayed on a school campus, reasonably could
7 be determined to threaten the health and safety of the school
8 environment. Any schoolwide dress code established pursuant to
9 this section and Section 35183 shall be enforced on the school
10 campus and at any school-sponsored activity by the principal of
11 the school or the person designated by the principal. For the
12 purposes of this paragraph, “gang-related apparel” shall not be
13 considered a protected form of speech pursuant to Section 48950.

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

16 (H) A safe and orderly environment conducive to learning at
17 the school.

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

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

23 (b) The comprehensive school safety plan may include the rules
24 and procedures regarding the use of restraint and seclusion pursuant
25 to ~~Article 5.5 (commencing with Section 49010)~~ 5.2 (*commencing*
26 *with Section 49005*) of Chapter 6 of Part 27 of Division 4 of Title
27 2.

28 (c) It is the intent of the Legislature that schools develop
29 comprehensive school safety plans using existing resources,
30 including the materials and services of the partnership, pursuant
31 to this chapter. It is also the intent of the Legislature that schools
32 use the handbook developed and distributed by the School/Law
33 Enforcement Partnership Program entitled “Safe Schools: A
34 Planning Guide for Action” in conjunction with developing their
35 plan for school safety.

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

39 (e) Each schoolsite council or school safety planning committee
40 in developing and updating a comprehensive school safety plan

1 shall, where practical, consult, cooperate, and coordinate with
2 other schoolsite councils or school safety planning committees.

3 (f) The comprehensive school safety plan may be evaluated and
4 amended, as needed, by the school safety planning committee, but
5 shall be evaluated at least once a year, to ensure that the
6 comprehensive school safety plan is properly implemented. An
7 updated file of all safety-related plans and materials shall be readily
8 available for inspection by the public.

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

13 ~~SEC. 2.— Article 5.5 (commencing with Section 49010) is added~~
14 ~~to Chapter 6 of Part 27 of Division 4 of Title 2 of the Education~~
15 ~~Code, to read:~~

16
17 ~~Article 5.5. Restraint and Seclusion~~

18
19 ~~49010.—~~

20 ~~SEC. 2. Article 5.2 (commencing with Section 49005) is added~~
21 ~~to Chapter 6 of Part 27 of Division 4 of Title 2 of the Education~~
22 ~~Code, to read:~~

23
24 ~~Article 5.2. Restraint and Seclusion~~

25
26 ~~49005. The Legislature finds and declares all of the following:~~

27 (a) ~~Seclusion and restraint may cause trauma and injury to both~~
28 ~~the individual subjected to these techniques and the personnel~~
29 ~~executing them.~~

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

34 ~~49011.—~~

35 ~~49005.1. For purposes of this article, the following definitions~~
36 ~~apply:~~

37 (a) ~~“Chemical restraint” means the administration of a drug or~~
38 ~~medication to manage a pupil’s behavior or restrict a pupil’s~~
39 ~~freedom of movement that is not a standard treatment and dosage~~
40 ~~for the pupil’s medical or psychiatric condition.~~

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

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

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

6 (B) Provides educational or related services, support, or other
7 assistance to individuals in a public or private elementary or
8 secondary school.

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

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

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

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

37 ~~49012.~~

38 ~~49005.2. (a)~~—An educational provider shall not use seclusion,
39 chemical restraint, mechanical restraint, or physical restraint for

1 the purpose of coercion, discipline, convenience, or retaliation by
2 staff of the educational provider.

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

7 49013.

8 49005.3. (a) An educational provider shall not use any of the
9 following:

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

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

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

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

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

27 (6) Physical restraint as an extended procedure beyond the
28 immediate emergency.

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

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

33 ~~(1) It is an emergency situation and physical restraint is required~~
34 ~~to prevent imminent serious physical harm to the pupil, staff, or~~
35 ~~others.~~

36 ~~(2) The educational provider has determined that less restrictive~~
37 ~~alternatives and positive behavioral supports are ineffective.~~

38 ~~(3) A staff member is continuously present and keeps the pupil~~
39 ~~under constant face-to-face observation for signs of distress or~~
40 ~~difficulty breathing.~~

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

4 *(c) An educational provider may use physical restraint in an*
5 *emergency situation if all of the following conditions are met,*
6 *unless otherwise stated in a pupil's individualized education*
7 *program and approved behavioral intervention plan:*

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

10 *(2) The educational provider has determined that less restrictive*
11 *alternatives are ineffective.*

12 *(3) Physical restraint is not employed for longer or with more*
13 *force than is necessary to prevent the imminent serious physical*
14 *harm.*

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

18 *(5) The staff member applying the restraint is trained in*
19 *emergency interventions, including the use of physical restraint,*
20 *and applies the techniques consistent with district-approved*
21 *procedures or training.*

22 *(d) An educational provider may use physical restraint as a*
23 *component of a pupil's behavioral intervention plan if all of the*
24 *following conditions are met:*

25 *(1) The behavioral intervention plan has been developed and*
26 *approved by the pupil's individualized education program team*
27 *following a functional analysis assessment pursuant to regulation.*

28 *(2) Physical restraint is required to prevent a targeted and*
29 *imminent dangerous behavior that poses serious physical harm to*
30 *the pupil, staff, or others.*

31 *(3) Physical restraint is not to be employed for longer or with*
32 *more force than is necessary to prevent the targeted dangerous*
33 *behavior.*

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

37 *(5) The staff member applying the restraint is trained in*
38 *implementation of the pupil's behavioral intervention plan,*
39 *including the use of physical restraint, and applies the physical*
40 *restraint consistent with district-approved procedures and training.*

1 (6) *The individualized education program team reviews data*
2 *regarding frequency of the targeted behavior and the use of*
3 *physical restraint.*

4 (e) *This section shall only apply to the use of physical restraint*
5 *on individuals with exceptional needs, as defined in Section 56026,*
6 *who receive special education and related services.*

7 ~~49014.~~

8 49005.4. An educational provider shall not use chemical
9 restraint, except as otherwise licensed to prescribe and administer
10 medication.

11 ~~49015.~~

12 49005.5. An educational provider shall not use mechanical
13 restraint.

14 ~~49016.~~

15 49005.6. (a) Beginning January 1, 2014, an educational
16 provider shall not use seclusion.

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

19 (1) The educational provider is a nonpublic, nonsectarian school,
20 as defined in Section 56034, with intensive behavioral supports
21 or a district-designated alternative program with intensive
22 behavioral supports that is an alternative to a nonpublic,
23 nonsectarian school.

24 (2) The pupil placed in seclusion is an individual with
25 exceptional needs, as defined in Section 56026, has a current
26 individualized education program, and has the ability to understand
27 the purpose of seclusion and the directives given by the school
28 personnel regarding the seclusion.

29 (3) The pupil has a behavioral intervention plan or interim
30 behavioral intervention plan, while a functional analysis
31 assessment, pursuant to Section 3052(b) of Title 5 of the California
32 Code of Regulations, is being completed, and that plan takes into
33 account a pupil's developmental level and individual history of
34 trauma and abuse and includes the pupil's expressed preference
35 of emergency intervention. The plan shall be reviewed after every
36 incident of seclusion.

37 (4) The pupil placed in seclusion exhibits behavior that poses
38 an imminent risk of serious physical harm to school personnel, or
39 is in a facility otherwise licensed or permitted by the state to use
40 seclusion when the pupil poses an imminent risk of serious physical

1 harm to school personnel or others, and the behavior cannot be
2 addressed by a less restrictive intervention.

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

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

10 (A) A behavioral intervention case manager or, in the absence
11 of the behavioral intervention case manager, a site administrator
12 with training in behavioral intervention may approve continuation
13 of seclusion for a total duration not to exceed 30 minutes for any
14 one continuous seclusion event, after observing the pupil’s behavior
15 while secluded and determining that the pupil continues to exhibit
16 behavior consistent with the conditions described in paragraph (4).

17 (B) A qualified mental health professional, as defined in Section
18 60020(j) of Title 2 of the California Code of Regulations, may
19 approve continuation of seclusion in a facility otherwise licensed
20 to use seclusion under Title 22 of the California Code of
21 Regulations for a total duration not to exceed 60 minutes for any
22 one continuous seclusion event, after observing the pupil’s behavior
23 while secluded and determining that the pupil continues to exhibit
24 behavior consistent with the conditions described in paragraph (4).

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

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

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

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

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

37 ~~49017.~~

38 ~~49005.7.~~ (a) It is the intent of the Legislature that, except where
39 this article may grant more protections, this article shall be
40 interpreted as being consistent with Chapter 5.5 (commencing with

1 Section 56520) of Part 30 and its implementing regulations
2 commencing with Section 3052 of Title 5 of the California Code
3 of Regulations.

4 (b) It is also the intent of the Legislature to monitor the
5 implementation of this article and to encourage stakeholders,
6 including, but not limited to, disability rights advocacy groups,
7 representatives of education providers, and education organizations
8 to voluntarily make recommendations for future legislation and
9 budget augmentations on the topic of seclusion and restraint.

10 49005.8. *The department is authorized to use funds received*
11 *for training pursuant to the federal Individuals with Disabilities*
12 *Education Act (20 U.S.C. Sec. 1400 et seq.) to provide professional*
13 *and education support staff who work with pupils with exceptional*
14 *needs and pupils receiving special education services*
15 *professionally recognized or accepted training in evidence-based*
16 *emergency interventions.*