

**Introduced by Senator Cortese**

February 14, 2023

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An act to amend Sections 49005.1, 49005.8, 56521.1, and 56521.2 of, and to add Section 56028.3 to, the Education Code, relating to pupil rights.

LEGISLATIVE COUNSEL'S DIGEST

SB 483, as introduced, Cortese. Pupil rights: prone restraint.

Existing law prohibits a person employed by or engaged in a public school from inflicting, or causing to be inflicted, corporal punishment upon a pupil. Existing law prohibits the use of certain restraint and seclusion techniques. Existing law authorizes staff trained in prone containment to use the procedure on a pupil who is an individual with exceptional needs in a public school program as an emergency intervention. If prone restraint techniques are used, existing law requires a staff member to observe the pupil for any signs of distress throughout the use of prone restraint.

This bill instead would prohibit the use of prone restraint, defined to include prone containment, by an educational provider. The bill would also prohibit the use of prone restraint, including prone containment, on a pupil who is an individual with exceptional needs in a public school program.

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 49005.1 of the Education Code is
- 2 amended to read:

1 49005.1. The following definitions apply to this article:

2 (a) “Behavioral restraint” means “mechanical restraint” or  
3 “physical restraint,” as defined in this section, used as an  
4 intervention when a pupil presents an immediate danger to self or  
5 to others. “Behavioral restraint” does not include postural restraints  
6 or devices used to improve a pupil’s mobility and independent  
7 functioning rather than to restrict movement.

8 (b) “Educational provider” means a person who provides  
9 educational or related services, support, or other assistance to a  
10 pupil enrolled in an educational program provided by a local  
11 educational agency or a nonpublic school or agency.

12 (c) “Local educational agency” means a school district, county  
13 office of education, charter school, the California Schools for the  
14 Deaf, and the California School for the Blind.

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

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

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

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

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

32 (iii) Restraints for medical immobilization.

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

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

38 (f) (1) “Physical restraint” means a personal restriction that  
39 immobilizes or reduces the ability of a pupil to move the pupil’s  
40 torso, arms, legs, or head freely. “Physical restraint” does not

1 include a physical escort, which means a temporary touching or  
2 holding of the hand, wrist, arm, shoulder, or back for the purpose  
3 of inducing a pupil who is acting out to walk to a safe location.

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

7 (g) “Prone restraint” means the application of a behavioral  
8 restraint on a pupil in a facedown ~~position~~: *position for any period*  
9 *of time and includes the procedure known as prone containment.*

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

13 (i) “Seclusion” means the involuntary confinement of a pupil  
14 alone in a room or area from which the pupil is physically  
15 prevented from leaving. “Seclusion” does not include a timeout,  
16 which is a behavior management technique that is part of an  
17 approved program, that involves the monitored separation of the  
18 pupil in a nonlocked setting, and is implemented for the purpose  
19 of calming.

20 SEC. 2. Section 49005.8 of the Education Code is amended to  
21 read:

22 49005.8. (a) An educational provider shall not do any of the  
23 following:

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

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

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

33 (4) Use a behavioral restraint technique that restricts breathing,  
34 including, but not limited to, using a pillow, blanket, carpet, mat,  
35 or other item to cover a pupil’s face.

36 ~~(5) Place a pupil in a facedown position with the pupil’s hands~~  
37 ~~held or restrained behind the pupil’s back.~~

38 (5) *Use prone restraint.*

1 (6) Use a behavioral restraint for longer than is necessary to  
2 contain the behavior that poses a clear and present danger of serious  
3 physical harm to the pupil or others.

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

11 (c) An educational provider shall afford to pupils who are  
12 restrained the least restrictive alternative and the maximum freedom  
13 of movement, and shall use the least number of restraint points,  
14 while ensuring the physical safety of the pupil and others.

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

19 SEC. 3. Section 56028.3 is added to the Education Code, to  
20 read:

21 56028.3. “Prone restraint” means the application of a behavioral  
22 restraint on a pupil in a facedown position for any period of time  
23 and includes the procedure known as prone containment.

24 SEC. 4. Section 56521.1 of the Education Code is amended to  
25 read:

26 56521.1. (a) Emergency interventions may only be used to  
27 control unpredictable, spontaneous behavior that poses clear and  
28 present danger of serious physical harm to the individual with  
29 exceptional needs, or others, and that cannot be immediately  
30 prevented by a response less restrictive than the temporary  
31 application of a technique used to contain the behavior.

32 (b) Emergency interventions shall not be used as a substitute  
33 for the systematic behavioral intervention plan that is designed to  
34 change, replace, modify, or eliminate a targeted behavior.

35 (c) No emergency intervention shall be employed for longer  
36 than is necessary to contain the behavior. A situation that requires  
37 prolonged use of an emergency intervention shall require the staff  
38 to seek assistance of the schoolsite administrator or law  
39 enforcement agency, as applicable to the situation.

40 (d) Emergency interventions shall not include:

- 1 (1) Locked seclusion, unless it is in a facility otherwise licensed  
2 or permitted by state law to use a locked room.
- 3 (2) Employment of a device, material, or objects that  
4 simultaneously immobilize all four ~~extremities, except that~~  
5 ~~techniques such as prone containment may be used as an~~  
6 ~~emergency intervention by staff trained in those procedures.~~  
7 *extremities.*
- 8 (3) *Prone restraint.*
- 9 ~~(3)~~
- 10 (4) An amount of force that exceeds that which is reasonable  
11 and necessary under the circumstances.
- 12 (e) To prevent emergency interventions from being used in lieu  
13 of planned, systematic behavioral interventions, the parent,  
14 guardian, and residential care provider, if appropriate, shall be  
15 notified within one schoolday if an emergency intervention is used  
16 or serious property damage occurs. A behavioral emergency report  
17 shall immediately be completed and maintained in the file of the  
18 individual with exceptional needs. The behavioral emergency  
19 report shall include all of the following:
- 20 (1) The name and age of the individual with exceptional needs.  
21 (2) The setting and location of the incident.  
22 (3) The name of the staff or other persons involved.  
23 (4) A description of the incident and the emergency intervention  
24 used, and whether the individual with exceptional needs is currently  
25 engaged in any systematic behavioral intervention plan.  
26 (5) Details of any injuries sustained by the individual with  
27 exceptional needs, or others, including staff, as a result of the  
28 incident.
- 29 (f) All behavioral emergency reports shall immediately be  
30 forwarded to, and reviewed by, a designated responsible  
31 administrator.
- 32 (g) If a behavioral emergency report is written regarding an  
33 individual with exceptional needs who does not have a behavioral  
34 intervention plan, the designated responsible administrator shall,  
35 within two days, schedule an individualized education program  
36 (IEP) team meeting to review the emergency report, to determine  
37 the necessity for a functional behavioral assessment, and to  
38 determine the necessity for an interim plan. The IEP team shall  
39 document the reasons for not conducting the functional behavioral  
40 assessment, not developing an interim plan, or both.

1 (h) If a behavioral emergency report is written regarding an  
 2 individual with exceptional needs who has a positive behavioral  
 3 intervention plan, an incident involving a previously unseen serious  
 4 behavior problem, or where a previously designed intervention is  
 5 ineffective, shall be referred to the IEP team to review and  
 6 determine if the incident constitutes a need to modify the positive  
 7 behavioral intervention plan.

8 SEC. 5. Section 56521.2 of the Education Code is amended to  
 9 read:

10 56521.2. (a) A local educational agency or nonpublic,  
 11 nonsectarian school or agency serving individuals with exceptional  
 12 needs pursuant to Sections 56365 and 56366, shall not authorize,  
 13 order, consent to, or pay for the following interventions, or any  
 14 other interventions similar to or like the following:

15 (1) Any intervention that is designed to, or likely to, cause  
 16 physical pain, including, but not limited to, electric shock.

17 (2) An intervention that involves the release of noxious, toxic,  
 18 or otherwise unpleasant sprays, mists, or substances in proximity  
 19 to the face of the individual.

20 (3) An intervention that denies adequate sleep, food, water,  
 21 shelter, bedding, physical comfort, or access to bathroom facilities.

22 (4) An intervention that is designed to subject, used to subject,  
 23 or likely to subject, the individual to verbal abuse, ridicule, or  
 24 humiliation, or that can be expected to cause excessive emotional  
 25 trauma.

26 (5) Restrictive interventions that employ a device, material, or  
 27 objects that simultaneously immobilize all four ~~extremities,~~  
 28 ~~including the procedure known as prone containment, except that~~  
 29 ~~prone containment or similar techniques may be used by trained~~  
 30 ~~personnel as a limited emergency intervention.~~ *extremities.*

31 (6) *Prone restraint.*

32 ~~(6)~~

33 (7) Locked seclusion, unless it is in a facility otherwise licensed  
 34 or permitted by state law to use a locked room.

35 ~~(7)~~

36 (8) An intervention that precludes adequate supervision of the  
 37 individual.

38 ~~(8)~~

39 (9) An intervention that deprives the individual of one or more  
 40 of ~~his or her~~ *the individual's* senses.

1 (b) In the case of a child whose behavior impedes the child's  
2 learning or that of others, the individualized education program  
3 team shall consider the use of positive behavioral interventions  
4 and supports, and other strategies, to address that behavior,  
5 consistent with Section 1414(d)(3)(B)(i) and (d)(4) of Title 20 of  
6 the United States Code and associated federal regulations.

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