

CLIENT NEWS BRIEF

New Law Limits the Use of Seclusion and Restraints in Schools, Requires Annual Data Report

The California Legislature recently passed a new law aiming to promote student rights and safety by imposing limits on the use of behavioral restraints and seclusion in schools. Assembly Bill (AB) 2657, which prohibits the use of restraint or seclusion for any student except in specified circumstances, becomes effective on January 1, 2019.

Current Law

Existing law limits the use of seclusion and restraints in schools for students with exceptional needs. Specifically, California school districts and nonpublic schools or agencies serving individuals with exceptional needs are prohibited from authorizing, ordering, consenting to, or paying for certain types of behavior interventions, including electric shock, the release of toxic or noxious sprays or mists, mechanical restraints, except when mechanical restraints are used by trained personnel as a limited emergency intervention, or locked seclusion, except when seclusion is used as specified. Additionally, California law authorizes the use of emergency interventions for students with exceptional needs in limited circumstances. (See 2013 [Client News Brief No. 39](#).)

California law also prohibits persons employed by or engaged in a public school from inflicting, or causing to be inflicted, corporal punishment upon a student. However, there are currently no other limitations on the use of seclusion or restraints for general education students.

New Law

AB 2657 establishes a student's 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." The legislation limits the use of seclusion and behavioral restraints, which include both mechanical and physical restraints, for all students and establishes parameters for situations in which behavioral restraints or seclusion may be used. Specifically, school districts and nonpublic schools or agencies may use a behavioral restraint or seclusion "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."

The legislation also provides statutory definitions for behavioral restraint, mechanical restraint, physical restraint, and seclusion for the first time in the Education Code, adopted from the [Office for Civil Rights' guidance on the use of restraint and seclusion](#). Notably, it states vehicle safety restraints when used as intended during the transport of a student in a moving vehicle are not mechanical restraints, and physical escorts are not physical restraints.

School districts and nonpublic schools or agencies are prohibited from using a behavioral restraint for longer than is necessary to contain the behavior that poses a clear and present danger of serious physical harm. The legislation

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As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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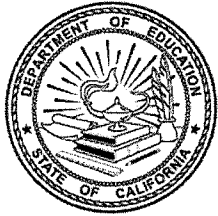
clarifies what types of interventions are not allowed, and emphasizes the need to avoid restraints and seclusion whenever possible. Specifically, it bans the use of locked seclusion unless the facility is otherwise licensed or permitted to use a locked room, physical restraint techniques that obstruct the student's respiratory airway or impairs the student's breathing or respiratory capacity, behavioral restraints that restrict breathing, and placing a student in a facedown position with the student's hands held or restrained behind the student's back. A student placed in seclusion must be under constant, direct observation at all times.

AB 2657 also requires school districts and nonpublic schools or agencies to collect and report data on the use of restraints and seclusion to the California Department of Education (CDE) annually, no later than three months after the end of the school year. The report must include the number of students subjected to mechanical restraint and the number of times it was used, the number of students subjected to physical restraint and the number of times it was used, and the number of students subjected to seclusion and the number of times it was used. The information must be disaggregated by race or ethnicity, and gender, with separate counts for students with an individualized education program (IEP), students with a 504 plan, and students without an IEP or 504 plan. The legislation requires CDE to annually post the data from the report on its website within three months after the report is due to CDE.

Takeaways

School districts should note the new limitations on the use of restraints and seclusion for all students, effective January 1, 2019. This legislation does not repeal or replace existing laws that provide parameters and procedures for the use of seclusion and restraint for students with exceptional needs. School districts should consider updating their policies and procedures relating to pupil discipline, in light of the new rules for general education students, while continuing compliance with existing law related to seclusion or restraint that applies only to students with exceptional needs.

If you have any questions about AB 2657 or restraint and seclusion laws applicable to California school districts, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).



**CALIFORNIA DEPARTMENT
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December 24, 2018

Dear County and District Superintendents, Charter School Administrators, Special Education Local Plan Area Directors, Special Education Administrators of County Offices of Education, Nonpublic School Administrators, State Diagnostic Center Directors, and Local Educational Agency Special Education Directors:

**New Law Regarding the Use of Restraint and Seclusion for
Students in California**

Assembly Bill (AB) 2657, Statutes of 2018, Chapter 998, will go into effect on January 1, 2019. The bill added sections 49005–49006.4 to California’s *Education Code* regarding the use of restraint and seclusion with students receiving both general education and special education. The following information highlights certain passages of the new law, but educators are encouraged to read the entirety of the legislation at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2657.

Education Code Section 49005 contains legislative findings and declarations. Subsection (a) says that “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.” Subsection (i) confirms “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.”

Education Code Section 49005.1 provides a series of definitions pertinent to the law’s implementation. Subsection (a) says “‘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.” Subsection (d)(1) defines **mechanical restraint** as “the use of a device or equipment to restrict a pupil’s freedom of movement.” **Physical restraint** is defined as “a personal restriction that immobilizes or reduces the ability of a pupil to move his or her torso, arms, legs, or head freely” (*Education Code* Section 49005.1[f][1]). **Prone restraint** “means the application of a behavioral restraint on a pupil in a facedown position” (*Education Code* Section 49005.1[g]). **Seclusion** is defined as “the involuntary confinement of a pupil alone in a room or area from which the pupil is physically prevented from leaving (*Education Code* Section 49005.1[i]).

The new law says that 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" (*Education Code* Section 49005.2). Seclusion or a behavioral restraint may be used "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" (*Education Code* Section 49005.4).

Several prohibitions regarding the use of restraint and seclusion are listed in *Education Code* Section 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.

Educational providers, as defined, must also adhere to new requirements. For example, they "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" (*Education Code* Section 49005.8[b]).

This section also mandates that 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. 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" (*Education Code* Section 49005.8[c] and [d]).

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The new law requires local educational agencies to collect and report annually to the California Department of Education data on the number of times and the number of students on which mechanical restraints, physical restraints, and seclusion are used. The data must be disaggregated for students who have Section 504 plans, students who have individualized education programs, and students who do not have either plan. The California Department of Education is mandated to post the data on its Internet website (*Education Code* Section 49006).

Finally, the new law notes that 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” (*Education Code* Section 49006.4). These existing sections of code pertain to behavioral emergency reporting. The existing statute is accessible at https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC§ionNum=56521.1.

If you have any questions regarding this subject, please contact Allison Smith, Special Education Consultant, Special Education Division, at 916-319-0377 or asmith@cde.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Tom Torlakson". The signature is written in a cursive, flowing style.

Tom Torlakson

TT:kw
2018-08091