

Date of Hearing: January 15, 2020

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

AB 216 (Weber) – As Amended January 7, 2020

SUBJECT: School safety: Pupil and Staff Safety Pilot Program

SUMMARY: Establishes the Pupil and Staff Safety Pilot Program, to be administered by the Scale Up MTSS Statewide (SUMS) project, for the purpose of training school staff de-escalation techniques and alternatives to physical restraint and seclusion of students. Specifically, **this bill:**

- 1) Establishes the Pupil and Staff Safety Pilot Program, to be administered through the Scale Up MTSS Statewide (SUMS) project.
- 2) Authorizes local educational agencies (LEAs) to apply for funds through this program to train staff who have contact or interaction with students on de-escalation techniques and alternatives to physical restraint and seclusion of students.
- 3) Defines LEA for purposes of this program as school districts, county offices of education, charter schools, and the State Special Schools for the Blind and the Deaf.
- 4) Requires that priority be given in awarding grants to LEAs with higher rates of seclusion or restraint of pupils or significant disproportionality in pupil discipline, as demonstrated by data submitted to the department as required by state or federal law.
- 5) Requires that a LEA receiving a grant under this program train all staff who have contact with students.
- 6) Requires that the training:
 - a) Be conducted by persons licensed or certified in fields related to the evidence-based practices and interventions being taught.
 - b) Be taught in a manner consistent with the development and implementation of individualized education programs (IEPs).
 - c) Be consistent with the requirements of existing law relative to the restraint and seclusion of students.
- 7) Requires that the content of the training include:
 - a) Positive behavioral intervention and supports, including collection, analysis, and use of data to inform, plan, and implement behavioral supports.
 - b) How to understand and address challenging behaviors, including evidence-based strategies for preventing those behaviors.
 - c) Evidence-based interventions for reducing and replacing challenging behaviors, including de-escalation techniques.

- 8) Requires a LEA, once its grant funds have been exhausted, to report to the administrator of the SUMS project on its implementation of the training and any available outcome data.
- 9) Requires, by September 30 of each fiscal year until a LEA has fully expended its pilot program funds, the LEA to submit a report to the Superintendent of Public Instruction (SPI) summarizing how the LEA used the pilot program funds in the prior fiscal year. Requires each annual report to include the following:
 - a) A summary of the training conducted.
 - b) The number of LEAs, educators, and pupils served by the training.
 - c) A summary of any data that is available on outcomes resulting from the training conducted, which may include, but is not limited to, outcome data related to restraint and seclusion of pupils.
- 10) Requires that, once all pilot program funds are fully expended, the SPI submit a summary of the annual reports to the appropriate fiscal and policy committees of the Legislature, the Department of Finance, the State Board of Education, and the Legislative Analyst's Office.
- 11) Makes implementation of the program contingent upon funds being provided for this purpose.

EXISTING LAW:

- 1) Requires, beginning with the 2020-21 school year, a nonpublic, nonsectarian school (NPS) or nonpublic agency (NPA) to include in its certification application documentation that all staff who have any contact or interaction with pupils have been trained in the use of practices and interventions specific to needs of the school's students. The training must be provided within 30 days of employment to new staff and annually to all staff who have any contact or interaction with pupils. Requires that the training:
 - a) Be conducted by persons licensed or certified in fields related to the evidence-based practices and interventions being taught.
 - b) Be taught in a manner consistent with the development and implementation of IEPs.
 - c) Include all of the following content:
 - i) Positive behavioral intervention and supports, including collection, analysis, and use of data to inform, plan and implement behavioral supports.
 - ii) How to understand and address challenging behaviors, including evidence-based strategies for preventing these behaviors.
 - iii) Evidence-based interventions for reducing and replacing challenging behaviors, including de-escalation techniques.

- d) Requires a NPS that provides special education and related services to an individual with exceptional needs to certify in writing to the SPI that beginning with the 2020–21 school year, the school provides annual training to all staff who have any contact or interaction with pupils during the schoolday.
- 2) Prohibits an educational provider from doing any of the following:
 - a) Using seclusion or a behavioral restraint for the purpose of coercion, discipline, convenience, or retaliation.
 - b) Using locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room.
 - c) Using a physical restraint technique that obstructs a student's respiratory airway or impairs the student's breathing or respiratory capacity, including techniques in which a staff member places pressure on a student's back or places his or her body weight against the student's torso or back.
 - d) Using a behavioral restraint technique that restricts breathing, including but not limited to using a pillow, blanket, carpet, mat, or other item to cover a student's face.
 - e) Placing a student in a facedown position with the student's hands held or restrained behind the student's back.
 - f) Using behavioral restraint for longer than is necessary to contain the behavior that poses a clear and present danger of serious physical harm to the student or others.
 - 3) Requires an educational provider to avoid, whenever possible, the use of seclusion or behavioral restraint techniques.
 - 4) Authorizes an educational provider to use seclusion or a behavioral restraint only to control behavior that poses a clear and present danger of serious physical harm to the student or others that cannot be immediately prevented by a response that is less.
 - 5) Requires an educational provider to afford to students who are restrained the least restrictive alternative and the maximum freedom of movement, and use the least number of restraint points, while ensuring the physical safety of the student and others.
 - 6) Requires an educational provider to keep constant, direct observation of a student who is in seclusion, and allows that to be a window, or another barrier, through which the educational provider is able to make direct eye contact with the student. This bill prohibits the observation to be through indirect means, including through a security camera or closed-circuit TV.
 - 7) Requires a staff member, if prone restraint techniques are used, to observe the student for any signs of physical distress throughout the use of prone restraint. Requires that, whenever possible, the staff member monitoring the students not be involved in restraining the student.

- 8) Requires LEAs to collect and report annually to CDE, no later than three months after the end of the school year, on the use of behavioral restraints and seclusion for students enrolled in or served by the LEA for all or part of the prior school year.
- 9) Requires the report to include all of the following information, disaggregated by race or ethnicity, and gender, with separate counts for students with an IEP, 504 plan, and students without an IEP or 504 plan:
 - a) The number of students subjected to mechanical restraint, and the number of times mechanical restraint was used on students.
 - b) The number of students subjected to physical restraint, and the number of times physical restraint was used on students.
 - c) The number of students subjected to seclusion, and the number of times seclusion was used on students.
- 10) Requires the data collected and reported to be available as a public record.
- 11) Requires the CDE to annually post the data from the report on its website within three months after the report is due to CDE.
- 12) Requires the data collection and reporting requirements to be conducted in compliance with the requirements of the federal Civil Rights Data Collection, and prohibits the data collection and reporting requirements from being construed to impose a new program or higher level of service on LEAs or nonpublic schools or agencies.

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill. The author states, “AB 216 is a follow-up to my prior bill to stop restraint and seclusion in schools. Tragically, a student died a few months after my bill was signed into law. My new bill supplements AB 2657 from last year by adding training in de-escalation techniques to recognize challenging behaviors and avoid restraining or secluding a child.”

Need for training on alternatives to physical restraint and seclusion of students. AB 2657 (Weber), Chapter 998, Statutes of 2018, prohibits the use of restraint or seclusion on any student (except under specified circumstances), establishes parameters and procedures for situations in which restraint or seclusion may be used, and requires data collection and reporting to the CDE.

The CDE is in the process of establishing an ad hoc advisory group to solicit input on the implementation of AB 2657. This ad hoc group will provide 1) feedback to the CDE in the development of guidance to LEAs on identifying and implementing best practices related to pupil discipline resulting in restraint and seclusion, including preventative practices and positive behavioral interventions, and 2) feedback to the CDE in the development of a plan for disseminating the guidance and providing professional development on its content. The CDE is also planning to sponsor webinars and in-person training on this topic. ***The Committee may***

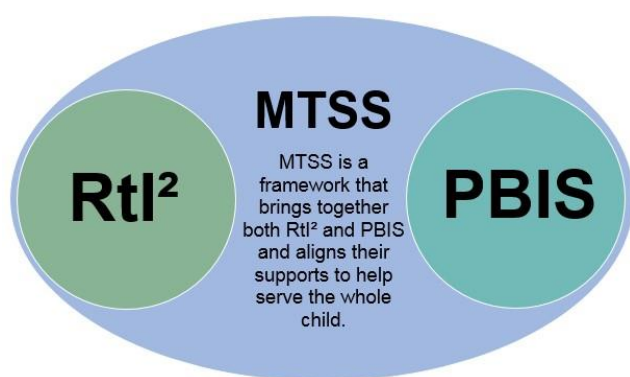
wish to consider that training in evidence-based practices to de-escalate challenging behaviors will enable educators to avoid the use of restraint and seclusion, in accordance with the law.

Federal reports and action on seclusion and restraint. In recent years the federal government has produced a number of reports, guidance, and initiatives related seclusion and restraint, including the following:

- In 2019, the U.S. Department of Education’s (USDOE) Office for Civil Rights (OCR) launched an initiative to address the possible inappropriate use of restraint and seclusion in the nation’s schools to provide technical assistance and support to schools, districts, and state education agencies, and strengthen enforcement activities. The OCR initiative includes three components: compliance reviews, data quality reviews and technical assistance, and technical assistance and support to public schools on policies and practice related to seclusion and restraint, with a focus on those identified through compliance reviews or complaint processes. This includes webinars on the use of appropriate interventions and supports for all students.
- In 2018, the U.S. Government Accountability Office (GAO) released a report entitled *K-12 Education: Discipline Disparities for Black Students, Boys, and Students with Disabilities*, in which it reported that in 2013-14, African American students represented 15 percent of the national population of public school students, but 33 percent of students subjected to mechanical restraint, 25 percent of students subjected to physical restraint, and 22 percent of students placed in seclusion. The GAO also found that African American boys constitute 8 percent of public school students, but 23 percent of students subjected to mechanical restraint. The GAO states, “Teachers and staff sometimes have discretion to make case-by-case decisions about whether to discipline, and the form of discipline to impose in response to student behaviors...Studies show that these decisions can result in certain groups of students being more harshly disciplined than others.”
- In 2016, the OCR issued a “Dear Colleague” letter to explain the limits that federal civil rights laws impose on the use of seclusion and restraint in public schools. OCR stated that a “school district discriminates on the basis of disability in its use of restraint or seclusion by (1) unnecessarily treating students with disabilities differently from students without disabilities; (2) implementing policies, practices, procedures, or criteria that have an effect of discriminating against students on the basis of disability or defeating or substantially impairing accomplishment of the objectives of the school district’s program or activity with respect to students with disabilities; or (3) denying the right to a free appropriate public education.”
- In 2014, the OCR reported the following statistics, collected for its biennial Civil Rights Data Collection, on the nationwide use of seclusion and restraint in public schools in 2011-12 1) students with disabilities represent 12 percent of the national student population, but 58 percent of those placed in seclusion and 75 percent of those subjected to physical restraint. In California, 81 percent of students exposed to physical restraint are served in special education programs, and 2) African American students represent 19 percent of students with disabilities served with IDEA, but 36 percent of those subjected to mechanical restraint, defined as the use of devices or equipment to restrict a student’s movement.

- In 2012 the USDOE released guidance on seclusion and restraint, in which it lists 15 principles that it developed in collaboration with the federal Substance Abuse and Mental Health Services Administration, to help states develop a framework of policies that ensure “restraint or seclusion in schools does not occur, except when there is a threat of imminent danger of serious physical harm to the student or others.” Many of the provisions of current law mirror DOE’s 15 principles.
- In 2009, the Education and Labor Committee in the U.S. House of Representatives held a hearing to examine the misapplication of seclusion and restraint in schools; the same day, the GAO issued a report entitled *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers*. GAO summarizes its findings as follows: “[We found] hundreds of cases of alleged abuse and death related to the use of [seclusion and restraint] on school children during the past two decades. Examples of these cases include a 7 year old purportedly dying after being held face down for hours by school staff, 5 year olds allegedly being tied to chairs with bungee cords and duct tape by their teacher and suffering broken arms and bloody noses, and a 13 year old reportedly hanging himself in a seclusion room after prolonged confinement...GAO could not find a single Web site, federal agency, or other entity that collects information on the use of these methods or the extent of their alleged abuse.” Following the 2009 GAO report, U.S. Education Secretary Arne Duncan sent a letter to Chief State School Officers advising them to review their state policies on seclusion and restraint. In his statement, he advocated for a two-pronged approach for reducing injuries and deaths resulting from seclusion and restraint: widespread implementation of PBIS, and implementation of state regulations that “limit the use of seclusion and restraint under most circumstances.”

Evidence-based educational frameworks that minimize seclusion and restraint. To reduce the use of seclusion and restraint, the DOE supports the use of an approach known as Positive Behavioral Interventions and Supports (PBIS), which is now recognized, along with another theory known as Response to Instruction and Intervention (RtI²), as a component of a



comprehensive educational framework called Multi-Tiered Systems of Support (MTSS). This merged framework is depicted in the adjacent figure, produced by CDE.

The National Education Association (NEA) states that although MTSS was originally developed to provide alternatives to aversive interventions for students with disabilities, this framework is now recognized as an effective means for improving educational outcomes for *all* students. According to the

NEA, MTSS facilitates data-driven changes in schoolwide practices that help school personnel identify and expand effective, evidence-based practices throughout the entire school community; identify and improve inefficient practices; and collaboratively address problematic student behaviors before they escalate to a level requiring emergency intervention. According to the Technical Assistance Center on PBIS (funded through DOE’s Office of Special Education Programs), MTSS is a prevention strategy that minimizes seclusion and restraint incidents, in part because it includes multiple, tiered opportunities for intervention that can be tailored to a

student's individual needs. NEA identifies these tiers as primary (school-wide), secondary (classroom), and tertiary (individual) systems of support.

This bill proposes to create a training program administered by the Scaling Up MTSS (SUMS) project. The Legislature has funded this initiative several times, and it is run through the Orange County Office of Education. According to Orange County's Department of Education, SUMS "is a comprehensive framework designed to provide effective technical assistance for districts and schools that supports them in addressing each and every student's academic, behavioral, and social-emotional needs in the most inclusive and equitable learning environment."

Arguments in support. Disability Rights California writes, "Despite the dangers to pupils and school staff when physical restraints are used, there is currently no program or funding to offer K-12 staff evidence-based training on alternatives to using seclusion and restraint. AB 216 is critically important to ensure school staff are properly trained on de-escalation techniques and alternatives to physically restraining or secluding pupils. California has fallen behind federal guidelines and practices adopted by other states to reduce the use of these dangerous practices and instead implement positive behavior techniques."

Previous legislation. AB 1172 (Frazier), Chapter 454, Statutes of 2019, requires that LEAs that send students to NPSs conduct on-site monitoring visits; requires that NPSs notify the CDE of any student-involved incident in which law enforcement is contacted; requires the CDE, if an investigation conducted by the CDE results in a finding that pupil health or safety has been compromised, to immediately suspend or revoke the school's certification; requires that an NPS serving students with significant behavioral needs to have an individual on site who is qualified to implement behavior interventions, and requires that administrators of NPSs hold or be working toward specified credentials or licenses; requires that NPSs train specified staff in evidence-based practices and interventions specific to students' unique behavioral needs.

AB 2657 (Weber), Chapter 998, Statutes of 2018, prohibits the use of restraint or seclusion on any student, except in specified circumstances; establishes parameters and procedures for situations in which restraint or seclusion may be used; and requires data collection and reporting to the CDE.

SB 828 (Education Omnibus Trailer Bill), Chapter 29, Statutes of 2016, appropriated \$20 million to the SPI for allocation to the Orange County Department of Education, for the purpose of directly funding services or practices aligned to the California MTSS framework at participating LEAs.

AB 104 (Education Omnibus Trailer Bill), Chapter 13, Statutes of 2015, appropriated \$10 million to the SPI, to allocate to a designated county office of education (COE) or jointly-applying COEs for the purpose of developing and disseminating statewide resources that encourage and assist LEAs and charter schools in establishing and aligning schoolwide, data-driven systems of learning and behavioral supports, to meet the needs of California's diverse learners in the most inclusive environments possible.

AB 519 (Hernández) of the 2011-12 Session would have prohibited an educational provider from using chemical and mechanical restraints, and limited the use of physical restraint and seclusion in specified circumstances. This bill died in the Assembly Education Committee.

AB 1538 (Ma and Chesbro) of the 2009-10 Session proposed prohibition of certain types of restraint, including restraint used for the purposes of punishment, coercion, convenience, or retaliation by staff, as well as chemical restraint, mechanical restraint, or any technique that interferes with a pupil's ability to breathe. This bill would have also authorized physical restraint during emergencies and as a component of a student's behavioral intervention plan if certain conditions were met, including prior staff training in proper restraint techniques, tracking of the frequency of physical restraint use, and use of restraint in the continuous presence of a staff member responsible for observing the pupil for signs of distress or impaired breathing. This bill would have expanded upon and codified the implementing regulations associated with existing law. AB 1538 died on third reading in the Assembly.

SB 1515 (Kuehl) of the 2007-08 Session would have prohibited an educational provider from using chemical restraint or seclusion, and limited the use of specified types of behavioral, physical, and mechanical restraints. This bill was vetoed by Governor Schwarzenegger with the following veto message:

The safety of California students is of the utmost importance. The California Constitution and state law provide for the protection and safety of all California students. While undue seclusion and restraints, including physical, chemical and mechanical on students are never acceptable, the provisions of this bill are too prescriptive.

Unfortunately, this bill could result in inhibiting school employees from intervening in an emergency situation and place more students at risk of potential harm. I am concerned that it may have unintended consequences that can be detrimental to the best interest of all students. I encourage school districts to be more conscious of maintaining a fair balance between protecting the safety of all their teachers and students, while using reasonable, common sense standards in ensuring that seclusion and restraints are not overly applied in a way that may harm the welfare of specific students.

REGISTERED SUPPORT / OPPOSITION:

Support

Disability Rights California (sponsor)
Educate. Advocate.
Empower Family California
Grupo de Autismo Angeles
Port View Preparatory
State Council on Developmental Disabilities

Opposition

None on file

Analysis Prepared by: Tanya Lieberman / ED. / (916) 319-2087