

Date of Hearing: March 22, 2023

ASSEMBLY COMMITTEE ON EDUCATION
Al Muratsuchi, Chair
AB 1466 (Weber) – As Introduced February 17, 2023

SUBJECT: Student discipline: restraint and seclusion: reporting

SUMMARY: Requires local educational agencies (LEAs), as defined, to annually post on their websites data on seclusions and restraints of students which is currently reported to the California Department of Education (CDE). Specifically, **this bill**:

- 1) Requires that a local educational agency that meets the definition of a “local educational agency” specified in Section 300.28 of Title 34 of the Code of Federal Regulations annually post data about the seclusion and restraint of students on its website.

EXISTING LAW:

- 1) In federal law, defines LEA to include a public board of education or other public authority legally constituted within a state for either administrative control or direction of, or to perform a service function for, public schools; charter schools; and educational service agencies, defined as entities authorized by state law to develop, manage, and provide services or programs to LEAs. (Section 300.28 of Title 34 of the Code of Federal Regulations)
- 2) Requires LEAs that meet the definition of a “local educational agency” specified in Section 300.28 of Title 34 of the Code of Federal Regulations to collect and, no later than three months after the end of a school year, report to the California Department of Education (CDE) annually 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. (Education Code (EC) 49006)
- 3) Requires that this data include all of the following information, disaggregated by race or ethnicity, and gender, with separate counts for students with Section 504 plans, Individualized Education Programs (IEPs), and those without IEPs:
 - a) The number of students subjected to mechanical restraint;
 - b) The number of students subjected to physical restraint;
 - c) The number of students subjected to seclusion;
 - d) The number of times mechanical restraint was used on students;
 - e) The number of times physical restraint was used on students; and
 - f) The number of times seclusion was used on students. (EC 49006)
- 4) Requires that this data be available as a public record. (EC 49006)
- 5) Requires that, no later than three months after the report is due to the CDE, the CDE post the data from the report annually on its website. (EC 49006)

- 6) States that the data collection and reporting is in compliance with federal data reporting requirements and shall not be construed to impose a new program or higher level of service on LEAs or non-public, nonsectarian schools (NPSs) or nonpublic agencies (NPAs). (EC 49006.2)
- 7) Permits an educational provider from using seclusion or 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 restrictive. (EC 49005.4)
- 8) Requires educational providers to avoid, whenever possible, the use of seclusion or behavioral restraint techniques. (EC 49005.6)
- 9) Defines the following terms:
 - a) “Behavioral restraint” means “mechanical restraint” or “physical restraint,” used as an intervention when a student presents an immediate danger to self or to others. “Behavioral restraint” does not include postural restraints or devices used to improve a student’s mobility and independent functioning rather than to restrict movement.
 - b) “Educational provider” means a person who provides educational or related services, support, or other assistance to a student enrolled in an educational program provided by an LEA or NPS/A;
 - c) “Local educational agency” means a school district, county office of education, charter school, the California Schools for the Deaf, and the California School for the Blind.
 - d) “Mechanical restraint” means the use of a device or equipment to restrict a student’s freedom of movement, as specified.
 - e) “Physical restraint” means a personal restriction that immobilizes or reduces the ability of a student to move the student’s torso, arms, legs, or head freely. “Physical restraint” does not include a physical escort, which means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location.
 - f) “Prone restraint” means the application of a behavioral restraint on a student in a facedown position.
 - g) “Seclusion” means the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. “Seclusion” does not include a timeout, which is a behavior management technique that is part of an approved program, that involves the monitored separation of the student in a nonlocked setting, and is implemented for the purpose of calming. (EC 49005.1)
- 10) 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) Use 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) 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 student's face;
- e) Place a student in a facedown position with the student's hands held or restrained behind the student's back; and
- f) 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 student or others. (EC 49005.8)

11) Requires an educational provider to:

- a) Keep constant, direct observation of a student who is in seclusion, which may be through observation of the student through a window, or another barrier, through which the educational provider is able to make direct eye contact with the student. Prohibits observation through indirect means, including through a security camera or a closed-circuit television;
- b) Afford to students 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 student and others; and
- c) Ensure that, if prone restraint techniques are used, a staff member observes the student for any signs of physical distress throughout the use of prone restraint. States that, whenever possible, the staff member monitoring the student shall not be involved in restraining the student. (EC 49005.8)

FISCAL EFFECT: This bill has been keyed a possible state-mandated local program by the Office of Legislative Counsel.

COMMENTS:

Need for the bill. The author states, "Current state law requires LEAs to submit their restraint and seclusion data to the CDE annually. AB 1466 strengthens that provision by requiring LEAs to post that same data on their website; increasing transparency and allowing all families to easily access critical data relevant to their children's school environment."

Current law requires LEA data on seclusion and restraint to be collected and posted on CDE website. This bill requires that LEAs post data on seclusion and restraint of their students on their websites. This data is currently collected and reported pursuant to state and federal law. Current law also requires LEAs to collect and, no later than three months after the end of a school year, report to the CDE annually on the use of behavioral restraints and seclusion for students enrolled in or served by the LEA. Current law requires that, no later than three months after the report is due to the CDE, the CDE post the data from the report annually on its website.

This data must include the following, disaggregated by race or ethnicity, and gender, with separate counts for students with Section 504 plans, IEPs, and those without IEPs:

- The number of students subjected to mechanical restraint;
- The number of students subjected to physical restraint;
- The number of students subjected to seclusion;
- The number of times mechanical restraint was used on students;
- The number of times physical restraint was used on students; and
- The number of times seclusion was used on students.

The CDE collected restraint and seclusion data for the first time from LEAs as part of the 2019–20 CALPADS annual data submission. The CDE provided extensive technical assistance to LEAs regarding this new data collection and the submission of these data, including notices to the field, meetings with stakeholders, and numerous data collection trainings and webinars. To certify the accuracy of the data, LEAs were required to review and approve the information displayed in the CALPADS incident and incident results reports. ***The Committee may wish to consider that***, while not required to by law, the CDE reported these data separately for students attending NPSs and is also reporting these data separately for students who are English learners, socioeconomically disadvantaged, and for migrant, foster, and homeless students.

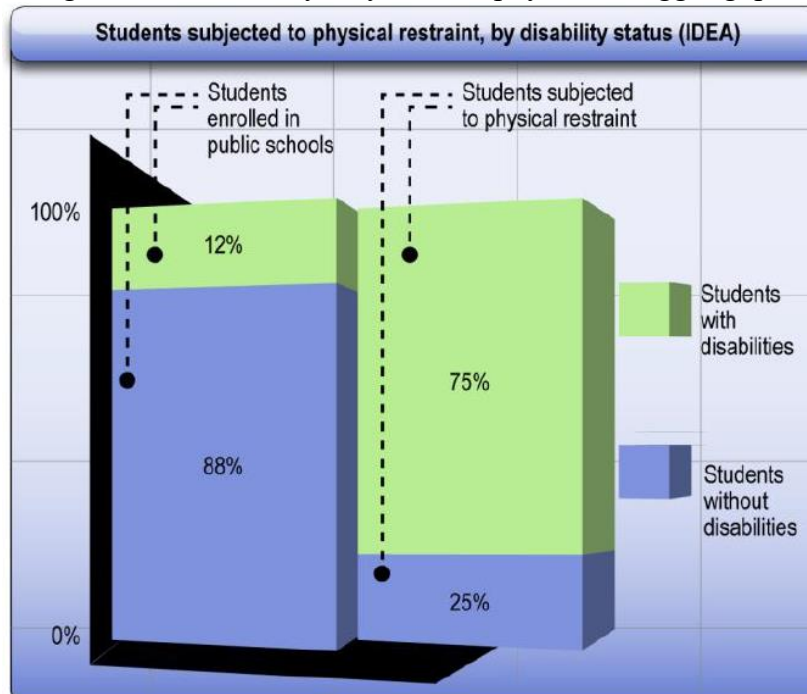
Number of students restrained or secluded in California. Data posted on CDE’s website for 2020-21 shows an unduplicated count of 325 students restrained and 1,299 students secluded in all educational environments (public school, NPS, etc.). Data were redacted for a number of LEAs to comply with privacy protections in state and federal law. ***The Committee may wish to consider that***, under this bill, some LEAs will not be able to post data on their websites in order to comply with these privacy requirements.

Student trauma and deaths caused by seclusion and restraint. In 2014, the OCR reported the following statistics, collected for its biennial Civil Rights Data Collection, for nationwide use of seclusion and restraint in public schools in 2011-12:

- 1) Students with disabilities represent 12% of the national student population, but 58% of those placed in seclusion and 75% of those subjected to physical restraint. In California, 81% of students exposed to physical restraint are IDEA students.
- 2) African American students represent 19% of students with disabilities served with IDEA, but 36% of those subjected to mechanical restraint, defined as the use of devices or equipment to restrict a student’s movement.

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 shows that in 2013-14, African American students represented 15% of the national population of public school students, but 33% of students subjected to mechanical restraint, 25% of students subjected to physical restraint, and 22% of students placed in seclusion. The GAO also found that African American boys constitute 8% of public school students, but 23% 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.”

After investigating case studies involving seclusion and restraint use in schools throughout the nation, the GAO concluded in 2009 that certain types of restraint are more dangerous than others, particularly for children. Specifically, the GAO states that certain techniques are “dangerous because they may involve physical struggling, pressure on the chest, or other



interruptions in breathing.” The GAO also found that children are subjected to restraint or seclusion at higher rates than adults and are at greater risk for injury. Prone restraints, in which students are placed face down on the ground, and restraints that impede breathing were identified as having the greatest risk of death.

In 2016, 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.”

Federal and state actions on seclusion and restraint in schools. 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 website, federal agency, or other entity that collects information on the use of these methods or the extent of their alleged abuse.”

Following the hearing and GAO report release, the U.S. Secretary of Education 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 Positive Behavioral

Interventions and Support (PBIS) and implementation of state regulations that “limit the use of seclusion and restraint under most circumstances.”

The GAO states that there are no federal laws restricting the use of seclusion and restraint in public and private schools. However, in 2012 the DOE 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.”

In 2018, AB 2756 (Weber), Chapter 998, Statutes of 2018, prohibited the use of restraint or seclusion on any student, except in specified circumstances, established parameters and procedures for situations in which restraint or seclusion may be used, and required data collection and reporting to the CDE, and posting of the data on the CDE website.

GAO report highlights problems in federal data collection on seclusion and restraint. Every 2 years, the U.S. Department of Education’s (USDOE) Office of Civil Rights (OCR) requires nearly all school districts to report incidents of restraint and seclusion. A 2020 report by the federal Governmental Accounting Office (GAO) found that the OCR’s quality control processes for data it collects from public school districts on incidents of restraint and seclusion were largely ineffective or did not exist, according to GAO’s analysis of school year 2015-16 federal restraint and seclusion data. The GAO report found that data quality control processes were insufficient to detect problematic data. For example, one rule used to check the quality of data submitted only applied to very large school districts, although GAO and USDOE’s own analyses found erroneous reporting in districts of all sizes. USDOE also had no rules that flagged outliers that might warrant further exploration, such as districts reporting relatively low or high rates of restraint or seclusion. The GAO tested for these outliers and found patterns in some school districts of relatively low and high rates of restraint or seclusion.

The GAO made six recommendations, including that the USDOE expand its data system business rules to cover all districts, develop additional quality controls to address misreporting, address factors underlying misreporting, and refine and clarify its definitions. USDOE agreed with these recommendations.

Arguments in support. The California Association for Parent-Child Advocacy writes, “We support AB 1466 for the reasons below and ask this committee to support the bill as well [excerpted below]:

- The CDE website is difficult to search even for experienced attorneys and advocates;
- Knowing this information is important for evaluating the effectiveness of existing training and determining whether research-based, positive alternatives to restraint and seclusion are being used sufficiently;
- Posting information could potentially allow parents and advocates to correct incorrect information reported by districts;
- Parents are sometimes under the mistaken impression that restraint and/or seclusion are always illegal, or see these practices as affecting only their children and a handful of others, for discriminatory or retaliatory reasons; and
- It is critical to have information at the local level, where effective action is most likely to occur.”

Related legislation. SB 483 (Cortese) of the 2023-24 Session would prohibit the use of prone restraint for any period of time by LEAs, charter schools, the State Special Schools for the Blind and the Deaf, and NPS/A.

AB 611 (Akilah Weber) of the 2023-24 Session would require that a contracting LEA inform parents and guardians of students who attend a nonpublic, nonsectarian school or agency (NPS/A) of the change in its certification status within 14 days of becoming aware of any change to the certification status.

AB 1172 (Frazier), Chapter 454, Statutes of 2019, requires that LEAs that send students to non-public, 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 student 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 216 (Shirley Weber) of the 2019-20 Session would have, among other things, prohibited prone restraint, chemical restraint, and mechanical restraint, and permit seclusion or restraint to be used only when behavior is unpredictable and spontaneous.

AB 2756 (Shirley 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; requires data collection and reporting to the CDE.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association for Parent-Child Advocacy
California Health Coalition Advocacy
Educate. Advocate.
Families for Early Autism Treatment
Inland Regional Center
Learning Rights Law Center

Opposition

One individual

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