An act to add Article 5.5 (commencing with Section 49010) to Chapter 6 of Part 27 of Division 4 of Title 2 of the Education Code, relating to pupil discipline.

LEGISLATIVE COUNSEL’S DIGEST

SB 1515, as introduced, Kuehl. 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 or seclusion, as defined. The bill would specify conditions under which an educational provider would be authorized to use behavioral restraint. The bill would require an educational provider to conduct a debriefing after the use of behavioral restraint, and would require the educational provider to train staff annually in behavioral restraint. The bill would require the State Department of Education to review an educational provider’s compliance with training requirements. The bill would require the department to take steps to establish a data collection system regarding the use of behavioral restraint. By imposing additional requirements on local educational agencies, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,
reimbursement for those costs shall be made pursuant to these statutory
provisions.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Article 5.5 (commencing with Section 49010) is
added to Chapter 6 of Part 27 of Division 4 of Title 2 of the
Education Code, to read:

Article 5.5. Restraint and Seclusion

49010. The Legislature finds and declares all of the following:
(a) Seclusion and restraint are known to cause trauma and injury
to both the individual subjected to these techniques and the
personnel executing them.
(b) The use of seclusion and behavioral restraint are not
therapeutic or educational, and their use does not positively change
behavior.

49011. For purposes of this article, the following definitions
apply:
(a) “Behavioral restraint” means mechanical restraint or physical
restraint used as an intervention when a pupil presents an imminent
risk of serious physical harm to self or others. Behavioral restraint
does not include restraints used for postural support or devices
used to improve a pupil’s mobility and independent functioning
rather than to restrict movement.
(b) “Chemical restraint” means the administration of a drug or
medication to manage a pupil’s behavior or restrict a pupil’s
freedom of movement that is not a standard treatment and dosage
for the pupil’s medical or psychiatric condition.
(c) “Department” means the State Department of Education.
(d) “Educational provider” means an entity or a person that does
both of the following:
(1) Receives support in any form from a program supported in
whole or in part with funds appropriated by the department.
(2) Provides educational or related services, supports, or other
assistance to individuals in a public or private elementary or
secondary school.
Educational provider includes all local educational agencies, including charter schools, the California School for the Deaf, the California School for the Blind, nonpublic schools, and nonpublic agencies.

(e) “Mechanical restraint” means the use of a mechanical device, material, or equipment attached or adjacent to the pupil’s body that he or she cannot easily remove that restricts the freedom of movement of all or part of a pupil’s body, or restricts normal access to the pupil’s body, and that is used as a behavioral restraint.

(f) “Physical restraint” means the use of a manual hold to restrict freedom of movement of all or part of a pupil’s body, or to restrict normal access to the pupil’s body, that is used as a behavioral restraint. Physical restraint is a staff-to-pupil physical contact in which the pupil unwillingly participates. Physical restraint does not include briefly holding a pupil without undue force in order to calm or comfort or to prevent an isolated incident of unpredictable and spontaneous unsafe behavior, such as running into traffic or engaging in a physical altercation, or physical contact intended to gently assist or prompt a pupil in performing a task or to guide or assist a pupil from one area to another.

(g) “Seclusion” means the involuntary confinement of a pupil alone in a room or area from which the pupil physically is prevented from leaving.

(h) “Serious injury” means a significant impairment of a person’s physical condition as determined by qualified medical personnel, and includes, but is not limited to, burns, lacerations, bone fractures, substantial hematomas, or injuries to internal organs.

49012. (a) An educational provider may use behavioral restraint only if all of the following conditions are met:

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

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

(3) Staff implementing the restraint have completed training that is certified by the department as meeting the training requirements of subdivision (b) of Section 49014.

(4) A staff member continuously is present and keeps the pupil under constant face-to-face observation.
(b) Wherever possible, when a pupil is restrained, a staff member not involved in restraining the pupil shall observe the pupil for signs of distress or respiratory compromise.

(c) An educational provider, as soon as possible, but no later than two school days after the use of behavioral restraints, shall conduct a debriefing regarding the incident with the pupil, the pupil’s parent or guardian, as well as with the staff members involved in the incident and the program’s administrator, to discuss how to avoid a similar incident in the future. The pupil’s participation in the debriefing is voluntary. The purpose of the debriefing shall be the following:

(1) Assist the pupil and others to identify the precipitants to the incident, and suggest methods to more safely and constructively respond to the incident.

(2) Assist the staff to understand the precipitants to the incident, and to develop alternative methods of helping the pupil avoid or cope with these incidents.

(3) Help staff devise interventions to address the root cause of the incident and its consequences.

(4) Help assess whether restraint was necessary and whether it was implemented in a manner consistent with staff training and educational provider policies.

(d) The educational provider, in the debriefing, shall provide both the pupil and staff the opportunity to discuss the circumstances resulting in the use of behavioral restraints, and strategies to be used by the staff, the pupil, and others that could prevent the future use of behavioral restraints.

(e) The educational provider shall ensure that staff document in the pupil’s record that the debriefing session took place and the changes to the pupil’s individual education plan that resulted from the debriefing.

49013. (a) An educational provider shall not use seclusion or chemical restraint.

(b) An educational provider shall not use behavioral restraint for the purpose of coercion, discipline, convenience, or retaliation by staff.

(c) An educational provider shall not use any of the following:

(1) 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.
(2) A pillow, blanket, or other item covering the pupil’s face as
part of a physical or mechanical restraint.
(3) An improvised restraint device, such as a sheet or belt.
(4) A physical or mechanical restraint on a pupil who has a
known medical, psychological, or physical condition, and where
there is reason to believe that the use would endanger the pupil’s
life or seriously exacerbate the medical, psychological, or physical
condition of the pupil. Known risk factors include a history of
trauma or abuse, obesity, agitated or excited syndromes, preexisting
heart disease, and respiratory conditions, including bronchitis or
asthma.
(5) Placement of a pupil in a facedown position with the pupil’s
hands held or restrained behind his or her back.
(6) Physical or mechanical restraint as an extended procedure.
(d) An educational provider shall avoid the deliberate use of
prone restraint techniques whenever possible.
49014. (a) All staff of the educational provider executing
behavioral restraint in subdivision (a) of Section 49012 shall be
trained on an annual basis. The educational provider shall maintain
records of staff training.
(b) Training shall include information and skills development
on the following:
(1) The educational provider’s behavioral restraint policies and
procedures, and applicable state and federal laws.
(2) The development and implementation of functional analysis
assessments and behavior support and intervention plans that
address positive behavioral approaches to address the pupil’s
behavior prompting the use of behavioral restraint.
(3) Interventions that may preclude the need for behavioral
restraint, including, but not limited to:
(A) Recognizing and responding appropriately to underlying
reasons for escalating behavior.
(B) Using conflict resolution, effective communication,
de-escalation, and pupil-oriented problem solving strategies that
diffuse and safely resolve emerging crisis situations.
(C) Using positive behavior supports.
(4) The physical and psychological risks associated with the
use of behavioral restraint.
(5) The physical and psychological indicators of distress or trauma associated with the use of behavioral restraint.
(6) The educational provider’s procedures for securing emergency medical services if needed.
(7) The use of behavioral restraint permitted by this chapter.
(8) Effective procedures for conducting debriefings after the use of behavioral restraint.
(9) The documentation of incidents of behavioral restraint.
(10) The reporting procedures required by Section 49015.
(c) The department shall review the educational provider’s compliance with the training requirement under this section for any of the following:
(1) As part of the educational provider’s self-review.
(2) The verification review by the department of the educational provider.
(3) The investigation by the department of any complaint involving the use of behavioral restraint.
49015. (a) An educational provider, as soon as possible but no later than one school day after the use of behavioral restraints, shall notify the pupil’s parents or guardian and the administrator of the educational provider.
(b) The administrator of the educational provider and the special education local plan area director shall be notified the same day if more than one behavioral restraint event occurs per pupil per school day.
(c) An educational provider shall report a death or serious injury of a person occurring during, or related to, the use of behavioral restraint. This report shall be made to the department no later than the close of business day following the death or serious injury.
(d) The department shall report each death or serious injury of a person that occurred during, or was related to, the use of behavioral restraint to the protection and advocacy agency designated in subdivision (i) of Section 4900 of the Welfare and Institutions Code no later than the close of business day following the death or serious injury.
(e) The department annually shall provide information to the Legislature about the progress made in implementing this division. This information shall include the progress of implementation and barriers to achieving full implementation.
The department shall take steps to establish a system of mandatory, consistent, timely, and publicly accessible data collection regarding the use of behavioral restraint. It is the intent of the Legislature that data be compiled in a manner that allows for standard statistical comparison.

(b) Data collected pursuant to this section shall include all of the following:

(1) Type of intervention.
(2) Duration of intervention.
(3) Time of initiation and release.
(4) Date and day of week.
(5) Location of incident, including school and classroom or area where the incident occurred.
(6) Episode or events preceding the incident, including whether harm was directed to self, peers, staff, or others.
(7) Resulting injuries, if any.
(8) Age of pupil.
(9) Type of disability of pupil, if any.
(10) Whether the pupil has a functional analysis assessment or behavior support or intervention plan and the date of the most recent version.

(c) Neither the educational provider nor the department shall be required to implement this section if implementation cannot be achieved with existing resources, unless additional funding for this purpose becomes available. The educational provider and the department incrementally may implement this section in order to accomplish its goals within existing resources through the use of federal or private funding, or upon the subsequent appropriation of funds by the Legislature for this purpose, or all of these.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.