



News

Restrictions Expanded to All Students on Use of Restraints and Seclusion

January 2019



Top Issues

■ #discipline

Until recently, the law pertaining to the use of restraints and seclusion during behavioral emergencies applied only to students with individualized education programs (“IEPs”). Effective January 1, 2019, educational providers now cannot use behavioral restraints or seclusion on any student unless certain circumstances exist. Assembly Bill 2657 (“AB 2657”), which adds sections 49005-49006 to the Education Code, was enacted in response to the California State Legislature’s concern about the increasing yet underreported use of restraints and seclusion on public school children, particularly the disproportionate use of such interventions on students with disabilities and students of color, especially African American males.

AB 2657 sets forth the following requirements:

- Behavioral restraints and seclusion should be avoided “whenever possible” and used 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
- There are six interventions that educational providers must never employ, including restraints that obstruct or restrict a student’s respiratory airway or impair a student’s breathing, placing a student in a facedown position with the student’s hands held or restrained behind his or her back, and a behavioral restraint that is employed longer than is necessary to contain the behavior.



- Behavioral restraints and seclusion that are imposed as a means of coercion, discipline, convenience or retaliation are prohibited.
- Use of restraints and seclusion are limited to bona fide emergencies.
- If an educational provider needs to place a student in seclusion, the educational provider must maintain constant, direct observation of the student in a manner that allows direct eye contact.
- When using behavioral restraints, the educational provider must afford the student the least restrictive alternative and the maximum freedom of movement, including using the least number of restraint points while ensuring the physical safety of the student and others.
- If a prone restraint (defined as the application of a behavioral restraint on a student in a facedown position) is used, a staff member (preferably someone other than the person administering the restraint) must observe and monitor the student to check for any signs of physical distress.

AB 2657 also requires an LEA to annually report to the California Department of Education (“CDE”) on behavioral restraints and seclusion used on general education students, students with IEPs, and students with Section 504 plans, disaggregated by race/ethnicity and gender. CDE must post this data on its internet website. To date, CDE has not issued any directives on what reporting format it will require.

In light of these changes, LEAs should consider training their educational providers on the appropriate use of behavioral restraints and seclusion, including how and when to administer such interventions. LEAs also should start developing information databases from which they can develop reports to provide to CDE within three months of the end of the 2018-19 school year and subsequent school years.

If you have any questions regarding AB 2657 and the use of behavioral restraints, please contact one of our six offices.



Professionals



Kathleen Anderson

Partner

Fresno

559.860.4707

kmcdonald@f3law.com



Tiffany M. Santos

Partner

San Diego

760.304.6013

tsantos@f3law.com