

ASSEMBLY BILL NO. 56—COMMITTEE ON EDUCATION

(ON BEHALF OF THE CLARK COUNTY SCHOOL DISTRICT)

PREFILED DECEMBER 9, 2008

Referred to Committee on Education

SUMMARY—Revises provisions governing pupils with disabilities.
(BDR 34-635)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to education; revising provisions governing the use of physical restraint and mechanical restraint on pupils with disabilities; revising provisions relating to reports of the use of restraints and reports of violations; providing for the reporting of the use of corporal punishment on a pupil in public school; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law prescribes the requirements for the use of physical restraint or mechanical restraint on a pupil with a disability who is enrolled in a public school or a private school. (NRS 388.521-388.5315, 394.353-394.378) **Sections 1 and 7** of this bill require each school district and each private school which provides services to pupils with disabilities to submit annual reports to the Department of Education on the use of physical restraint and mechanical restraint on pupils with disabilities during the previous school year.

Sections 3, 4, 9 and 10 of this bill provide that if physical restraint or mechanical restraint is used on a pupil with a disability three times during 1 school year, the circumstances of the restraint must be reviewed and reported. If such restraint is used five times during 1 school year, the pupil's individualized education program or the pupil's services plan, as applicable, developed pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., must be reviewed. If the restraint continues after such a review, the school district or private school, as applicable, and the pupil's parent or legal guardian shall include additional positive behavioral approaches in the pupil's services plan or program, as applicable, so that the restraint does not continue. (NRS 388.5275, 388.528, 394.368, 394.369)



Existing law prescribes the requirements for the use of mechanical restraint on a pupil with a disability enrolled in a public school or private school, including a requirement that the pupil's physician issue a medical order authorizing the use of mechanical restraint before the application of the restraint or not later than 15 minutes after the application of the restraint. (NRS 388.528, 394.369) **Sections 4 and 10** of this bill eliminate the requirement of a medical order for each application of the mechanical restraint and instead require that a medical order authorizing the use of mechanical restraint be included in the pupil's individualized education program or the pupil's services plan, as applicable.

Existing law provides that corporal punishment may not be used on a pupil in any public school. (NRS 392.4633) **Section 6** of this bill provides that a person may report the use of corporal punishment on a pupil to the agency which provides child welfare services in the county in which the school district is located. If the agency finds that the report is substantiated, the agency shall forward the report to the Department, local law enforcement agency and the county district attorney for further investigation.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 388 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The board of trustees of each school district shall, on or before August 1 of each year, prepare a report in the form prescribed by the Department that includes, without limitation, for each school within the school district:

(a) The number of instances in which physical restraint was used at the school during the immediately preceding school year, which must indicate the number of instances per teacher employed at the school and per pupil enrolled at the school without disclosing personally identifiable information about the teacher or the pupil;

(b) The number of instances in which mechanical restraint was used at the school during the immediately preceding school year, which must indicate the number of instances per teacher employed at the school and per pupil enrolled at the school without disclosing personally identifiable information about the teacher or the pupil; and

(c) The number of violations of NRS 388.521 to 388.5315, inclusive, by type of violation, which must indicate the number of violations per teacher employed at the school and per pupil enrolled at the school without disclosing personally identifiable information about the teacher or the pupil.

2. The board of trustees of each school district shall prescribe a form for each school within the school district to report the information set forth in subsection 1 to the school district and the



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1 *time by which those reports must be submitted to the school*
2 *district.*

3 *3. On or before August 15 of each year, the board of trustees*
4 *of each school district shall submit to the Department the written*
5 *report prepared by the board of trustees pursuant to subsection 1.*

6 *4. The Department shall compile the data received by each*
7 *school district pursuant to subsection 3 and prepare a written*
8 *report of the compilation, disaggregated by school district. On or*
9 *before October 1 of each year, the Department shall submit the*
10 *written compilation:*

11 *(a) In even-numbered years, to the Director of the Legislative*
12 *Counsel Bureau for transmission to the next regular session of the*
13 *Legislature.*

14 *(b) In odd-numbered years, to the Legislative Committee on*
15 *Education.*

16 *5. If a particular item in a report required pursuant to this*
17 *section would reveal personally identifiable information about an*
18 *individual pupil or teacher, that item must not be included in the*
19 *report.*

20 **Sec. 2.** NRS 388.521 is hereby amended to read as follows:

21 388.521 As used in NRS 388.521 to 388.5315, inclusive, *and*
22 *section 1 of this act*, unless the context otherwise requires, the
23 words and terms defined in NRS 388.5215 to 388.526, inclusive,
24 have the meanings ascribed to them in those sections.

25 **Sec. 3.** NRS 388.5275 is hereby amended to read as follows:

26 388.5275 1. Except as otherwise provided in subsection 2,
27 physical restraint may be used on a pupil with a disability only if:

28 (a) An emergency exists that necessitates the use of physical
29 restraint;

30 (b) The physical restraint is used only for the period that is
31 necessary to contain the behavior of the pupil so that the pupil is no
32 longer an immediate threat of causing physical injury to himself or
33 others or causing severe property damage; and

34 (c) The use of force in the application of physical restraint does
35 not exceed the force that is reasonable and necessary under the
36 circumstances precipitating the use of physical restraint.

37 2. Physical restraint may be used on a pupil with a disability
38 and the provisions of subsection 1 do not apply if the physical
39 restraint is used to:

40 (a) Assist the pupil in completing a task or response if the pupil
41 does not resist the application of physical restraint or if his
42 resistance is minimal in intensity and duration;

43 (b) Escort or carry ~~the~~ *the* pupil to safety if the pupil is in danger
44 in his present location; or



(c) Conduct medical examinations or treatments on the pupil that are necessary.

3. If physical restraint is used on a pupil with a disability in an emergency, the use of the procedure must be reported in the pupil's cumulative record and a confidential file maintained for the pupil not later than 1 working day after the procedure is used. A copy of the report must be provided to the board of trustees of the school district ~~{ }~~ *or its designee*, the pupil's individualized education program team and the parent or guardian of the pupil. If the board of trustees *or its designee* determines that a denial of the pupil's rights has occurred, the board of trustees ~~{may}~~ *or its designee shall* submit a report to the Department in accordance with NRS 388.5315.

4. If a pupil with a disability has three reports of the use of physical restraint in his record pursuant subsection 3 in 1 school year, the school district shall notify the school in which the pupil is enrolled to review the circumstances of the use of the restraint on the pupil and provide a report to the school district on its findings.

5. If a pupil with a disability has five reports of the use of physical restraint in his record pursuant to subsection 3 in 1 school year, the pupil's individualized education program must be reviewed in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1414 et seq., and the regulations adopted pursuant thereto. If physical restraint continues after the pupil's individualized education program has been reviewed, the school district and the parent or legal guardian of the pupil shall include in the pupil's individualized education program additional methods that are appropriate for the pupil to ensure that the restraint does not continue, including, without limitation, mentoring, training, a functional behavioral assessment, a positive behavior plan and positive behavioral supports.

Sec. 4. NRS 388.528 is hereby amended to read as follows:

388.528 1. Except as otherwise provided in subsection 2, mechanical restraint may be used on a pupil with a disability only if:

(a) An emergency exists that necessitates the use of mechanical restraint;

(b) A medical order authorizing the use of mechanical restraint ~~{is obtained}~~ from the pupil's treating physician *is included in the pupil's individualized education program* before the application of the mechanical restraint ; ~~{or not later than 15 minutes after the application of the mechanical restraint;}~~

(c) The physician who signed the order required pursuant to paragraph (b) or the attending physician examines the pupil as soon as practicable ~~{ }~~ *after the application of the mechanical restraint;*



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(d) The mechanical restraint is applied by a member of the staff of the school who is trained and qualified to apply mechanical restraint;

(e) The pupil is given the opportunity to move and exercise the parts of his body that are restrained at least 10 minutes per every 60 minutes of restraint, unless otherwise prescribed by the physician who signed the order;

(f) A member of the staff of the school lessens or discontinues the restraint every 15 minutes to determine whether the pupil will stop ~~for control his inappropriate behavior~~ *injury to himself* without the use of the restraint;

(g) The record of the pupil contains a notation that includes the time of day that the restraint was lessened or discontinued pursuant to paragraph (f), the response of the pupil and the response of the member of the staff of the school who applied the mechanical restraint;

(h) A member of the staff of the school continuously monitors the pupil during the time that mechanical restraint is used on the pupil; and

(i) The mechanical restraint is used only for the period that is necessary to contain the behavior of the pupil so that the pupil is no longer an immediate threat of causing physical injury to himself . ~~for others or causing severe property damage.~~

2. Mechanical restraint may be used on a pupil with a disability and the provisions of subsection 1 do not apply if the mechanical restraint is used to:

(a) Treat the medical needs of the pupil;

(b) Protect a pupil who is known to be at risk of injury to himself because he lacks coordination or suffers from frequent loss of consciousness;

(c) Provide proper body alignment to a pupil; or

(d) Position a pupil who has physical disabilities in a manner prescribed in the pupil's individualized education program.

3. If mechanical restraint is used on a pupil with a disability in an emergency, the use of the procedure must be reported in the pupil's cumulative record and a confidential file maintained for the pupil not later than 1 working day after the procedure is used. A copy of the report must be provided to the board of trustees of the school district ~~H~~ *or its designee*, the pupil's individualized education program team and the parent or guardian of the pupil. If the board of trustees *or its designee* determines that a denial of the pupil's rights has occurred, the board of trustees ~~may~~ *or its designee shall* submit a report to the Department in accordance with NRS 388.5315.



1 **4. If a pupil with a disability has three reports of the use of**
2 **mechanical restraint in his record pursuant to subsection 3 in 1**
3 **school year, the school district shall notify the school in which the**
4 **pupil is enrolled to review the circumstances of the use of**
5 **the restraint on the pupil and provide a report of its findings to the**
6 **school district.**

7 **5. If a pupil with a disability has five reports of the use of**
8 **mechanical restraint in his record pursuant to subsection 3 in 1**
9 **school year, the pupil's individualized education program must be**
10 **reviewed in accordance with the Individuals with Disabilities**
11 **Education Act, 20 U.S.C. §§ 1414 et seq., and the regulations**
12 **adopted pursuant thereto. If mechanical restraint continues after**
13 **the pupil's individualized education program has been reviewed,**
14 **the school district and the parent or legal guardian of the pupil**
15 **shall include in the pupil's individualized education program**
16 **additional methods that are appropriate for the pupil to ensure**
17 **that restraint does not continue, including, without limitation,**
18 **mentoring, training, a functional behavioral assessment, a positive**
19 **behavior plan and positive behavioral supports.**

20 **Sec. 5.** NRS 388.5315 is hereby amended to read as follows:

21 388.5315 1. A denial of rights of a pupil with a disability
22 pursuant to NRS 388.521 to 388.5315, inclusive, **and section 1 of**
23 **this act** must be entered in the pupil's cumulative record and a
24 confidential file maintained for that pupil. Notice of the denial must
25 be provided to the board of trustees of the school district ~~or its~~ **or its**
26 **designee.**

27 2. If the board of trustees of a school district **or its designee**
28 receives notice of a denial of rights pursuant to subsection 1, ~~the~~ **the**
29 **board of trustees or its designee** shall cause a full report to be
30 prepared which must set forth in detail the factual circumstances
31 surrounding the denial. A copy of the report must be provided to the
32 Department.

33 3. The Department:

34 (a) Shall receive reports made pursuant to subsection 2;

35 (b) May investigate apparent violations of the rights of pupils
36 with disabilities; and

37 (c) May act to resolve disputes relating to apparent violations.

38 **Sec. 6.** NRS 392.4633 is hereby amended to read as follows:

39 392.4633 1. Corporal punishment ~~may~~ **must** not be
40 administered upon a pupil in any public school.

41 2. Subsection 1 does not prohibit any teacher, principal or other
42 licensed person from defending himself if attacked by a pupil.

43 3. **A person may report the use of corporal punishment on a**
44 **pupil to the agency which provides child welfare services in the**
45 **county in which the school district is located. If the agency**



determines that the complaint is substantiated, the agency shall forward the complaint to the Department, the appropriate local law enforcement agency within the county and the district attorney's office within the county for further investigation.

4. As used in this section ~~[, "corporal punishment"]~~:

(a) *"Agency which provides child welfare services" has the meaning ascribed to it in NRS 432B.030.*

(b) *"Corporal punishment" means the intentional infliction of physical pain upon or the physical restraint of a pupil for disciplinary purposes. The term does not include the use of reasonable and necessary force:*

~~[(a)]~~ (1) *To quell a disturbance that threatens physical injury to any person or the destruction of property;*

~~[(b)]~~ (2) *To obtain possession of a weapon or other dangerous object within a pupil's control;*

~~[(c)]~~ (3) *For the purpose of self-defense or the defense of another person; or*

~~[(d)]~~ (4) *To escort a disruptive pupil who refuses to go voluntarily with the proper authorities.*

Sec. 7. Chapter 394 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The administrative head of each private school that provides instruction to pupils with disabilities shall, on or before August 15 of each year, prepare a report that includes, without limitation:

(a) *The number of instances in which physical restraint was used at the private school during the immediately preceding school year, which must indicate the number of instances per teacher employed at the private school and per pupil enrolled at the private school without disclosing personally identifiable information about the teacher or the pupil;*

(b) *The number of instances in which mechanical restraint was used at the private school during the immediately preceding school year, which must indicate the number of instances per teacher employed at the private school and per pupil enrolled at the private school without disclosing personally identifiable information about the teacher or the pupil; and*

(c) *The number of violations of NRS 394.353 to 394.378, inclusive, by type of violation, which must indicate the number of violations per teacher employed at the private school and per pupil enrolled at the private school.*

2. On or before August 15 of each year, the administrative head of each private school that provides instruction to pupils with disabilities shall submit to the Department the report prepared



1 *pursuant to subsection 1. The report must be in the form*
2 *prescribed by the Department.*

3 *3. The Department shall compile the data submitted by each*
4 *private school pursuant to subsection 2 and prepare a written*
5 *report of the compilation, disaggregated by each private school.*
6 *On or before October 1 of each year, the Department shall submit*
7 *the written compilation:*

8 *(a) In even-numbered years, to the Director of the Legislative*
9 *Counsel Bureau for transmission to the next regular session of the*
10 *Legislature.*

11 *(b) In odd-numbered years, to the Legislative Committee on*
12 *Education.*

13 *4. If a particular item in a report required pursuant to this*
14 *section would reveal personally identifiable information about an*
15 *individual pupil or teacher, that item must not be included in the*
16 *report.*

17 **Sec. 8.** NRS 394.353 is hereby amended to read as follows:

18 394.353 As used in NRS 394.353 to 394.378, inclusive, *and*
19 *section 7 of this act*, unless the context otherwise requires, the
20 words and terms defined in NRS 394.354 to 394.365, inclusive,
21 have the meanings ascribed to them in those sections.

22 **Sec. 9.** NRS 394.368 is hereby amended to read as follows:

23 394.368 1. Except as otherwise provided in subsection 2,
24 physical restraint may be used on a pupil with a disability only if:

25 (a) An emergency exists that necessitates the use of physical
26 restraint;

27 (b) The physical restraint is used only for the period that is
28 necessary to contain the behavior of the pupil so that the pupil is no
29 longer an immediate threat of causing physical injury to himself or
30 others or causing severe property damage; and

31 (c) The use of force in the application of physical restraint does
32 not exceed the force that is reasonable and necessary under the
33 circumstances precipitating the use of physical restraint.

34 2. Physical restraint may be used on a pupil with a disability
35 and the provisions of subsection 1 do not apply if the physical
36 restraint is used to:

37 (a) Assist the pupil in completing a task or response if the pupil
38 does not resist the application of physical restraint or if his
39 resistance is minimal in intensity and duration;

40 (b) Escort or carry ~~to~~ *the* pupil to safety if the pupil is in danger
41 in his present location; or

42 (c) Conduct medical examinations or treatments on the pupil
43 that are necessary.

44 3. If physical restraint is used on a pupil with a disability in an
45 emergency, the use of the procedure must be reported in the pupil's



1 cumulative record not later than 1 working day after the procedure is
2 used. A copy of the report must be provided to the Superintendent,
3 the administrator of the private school, the pupil's individualized
4 education program team, if applicable, and the parent or guardian of
5 the pupil. If the administrator of the private school determines that a
6 denial of the pupil's rights has occurred, the administrator
7 shall submit a report to the Superintendent in accordance with
8 NRS 394.378.

9 *4. If a pupil with a disability has three reports of the use of*
10 *physical restraint in his record pursuant to subsection 3 in 1*
11 *school year, the private school in which the pupil is enrolled shall*
12 *review the circumstances of the restraint on the pupil and report*
13 *its findings to the Superintendent.*

14 *5. If a pupil with a disability has five reports of the use of*
15 *physical restraint in his record pursuant to subsection 3 in 1*
16 *school year, the pupil's individualized education program or the*
17 *pupil's services plan, as applicable, must be reviewed in*
18 *accordance with the Individuals with Disabilities Education Act,*
19 *20 U.S.C. §§ 1414 et seq., and the regulations adopted pursuant*
20 *thereto. If physical restraint continues after the pupil's*
21 *individualized education program or services plan has been*
22 *reviewed, the private school and the parent or legal guardian of*
23 *the pupil shall include in the pupil's individualized education*
24 *program or services plan, as applicable, additional methods that*
25 *are appropriate for the pupil to ensure that restraint does not*
26 *continue, including, without limitation, mentoring, training, a*
27 *functional behavioral assessment, a positive behavior plan and*
28 *positive behavioral supports.*

29 **Sec. 10.** NRS 394.369 is hereby amended to read as follows:

30 394.369 1. Except as otherwise provided in subsection 2,
31 mechanical restraint may be used on a pupil with a disability only if:

32 (a) An emergency exists that necessitates the use of mechanical
33 restraint;

34 (b) A medical order authorizing the use of mechanical restraint
35 ~~[is obtained]~~ from the pupil's treating physician *is included in the*
36 *pupil's services plan developed pursuant to 34 C.F.R. § 300.138 or*
37 *the pupil's individualized education program, whichever is*
38 *appropriate,* before the application of the mechanical restraint ; ~~for~~
39 ~~not later than 15 minutes after the application of the mechanical~~
40 ~~restraint;]~~

41 (c) The physician who signed the order required pursuant to
42 paragraph (b) or the attending physician examines the pupil as soon
43 as practicable after the application of the mechanical restraint;



(d) The mechanical restraint is applied by a member of the staff of the private school who is trained and qualified to apply mechanical restraint;

(e) The pupil is given the opportunity to move and exercise the parts of his body that are restrained at least 10 minutes per every 60 minutes of restraint, unless otherwise prescribed by the physician who signed the order;

(f) A member of the staff of the private school lessens or discontinues the restraint every 15 minutes to determine whether the pupil will stop ~~for control his inappropriate behavior~~ *injury to himself* without the use of the restraint;

(g) The record of the pupil contains a notation that includes the time of day that the restraint was lessened or discontinued pursuant to paragraph (f), the response of the pupil and the response of the member of the staff of the private school who applied the mechanical restraint;

(h) A member of the staff of the private school continuously monitors the pupil during the time that mechanical restraint is used on the pupil; and

(i) The mechanical restraint is used only for the period that is necessary to contain the behavior of the pupil so that the pupil is no longer an immediate threat of causing physical injury to himself . ~~for others or causing severe property damage.~~

2. Mechanical restraint may be used on a pupil with a disability and the provisions of subsection 1 do not apply if the mechanical restraint is used to:

(a) Treat the medical needs of the pupil;

(b) Protect a pupil who is known to be at risk of injury to himself because he lacks coordination or suffers from frequent loss of consciousness;

(c) Provide proper body alignment to a pupil; or

(d) Position a pupil who has physical disabilities in a manner prescribed in the pupil's service plan developed pursuant to 34 C.F.R. § ~~300.455~~ *300.138* or the pupil's individualized education program, whichever is appropriate.

3. If mechanical restraint is used on a pupil with a disability in an emergency, the use of the procedure must be reported in the pupil's cumulative record not later than 1 working day after the procedure is used. A copy of the report must be provided to the Superintendent, the administrator of the private school, the pupil's individualized education program team, if applicable, and the parent or guardian of the pupil. If the administrator of the private school determines that a denial of the pupil's rights has occurred, the administrator shall submit a report to the Superintendent in accordance with NRS 394.378.



1 4. *If a pupil with a disability has three reports of the use of*
2 *mechanical restraint in his record pursuant to subsection 3 in 1*
3 *school year, the private school in which the pupil is enrolled shall*
4 *review the circumstances of the use of the restraint on the pupil*
5 *and provide a report to the Superintendent on its findings.*

6 5. *If a pupil with a disability has five reports of the use of*
7 *mechanical restraint in his record pursuant to subsection 3 in 1*
8 *school year, the pupil's individualized education program or the*
9 *pupil's services plan, as applicable, must be reviewed in*
10 *accordance with the Individuals with Disabilities Education Act,*
11 *20 U.S.C. §§ 1414 et seq., and the regulations adopted pursuant*
12 *thereto. If mechanical restraint continues after the pupil's*
13 *individualized education program or services plan has been*
14 *reviewed, the private school and the parent or legal guardian of*
15 *the pupil shall include in the pupil's individualized education*
16 *program or services plan, as applicable, additional methods that*
17 *are appropriate for the pupil to ensure that the restraint does not*
18 *continue, including, without limitation, mentoring, training, a*
19 *functional behavioral assessment, a positive behavior plan and*
20 *positive behavioral supports.*

21 6. As used in this section, “individualized education program”
22 has the meaning ascribed to it in 20 U.S.C. § 1414(d)(1)(A).

23 **Sec. 11.** This act becomes effective on July 1, 2009.

