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FISCAL IMPACT REPORT

ORIGINAL DATE 2/26/17 CS/CS/75/aHF1#1
 LAST UPDATED 3/12/17 HB /aSJC

SPONSOR HJC

SHORT TITLE Limit School Use of Restraint & Seclusion SB _____

ANALYST Fernandez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications				

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB397

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Public Education Department (PED) on-file
- Department of Health (DOH) on-file
- Office of the Attorney General (OAG) on-file
- Public School Insurance Authority (PSIA) on-file

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to House Judiciary Committee Substitute for House Education Committee Substitute for House Bill 75 removes security aides and school police officers from subsection G. The subsection states “the provisions of this section shall not be interpreted as addressing the conduct of ….” and listed certain personnel. The amendment also adds to the definition section, “first responder” – means a person based outside of a school who functions within the emergency medical services system and who is dispatched to a school to provide initial emergency aid.

Synopsis of HF1#1

House Floor Amendment#1 exempts any school located within a county juvenile detention center or a state-operated facility from the provisions of the new section. The amendment also corrects a typographical error.

Synopsis of Bill

House Judiciary Committee Substitute for House Education Committee Substitute for House Bill 75 adds a new section to the Public School Code to specify the conditions when restraint or seclusion techniques may be permitted in schools; to require schools to adopt policies and procedures for the use of restraint or seclusion techniques in a school safety plan; requires schools to establish reporting and documentation procedures when restraint or seclusion is used on a student, including notification of the student’s parent or guardian.

FISCAL IMPLICATIONS

In an analysis for a similar bill, PED indicated there would be additional costs associated with informing school districts and state charter schools about the new section of the Public School Code and with potential costs for schools to write and adopt policies and procedures regarding the use of physical restraints and seclusion. In addition, some training costs may be incurred for schools to train employees in the safe and effective use of restrain and seclusion techniques. PSIA indicates they provide defense costs and negotiate settlements for claims arising out of improper or inappropriate restraint and seclusion. PSIA estimates the cost for at least six claims per fiscal year for improper seclusion and restraint could be \$500 thousand for defense costs and \$1.5 million for settlement costs for a total cost of \$1.8 million per year.

SIGNIFICANT ISSUES

A school is permitted to use restraint or seclusion techniques on a student only if both of the following apply:

1. The student’s behavior presents an imminent danger of serious physical harm to the student or others; and
2. Less restrictive interventions appear insufficient to mitigate the imminent danger of serious physical harm.

When a restraint or seclusion technique is used on a student: school employees must maintain continuous visual observation and monitoring; the technique shall end when the student’s behavior no longer presents an imminent danger of serious physical harm to either the student or others; restraint or seclusion shall only be used by school personnel trained in the safe and effective use except if an emergency situation does not allow sufficient time to reach trained staff; the restraint technique must not impede the student’s ability to breath or speak; and the restraint technique can’t be out of proportion to the student’s age or physical condition.

Schools are required to adopt policies and procedures for the use of restraint and seclusion techniques in a school safety plan that include:

- The plan must not be specific to an individual student; and
- The plan must be drafted by a team that includes at least one special education expert.

Schools are required to establish a reporting and documentation process when a restraint or seclusion technique has been used on a student and must include the following:

- Written or oral notification to the student’s parent or guardian the same day of the

occurrence, unless circumstances prevent such notification, then 24-hour notice shall be provided;

- Written documentation to the student’s parent or guardian that includes information about persons, location, or activities that may have triggered the behavior, the type of restraint or seclusion technique used and the duration of use; and
- Schools must review strategies to address dangerous behavior of a student if the restraint or seclusion has occurred two or more times in a 30-calendar-day period. This section specifies criteria that must be included in the review.

If a school calls law enforcement instead of using a restraint or seclusion technique, the school must comply with the reporting, documentation and review procedures listed above.

In an analysis for a similar bill, PED provided information regarding the use of restraint and seclusion as follows:

In March 2006, the PED issued comprehensive guidance on the use of physical restraints as a behavioral intervention for students with disabilities. The guidance indicates that it does not condone the use of mechanical restraints for students, requires the application of physical restraint to be performed by trained personnel only, and provides recommendations for documentation and reporting of restraint and the development of local policies.

In an analysis for a similar bill, DOH noted that according to the U. S. Department of Education, restraint or seclusion should not be used as routine school safety measures and implemented only in situations where a child’s behavior poses imminent danger of serious physical harm to self or others and should not be used as a routine strategy to address instructional problems, inappropriate behavior, as a means of coercion, retaliation or as a convenience.

In an analysis for a similar bill, the OAG indicated that while other states have passed similar legislation, “it does not appear that Congress has enacted any equivalent federal laws.”

PERFORMANCE IMPLICATIONS

In an analysis for a similar bill, DOH indicates that this bill relates to the 2017-2019 Strategic Plans, Result 3: Simple and Effective Administrative Processes that Support Health Status Improvement. Sequoyah Adolescent Treatment Center already has policies and procedures in place outlining the appropriate use of physical restraint and seclusion in accordance with the Children’s Mental Health and Developmental Disabilities Act, NMSA 1978, §32A-6A-1, *et seq.*

In an analysis for a similar bill, PED indicated this bill may support the PED’s strategic lever by ensuring that all students are provided a safe and supportive learning environment.

ADMINISTRATIVE IMPLICATIONS

PED would need to communicate this new section of the Public School Code to school districts and charter schools and schools would be required to write and adopt policies and procedures regarding the use of physical restraints and seclusion.

RELATIONSHIP

Relates to SB397, which enacts Michael’s Law, limiting the use of restraint and seclusion.

OTHER SUBSTANTIVE ISSUES

In an analysis for a similar bill, DOH provided the following:

The Children’s Mental Health and Developmental Disabilities Act governs the manner in which physical restraint and seclusion may be used in a treatment setting, including but not limited to when and how physical seclusion and restraint may be used, who may apply physical restraints and seclusion, specific requirements for seclusion rooms, and required documentation, parental notification, debriefing, and revision of a child’s treatment plan after physical restraint or seclusion have been applied.

CF/al/sb