

BIP Trailer Bill Language proposed for adoption 5/7/13

Proposed DOF TB Language	Consensus TBL proposed for adoption
<p>SEC. 27. 56520. (a) The Legislature finds and declares all of the following:</p> <p>(1) That the state has continually sought to provide an appropriate and meaningful educational program in a safe and healthy environment for all children regardless of possible physical, mental, or emotionally disabling conditions.</p> <p>(2) That teachers of children with special needs require training and guidance that provides positive ways for working successfully with children who have difficulties conforming to acceptable behavioral patterns in order to provide an environment in which learning can occur.</p> <p>(23) That procedures for the elimination of maladaptive behaviors shall not include those deemed unacceptable under Section 49001 or those that cause pain or trauma.</p> <p><u>(3) That this chapter shall not exceed the requirements of federal law, create new or separate state requirements, or result in a level of state service beyond that needed to comply with federal law and regulations.</u></p> <p>(b) It is the intent of the Legislature:</p> <p>(1) That when <u>positive</u> behavioral interventions <u>and supports, and other strategies</u> are used, they be used in consideration of the pupil's physical freedom and social interaction, be administered in a manner that respects human dignity and personal privacy, and that ensure a pupil's right to placement in the least restrictive educational environment.</p> <p>(2) That behavioral management <u>intervention</u> plans be developed and used, to the extent possible, in a consistent manner when the pupil is also the responsibility of another agency for residential care or related services.</p>	<p>SEC. 27. 56520. (a) The Legislature finds and declares all of the following:</p> <p>(1) That the state has continually sought to provide an appropriate and meaningful educational program in a safe and healthy environment for all children regardless of possible physical, mental, or emotionally disabling conditions.</p> <p>(2) That teachers of children with special needs require training and guidance that provides positive ways for working successfully with children who have difficulties conforming to acceptable behavioral patterns in order to provide an environment in which learning can occur.</p> <p>(2) That procedures for the elimination of maladaptive behaviors shall not include those deemed unacceptable under Section 49001 or those that cause pain or trauma.</p> <p>(b) It is the intent of the Legislature:</p> <p>(1) That when <u>positive</u> behavioral interventions <u>and supports, and other strategies</u> are used, they be used in consideration of the pupil's physical freedom and social interaction, be administered in a manner that respects human dignity and personal privacy, and that ensure a pupil's right to placement in the least restrictive educational environment.</p> <p>(2) That behavioral management <u>intervention</u> plans be developed and used, to the extent possible, in a consistent manner when the pupil is also the responsibility of another agency for residential care or related services.</p> <p>3) That a statewide study be conducted of the use of behavioral interventions with California individuals with exceptional needs receiving special education and related services.</p> <p>(4)</p> <p>(3) That training programs be developed and implemented in</p>

<p>(3) That a statewide study be conducted of the use of behavioral interventions with California individuals with exceptional needs receiving special education and related services.</p> <p>(4)</p> <p>(3) That training programs be developed and implemented in institutions of higher education that train teachers and that in-service training programs be made available as necessary in school districts and county offices of education to assure <u>ensure</u> that adequately trained staff are available to work effectively with the behavioral intervention needs of individuals with exceptional needs.</p>	<p>institutions of higher education that train teachers and that in-service training programs be made available as necessary in school districts and county offices of education to assure <u>ensure</u> that adequately trained staff are available to work effectively with the behavioral intervention needs of individuals with exceptional needs.</p>
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<p><u>SEC. 28. 56521.1 (a) Emergency interventions may only be used to control unpredictable, spontaneous behavior which poses clear and present danger of serious physical harm to the individual with exceptional needs, or others, and that cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior.</u></p> <p><u>(b) Emergency interventions shall not be used as a substitute for the systematic behavioral intervention plan that is designed to change, replace, modify, or eliminate a targeted behavior.</u></p> <p><u>(c) No emergency intervention shall be employed for longer than is necessary to contain the behavior. A situation which requires prolonged use of an emergency intervention shall require staff to seek assistance of the school site administrator or law enforcement agency, as applicable to the situation.</u></p> <p><u>(d) Emergency interventions shall not include:</u></p> <p><u>(1) Locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room.</u></p> <p><u>(2) Employment of a device, material, or objects that simultaneously immobilize all four extremities, except that techniques such as prone containment may be used as an emergency intervention by staff trained in such procedures.</u></p>	<p><u>SEC. 28. 56521.1 (a) Emergency interventions may only be used to control unpredictable, spontaneous behavior which poses clear and present danger of serious physical harm to the individual with exceptional needs, or others, and that cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior.</u></p> <p><u>(b) Emergency interventions shall not be used as a substitute for the systematic behavioral intervention plan that is designed to change, replace, modify, or eliminate a targeted behavior.</u></p> <p><u>(c) No emergency intervention shall be employed for longer than is necessary to contain the behavior. A situation which requires prolonged use of an emergency intervention shall require staff to seek assistance of the school site administrator or law enforcement agency, as applicable to the situation.</u></p> <p><u>(d) Emergency interventions shall not include:</u></p> <p><u>(1) Locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room.</u></p> <p><u>(2) Employment of a device, material, or objects that simultaneously immobilize all four extremities, except that techniques such as prone containment may be used as an emergency intervention by staff trained in such procedures.</u></p>
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(3) An amount of force that exceeds that which is reasonable and necessary under the circumstances.

(e) To prevent emergency interventions from being used in lieu of planned, systematic behavioral interventions, the parent, guardian, and residential care provider, if appropriate, shall be notified within one school day if an emergency intervention is used or serious property damage occurs. A behavioral emergency report shall immediately be completed and maintained in the file of the individual with exceptional needs. The behavioral emergency report shall include all of the following:

(1) The name and age of the individual with exceptional needs.

(2) The setting and location of the incident.

(3) The name of the staff or other persons involved.

(4) A description of the incident and the emergency intervention used, and whether the individual with exceptional needs is currently engaged in any systematic behavioral intervention plan.

(5) Details of any injuries sustained by the individual with exceptional needs, or others, including staff, as a result of the incident.

(f) All behavioral emergency reports shall immediately be forwarded to, and reviewed by, a designated responsible administrator.

(g) If a behavioral emergency report is written regarding an individual with exceptional needs who does not have a behavioral intervention plan, the designated responsible administrator shall, within two days, schedule an individualized education program (IEP) team meeting to review the emergency report, to determine the necessity for a functional behavioral assessment, and to determine the necessity for an interim plan. The IEP team shall document the reasons for not conducting the functional behavioral assessment, not developing an interim plan, or both.

(h) If a behavioral emergency report is written regarding an individual with exceptional needs who has a positive behavioral intervention plan, an incident involving a previously unseen serious behavior problem, or where a previously designed intervention is ineffective, shall be referred to the IEP team to review and determine if the

(3) An amount of force that exceeds that which is reasonable and necessary under the circumstances.

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(g) If a behavioral emergency report is written regarding an individual with exceptional needs who does not have a behavioral intervention plan, the designated responsible administrator shall, within two days, schedule an individualized education program (IEP) team meeting to review the emergency report, to determine the necessity for a functional behavioral assessment, and to determine the necessity for an interim plan. The IEP team shall document the reasons for not conducting the functional behavioral assessment, not developing an interim plan, or both.

(h) If a behavioral emergency report is written regarding an individual with exceptional needs who has a positive behavioral intervention plan, an incident involving a previously unseen serious behavior problem, or where a previously designed intervention is ineffective, shall be referred to the IEP team to review and determine if the

<p><u>incident constitutes a need to modify the positive behavioral intervention plan.</u></p>	<p><u>incident constitutes a need to modify the positive behavioral intervention plan.</u></p>
<p><u>SEC. 29. 56521.2 (a) A local educational agency or nonpublic, nonsectarian school or agency serving individuals with exceptional needs pursuant to Sections 56365 and 56366, shall not authorize, order, consent to, or pay for the following interventions, or any other interventions similar to or like the following:</u></p> <p><u>(1) Any intervention that is designed to, or likely to, cause physical pain, including but not limited to, electric shock.</u></p> <p><u>(2) Releasing noxious, toxic, or otherwise unpleasant sprays, mists, or substances in proximity to the face of the individual.</u></p> <p><u>(3) An intervention which denies adequate sleep, food, water, shelter, bedding, physical comfort, or access to bathroom facilities.</u></p> <p><u>(4) An intervention that is designed to subject, used to subject, or likely to subject, the individual to verbal abuse, ridicule, or humiliation, or that can be expected to cause excessive emotional trauma.</u></p> <p><u>(5) Restrictive interventions that employ a device, material, or objects that simultaneously immobilize all four extremities, including the procedure known as prone containment, except that prone containment or similar techniques may be used by trained personnel as a limited emergency intervention.</u></p> <p><u>(6) Locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room.</u></p> <p><u>(7) An intervention that precludes adequate supervision of the individual.</u></p> <p><u>(8) An intervention which deprives the individual of one or more of his or her senses.</u></p>	<p><u>SEC. 29. 56521.2 (a) A local educational agency or nonpublic, nonsectarian school or agency serving individuals with exceptional needs pursuant to Sections 56365 and 56366, shall not authorize, order, consent to, or pay for the following interventions, or any other interventions similar to or like the following:</u></p> <p><u>(1) Any intervention that is designed to, or likely to, cause physical pain, including but not limited to, electric shock.</u></p> <p><u>(2) Releasing noxious, toxic, or otherwise unpleasant sprays, mists, or substances in proximity to the face of the individual.</u></p> <p><u>(3) An intervention which denies adequate sleep, food, water, shelter, bedding, physical comfort, or access to bathroom facilities.</u></p> <p><u>(4) An intervention that is designed to subject, used to subject, or likely to subject, the individual to verbal abuse, ridicule, or humiliation, or that can be expected to cause excessive emotional trauma.</u></p> <p><u>(5) Restrictive interventions that employ a device, material, or objects that simultaneously immobilize all four extremities, including the procedure known as prone containment, except that prone containment or similar techniques may be used by trained personnel as a limited emergency intervention.</u></p> <p><u>(6) Locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room.</u></p> <p><u>(7) An intervention that precludes adequate supervision of the individual.</u></p> <p><u>(8) An intervention which deprives the individual of one or more of his or her senses.</u></p>
<p><u>SEC. 30. 56522. (a) The Superintendent may issue non-mandatory program guidelines, as described in Education Code 33308.5,</u></p>	<p><u>Do not adopt Sec. 30. No language agreement here – CSBA/SELPA's propose to strike this section</u></p>

regarding the systematic use of behavioral interventions and emergency interventions, and may provide related training.

(b) At a minimum, the non-mandatory program guidelines and training shall address all of the following:

(1) The recommended qualifications and training of personnel who participate in the implementation of the behavioral intervention plans, including training in positive behavioral interventions and support.

(2) Special training recommended for the use of emergency behavioral interventions and the types of interventions for which that training would be applicable.

(3) Recommended behavioral emergency procedures.

SEC. 31. 56523. (a) ~~On or before September 1, 1992, the~~ The Superintendent shall develop and the board shall adopt repeal those regulations governing the use of behavioral interventions with individuals with exceptional needs receiving special education and related services- , that are no longer supported by statute, including Section 3052 and subdivisions (d), (e), (f), (g), and (ab) of Section 3001, of Title 5 of the California Code of Regulations, as those provisions exist on January 10, 2013.

(b) ~~This section and the implementing regulations adopted by the board are~~ chapter is **declaratory of federal law and deemed** necessary to implement the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and associated federal regulations. This ~~section~~ chapter is intended to provide the clarity, definition, and specificity necessary for local educational agencies to comply with the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.)- and shall be implemented by local educational agencies without the development by the Superintendent and adoption by the state board of any additional regulations. This section, including the implementing state regulations needed to implement federal law and regulations, shall not exceed the requirements of federal law, create new or separate state requirements, or result in a level of state service beyond that needed to comply with federal law and regulations.

(c) As a condition of receiving funding from the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), a local educational agency shall agree to adhere to this chapter and implementing federal regulations and state regulations set forth in this ~~section~~ chapter.

(d) The Superintendent may monitor local educational agency compliance with this ~~section~~ chapter and may take appropriate action, including fiscal repercussions, if either of the following is found:

(1) The local educational agency failed to comply with this ~~section and~~

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(c) As a condition of receiving funding from the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), a local educational agency shall agree to adhere to this chapter and implementing federal regulations and state regulations set forth in this ~~section~~ chapter.

(d) The Superintendent may monitor local educational agency compliance with this ~~section~~ chapter and may take appropriate action, including fiscal repercussions, if either of the following is found:

(1) The local educational agency failed to comply with this ~~section and implementing regulations that govern the provision of special education and related services to individuals with exceptional needs~~

~~implementing regulations that govern the provision of special education and related services to individuals with exceptional needs~~ chapter and failed to comply substantially with corrective action orders issued by the department resulting from monitoring findings or complaint investigations.

(2) The local educational agency failed to implement the decision of a due process hearing officer based on noncompliance with this part, ~~the state implementing regulations,~~ provisions of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), or the federal implementing regulations, wherein noncompliance resulted in the denial of, or impeded the delivery of, a free appropriate public education for an individual with exceptional needs.

(e) Commencing with the 2010–11 fiscal year, if any activities authorized pursuant to this ~~section~~ chapter and implementing regulations are found be a state reimbursable mandate pursuant to Section 6 of Article XIII B of the California Constitution, state funding provided for purposes of special education pursuant to Item 6110-161-0001 of Section 2.00 of the annual Budget Act shall first be used to directly offset any mandated costs.

~~**(f)** Contingent on the adoption of a statute in the 2009–10 Regular Session that adds~~ Pursuant to Section 17570.1 to of the Government Code, the Legislature hereby requests the Department of Finance on or before December 31, ~~2010~~ 2013, to exercise its authority pursuant to subdivision (c) of Section 17570 of the Government Code and file a request with the Commission on State Mandates for the purpose of seeking the adoption of a new test claim to supersede CSM-4464 based on subsequent changes in law that may modify a requirement that the state reimburse a local government for a state mandate.

~~**(g)** The regulations shall do all of the following:~~

~~(1) Specify the types of positive behavioral interventions which may be utilized and specify that interventions which cause pain or trauma are prohibited.~~

~~(2) Require that, if appropriate, the pupil's individual education plan~~

chapter and failed to comply substantially with corrective action orders issued by the department resulting from monitoring findings or complaint investigations.

(2) The local educational agency failed to implement the decision of a due process hearing officer based on noncompliance with this part, ~~the state implementing regulations,~~ provisions of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), or the federal implementing regulations, wherein noncompliance resulted in the denial of, or impeded the delivery of, a free appropriate public education for an individual with exceptional needs.

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~~**(g)** The regulations shall do all of the following:~~

~~(1) Specify the types of positive behavioral interventions which may be utilized and specify that interventions which cause pain or trauma are prohibited.~~

~~(2) Require that, if appropriate, the pupil's individual education plan includes a description of the positive behavioral interventions to be utilized which accomplishes the following:~~

~~(A) Assesses the appropriateness of positive interventions.~~

<p>includes a description of the positive behavioral interventions to be utilized which accomplishes the following:</p> <p>(A) Assesses the appropriateness of positive interventions.</p> <p>(B) Assures the pupil's physical freedom, social interaction, and individual choices.</p> <p>(C) Respects the pupil's human dignity and personal privacy.</p> <p>(D) Assures the pupil's placement in the least restrictive environment.</p> <p>(E) Includes the method of measuring the effectiveness of the interventions.</p> <p>(F) Includes a timeline for the regular and frequent review of the pupil's progress.</p> <p>(3) Specify standards governing the application of restrictive behavioral interventions in the case of emergencies. These emergencies must pose a clear and present danger of serious physical harm to the pupil or others. These standards shall include:</p> <p>(A) The definition of an emergency.</p> <p>(B) The types of behavioral interventions that may be utilized in an emergency.</p> <p>(C) The duration of the intervention which shall not be longer than is necessary to contain the dangerous behavior.</p> <p>(D) A process and timeline for the convening of an individual education plan meeting to evaluate the application of the emergency intervention and adjust the pupil's individual education plan in a manner designed to reduce or eliminate the negative behavior through positive programming.</p> <p>(E) A process for reporting annually to the department and the Advisory Commission on Special Education the number of emergency interventions applied under this chapter.</p>	<p>(B) Assures the pupil's physical freedom, social interaction, and individual choices.</p> <p>(C) Respects the pupil's human dignity and personal privacy.</p> <p>(D) Assures the pupil's placement in the least restrictive environment.</p> <p>(E) Includes the method of measuring the effectiveness of the interventions.</p> <p>(F) Includes a timeline for the regular and frequent review of the pupil's progress.</p> <p>(3) Specify standards governing the application of restrictive behavioral interventions in the case of emergencies. These emergencies must pose a clear and present danger of serious physical harm to the pupil or others. These standards shall include:</p> <p>(A) The definition of an emergency.</p> <p>(B) The types of behavioral interventions that may be utilized in an emergency.</p> <p>(C) The duration of the intervention which shall not be longer than is necessary to contain the dangerous behavior.</p> <p>(D) A process and timeline for the convening of an individual education plan meeting to evaluate the application of the emergency intervention and adjust the pupil's individual education plan in a manner designed to reduce or eliminate the negative behavior through positive programming.</p> <p>(E) A process for reporting annually to the department and the Advisory Commission on Special Education the number of emergency interventions applied under this chapter.</p> <p>Note: CSBA/SELPA's want (e) struck. Staff recommends maintaining existing law for now</p>
<p>SEC. 32. 56525. (a) A person recognized by the national Behavior Analyst Certification Board as a Board Certified Behavior Analyst qualifies as a behavioral intervention case manager of a district, special education local plan area, or county office and may conduct</p>	<p>SEC. 32. 56525. (a) A person recognized by the national Behavior Analyst Certification Board as a Board Certified Behavior Analyst qualifies as a behavioral intervention case manager of a district, special education local plan area, or county office and may conduct</p>

<p>behavior assessments and provide behavioral intervention services for individuals with exceptional needs.</p> <p>(b) This section does not require a district, special education local plan area, or county office to use a Board Certified Behavior Analyst to <u>conduct behavior assessments and provide behavioral intervention services for individuals with exceptional needs</u>.as a behavioral intervention case manager.</p>	<p>behavior assessments and provide behavioral intervention services for individuals with exceptional needs.</p> <p>(b) This section does not require a district, special education local plan area, or county office to use a Board Certified Behavior Analyst to <u>conduct behavior assessments and provide behavioral intervention services for individuals with exceptional needs</u>.as a behavioral intervention case manager.</p>
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