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# SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

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**Bill No:** AB 2657 **Hearing Date:** June 27, 2018  
**Author:** Weber  
**Version:** June 18, 2018  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Lynn Lorber

**Subject:** Pupil discipline: restraint and seclusion.

## SUMMARY

This bill prohibits the use of restraint or seclusion on any student, except in specified circumstances, and establishes parameters and procedures for situations in which restraint or seclusion may be used.

## BACKGROUND

Existing law:

- 1) Requires the Superintendent of Public Instruction (SPI) to repeal regulations, no longer authorized by statute, which governed the use of behavioral interventions for individuals receiving special education, as they existed on January 10, 2013. (Education Code § 56523)
- 2) Requires local educational agencies (LEAs) to implement the statutory provisions relating to behavioral interventions, without the development or adoption of additional regulations by the SPI and State Board of Education. (EC § 56523)
- 3) Requires the SPI to explore, with representatives of institutions of higher education and the Commission on Teacher Credentialing, current training requirements for teachers, for the purpose of ensuring that adequate training in appropriate behavioral interventions is available to individuals entering the field of education. (EC § 56524)

### *Discipline in the general education environment*

- 4) Defines "corporal punishment" as the willful infliction of, or willfully causing the infliction of, physical pain on a student. (EC § 49001)
- 5) Prohibits actions using an amount of force that is reasonable and necessary from being construed as "corporal punishment," if they are used by a person employed by or engaged in a public school to address a physical threat to persons or property, for self-defense, or to obtain dangerous objects or weapons from a student. (EC § 49001)
- 6) Prohibits persons employed by or engaged in a public school from inflicting, or causing to be inflicted, corporal punishment upon a student. (EC § 49001)

*Use of emergency interventions (restraint or seclusion) for students with exceptional needs*

- 7) Establishes the following authorizations, prohibitions, and requirements for public schools, nonpublic schools, and State Special Schools:
  - a) Authorizes the use of emergency interventions only for controlling unpredictable, spontaneous behavior that threatens serious physical harm to an individual with exceptional needs or others, when those behaviors cannot be immediately prevented by a response that is less restrictive than the temporary application of a technique to contain the behavior.
  - b) Prohibits the use of emergency interventions as substitutes for a systematic behavioral intervention plan that is designed to change, replace, modify, or eliminate a targeted behavior.
  - c) Prohibits the use of an emergency intervention for longer than is necessary to contain the behavior.
  - d) Requires staff to seek assistance from a schoolsite administrator or law enforcement agency when emergency interventions are used for prolonged periods of time.
  - e) Defines emergency interventions to not include:
    - i) Locked seclusion, unless it occurs in a facility that is licensed or otherwise permitted by state law to use a locked room.
    - ii) Use of devices, materials, or objects that simultaneously immobilize all four limbs, unless these are used to facilitate prone restraint performed by trained staff.
    - iii) Use of an amount of force that exceeds what is reasonable and necessary. (EC § 56521.1)
- 8) Prohibits LEAs, nonpublic schools, or nonpublic agencies that serve individuals with exceptional needs from authorizing, ordering, consenting to, or paying for interventions that:
  - a) Are designed or likely to cause physical pain, including, but not limited to, electric shock.
  - b) Involve the release of noxious, toxic, or unpleasant sprays, mists, or substances near the face of an individual.
  - c) Deny adequate sleep, food, water, shelter, bedding, physical comfort, or access to bathroom facilities.
  - d) Are designed to subject individuals to verbal abuse, ridicule, or humiliation, or that can be expected to cause excessive emotional trauma.

- e) Are restrictive and involve use of devices, materials, or objects to simultaneously immobilize all four extremities, including the use of prone restraints unless implemented as an emergency intervention by trained personnel.
- f) Place students in locked seclusion, unless it is in a facility that is licensed or permitted by state law to use a locked room.
- g) Preclude adequate supervision of the individual.
- h) Deprive an individual of one or more of his or her senses. (EC § 56521.2)

*Procedures following the use of emergency interventions*

- 9) Requires that a parent, guardian, and residential care provider be notified within one school day if an emergency intervention is used or serious property damage occurs, in order to prevent emergency interventions from being used in place of planned, systematic behavioral interventions. (EC § 56521.1)
- 10) Requires a behavioral emergency report to be completed immediately and maintained in the file of a student with exceptional needs. (EC § 56521.1)
- 11) Requires a behavioral emergency report to include all of the following:
  - a) The name and age of the individual with exceptional needs.
  - b) The setting and location of the incident.
  - c) The name of the staff or other persons involved.
  - d) A description of the incident and the emergency intervention used, and whether the individual with exceptional needs currently has a systematic behavioral intervention plan.
  - e) Details of injuries sustained during the incident by the individual with exceptional needs or others, including staff. (EC § 56521.1)
- 12) Requires behavioral emergency reports to be immediately forwarded to, and reviewed by, a designated administrator. (EC § 56521.1)

*Follow-up*

- 13) Requires the designated administrator to schedule an individualized education program (IEP) team meeting within two days of a behavioral emergency incident to review the incident report, when incidents involve students who do not have behavioral intervention plans. Existing law requires the IEP team to determine the necessity for a functional behavioral assessment and an interim plan, and, if applicable, to document its reasons for not performing a functional behavioral assessment or developing an interim plan. (EC § 56521.1)

- 14) Requires the IEP team to review and determine if an incident warrants modification of a positive behavioral intervention plan, for students who have a positive behavioral intervention plan prior to an incident. (EC § 56521.1)
- 15) Requires the IEP team to consider the use of positive behavioral interventions and supports to address behaviors that impede the learning of the child or others. (United States Code § 1414(d)(3)(B)(i), and EC § 56521.2)

## ANALYSIS

### *Rights, prohibitions, and allowances*

- 1) Provides that a student has the right to be free from the use of seclusion and behavioral restraints of any form imposed as a means of coercion, discipline, convenience, or retaliation by staff. This bill provides that this right includes but is not limited to the right to be free from the use of a drug administered to the student in order to control the student's behavior or to restrict the student's freedom of movement, if that drug is not a standard treatment for the student's medical or psychiatric condition.
- 2) Prohibits an educational provider from doing any of the following:
  - a) Use seclusion or behavioral restraint for the purpose of coercion, discipline, convenience, or retaliation.
  - b) Use a physical restraint technique that obstructs a student's respiratory airway or impairs the student's breathing or respiratory capacity, including techniques in which a staff member places pressure on a student's back or places his or her body weight against the student's torso or back.
  - c) Use a behavioral restraint technique that restricts breathing, including but not limited to using a pillow, blanket, carpet, mat, or other item to cover a student's face.
  - d) Use a behavioral restraint on a student who has a known medical or physical condition if there is reason to believe that the use of the behavioral restraint would endanger the student's life or seriously exacerbate the student's medical or physical condition and either of the following apply:
    - i) The educational provider knows of the student's medical or physical condition at the time that the behavioral restraint would be used by the educational provider.
    - ii) The educational provider is directed to use the behavioral restraint by another educational provider who knows of the student's medical or physical condition at the time that the behavioral restraint would be used.

- e) Use prone restraint on a student at risk for positional asphyxiation as a result of having a risk factor, if either of the following apply:
    - i) The educational provider knows that the student has a risk factor at the time that the prone restraint would be used.
    - ii) The educational provider is directed to use the prone restraint by another educational provider who knows that the student has a risk factor at the time that the prone restraint would be used.
  - f) For purposes of (e), provides that a student has a risk factor if any of the following apply:
    - i) The student is obese.
    - ii) The student has preexisting heart disease, which may include but is not limited to an enlarged heart or other cardiovascular disorders.
    - iii) The student has a respiratory condition, which may include but is not limited to emphysema, bronchitis, or asthma.
    - iv) The student is pregnant.
    - v) The student has been exposed to pepper spray.
    - vi) The student has cocaine, methamphetamine, or alcohol intoxication.
  - g) Place a student in a facedown position with the student's hands held or restrained behind the student's back.
  - h) Use behavioral restraint for more than 15 consecutive minutes. This bill authorizes the California Department of Education to allow, by regulation, an exception when it is necessary to protect the immediate health and safety of the student or others from the risk of imminent serious physical harm and if the use of behavioral restraint conforms to the local educational agency's safety plan.
- 3) Requires an educational provider to avoid, whenever possible, the use of seclusion or behavioral restraint techniques, using the best practices in early intervention techniques, such as de-escalation.
  - 4) Authorizes an educational provider to use seclusion or a behavioral restraint only if a student's behavior presents an imminent danger of serious physical harm to the student or others.
  - 5) Requires an educational provider to afford to students who are restrained the least restrictive alternative and the maximum freedom of movement, and use the least number of restraint points, while ensuring the physical safety of the student

and others.

*Observation of the student*

- 6) Requires an educational provider to keep constant, direct observation of a student who is in seclusion, and allows that to be a window, or another barrier, through which the educational provider is able to make direct eye contact with the student. This bill prohibits the observation to be through indirect means, including through a security camera or closed-circuit TV.
- 7) Requires, if prone restraint techniques are used in an emergency situation, a staff member to observe the student for any signs of physical distress throughout the use of prone restraint. Prohibits, whenever possible, the staff member monitoring the student from being involved in restraining the student.

*Debriefing meeting*

- 8) Requires a local educational agency, as soon as possible but no later than two school days after the use of seclusion or a behavioral restraint, to contact the student's parent, staff involved in the incident, and the LEA's administrator, and schedule a debriefing meeting that is to occur as soon as reasonably possible.
- 9) Requires a non-public agency to participate in the debriefing meeting if one or more employees of the agency were involved in the use of seclusion or restraint, and authorizes the agency to send to the meeting a supervisory employee in addition to, or instead of, the employee(s) who were involved in the incident.
- 10) Encourages a classified employee, or a security employee, who was involved in the use of seclusion or restraint to participate in the meeting.
- 11) Requires the student to be informed of the debriefing meeting at the time it is scheduled, and provides that the student's participation is voluntary.
- 12) Provides that the purpose of the debriefing meeting is to discuss how to avoid a similar incident in the future, and to do all of the following:
  - a) Assist the staff in understanding the events that precipitated the incident and develop alternative methods of helping the student avoid or cope with those events.
  - b) Assist the student in identifying the events and suggest methods to the student for more safely and constructively responding to those events.
  - c) Assess whether the use of seclusion or restraint was necessary and whether it was implemented in a manner consistent with staff training and provider policies.
  - d) Help the educational providers involved in the student's educational program devise positive behavioral support interventions to address the root cause of the use of seclusion or restraint, and its consequences, and

to modify the student's education plan if necessary.

- 13) Requires the educational provider to provide in the debriefing meeting to the students, parent and staff the opportunity to discuss the circumstances that resulted in the use of seclusion or restraint, and strategies to be used by the staff, student, or others that could prevent the future use of seclusion or restraint.
- 14) Requires the local educational agency (LEA) to document in the student's record that the debriefing meeting took place and any changes to the student's education plan or program that resulted from the debriefing meeting.

*Report to the California Department of Education (CDE)*

- 15) Requires LEAs to collect and report annually to CDE, no later than three months after the end of the school year, on the use of behavioral restraints and seclusion for students enrolled in or served by the LEA for all or part of the prior school year.
- 16) Requires the report to include all of the following information, disaggregated by race or ethnicity, and gender, with separate counts for students with an individualized education program (IEP), 504 plan, and students without an IEP or 504 plan:
  - a) The number of students subjected to mechanical restraint, and the number of times mechanical restraint was used on students.
  - b) The number of students subjected to physical restraint, and the number of times physical restraint was used on students.
  - c) The number of students subjected to seclusion, and the number of times seclusion was used on students.
- 17) Requires the data collected and reported to be available as a public record.
- 18) Requires the CDE to annually post the data from the report on its website within three months after the report is due to CDE.
- 19) Requires the data collection and reporting requirements to be conducted in compliance with the requirements of the federal Civil Rights Data Collection, and prohibits the data collection and reporting requirements from being construed to impose a new duty or higher level of service on LEAs.

*Miscellaneous*

- 20) Provides the following definitions:
  - a) "Behavioral restraint" as "mechanical restraint" or "physical restraint" used as an intervention when a student presents an immediate danger to self or to others. This definition provides that "behavioral restraint" does not include postural restraints or devices used to improve a student's mobility

and independent functioning rather than to restrict movement.

- b) “Educational provider” as a person who provides educational or related services, support, or other assistance to a student enrolled in an educational program provided by a local educational agency.
- c) “Local educational agency” as a school district, county office of education, charter school, the California School for the Deaf, the California School for the Blind, and non-public schools and agencies (including both in-state and out-of-state non-public schools and agencies).
- d) “Mechanical restraint” as the use of a device or equipment to restrict a student’s freedom of movement, which includes but is not limited to the use of handcuffs by law enforcement personnel when the student is not under arrest. This definition provides that “mechanical restraint” does not include the use of devices by trained school personnel, or by a student, prescribed by an appropriate medical or related services professional, if the device is used for the specific and approved purpose for which the device or equipment was prescribed, which includes but is not limited to all of the following:
  - i) Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports.
  - ii) Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle.
  - iii) Restraints for medical immobilization.
  - iv) Orthopedically prescribed devices that permit a student to participate in activities without risk of harm.
- e) “Physical restraint” as a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. This definition provides that “physical restraint” does not include a physical escort, which means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location.
- f) “Pupil” as a student enrolled in a local educational agency.
- g) “Seclusion” as the involuntary confinement of a student alone in a room or areas from which the student is physically prevented from leaving. This definition provides that “seclusion” does not include a timeout, which is a behavior management technique that is part of an approved program, that involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.



## STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “Although California Education law prohibits corporal punishment, great harm is inflicted on children by means of restraints and seclusions. This harm is physical and emotional. Furthermore, it is discriminatory as noted in a United States Government Accountability Office report on K-12 education entitled Discipline Disparities for Black Students, Boys, and Students with Disabilities. Five states were examined, including California. The report noted disparities in these populations and in one example from Oakland (*Education Case 2* on page 33), an Office of Civil Rights investigation found the use of prone restraint on this student to be severe, persistent, and pervasive; staff held the student face-down 92 times over a period of 11 months, with the longest duration of a single face-down restraint being 93 minutes. AB 2657 provides a framework for the appropriate use of restraint and seclusion techniques on students to limit their use to a situation where a student’s behavior presents an imminent danger of serious physical harm to the pupil or others.”
  
- 2) ***Different from existing law related to students with exceptional needs.*** Existing law related to the use of seclusion or restraint applies only to students with exceptional needs. This bill applies to *all* students. While this bill applies to all students, existing law provides for procedures that are not repealed or replaced by this bill and therefore would still apply only to students with exceptional needs.
  
- 3) ***When seclusion or restraint may be used.*** Existing law allows the use of seclusion or restraint on a student with exceptional needs as an emergency intervention “to control unpredictable, spontaneous behavior that poses clear and present danger of serious physical harm to the student, or others, that cannot be immediately prevented by a response less restrictive than the temporary application of a technique use to control the behavior.” Existing law provides that “corporal punishment” does not include, and therefore allows the use of physical force in “an amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to persons or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil.” This bill authorizes an educational provider to use seclusion or a behavioral restraint only if a student’s behavior “presents an imminent danger of serious physical harm to the student or others.” **Staff recommends an amendment** to more closely align these two provisions, as follows:  
  

On page 4, lines 16-18: 49005.4. An educational provider may use seclusion or a behavioral restraint ~~only if a pupil’s behavior presents an imminent danger of serious physical harm to the pupil or others~~ **only to control behavior that poses clear and present danger of serious physical harm to the pupil, or others, that cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior.**
  
- 4) ***Locked seclusion.*** Existing law specifically prohibits the use of seclusion in a locked room. This bill does not reference whether a room is locked. **Staff**

**recommends an amendment** to specifically prohibit seclusion in a locked room.

On page 4, between lines 26-27: (2) **Use locked seclusion.**

- 5) ***Prone restraint.*** This bill prohibits an educational provider from, among other things, using prone restraint on a student at risk of positional asphyxiation as a result of having a risk factor, as specified. However, this bill does not define “prone restraint.” **Staff recommends an amendment** to provide a definition of “prone restraint” as follows:

On page 3, between lines 38-39: (f) **“Prone restraint” means the application of a restraint of a pupil in a facedown position.**

- 6) ***Risk factors.*** Existing law allows the use of prone restraint if it is used by trained personnel as a limited emergency intervention. This bill prohibits the use of prone restraint on a student at risk for positional asphyxiation as a result of having a risk factor, if the educational provider knows that the student has a risk factor, as specified. *Should the authority for educational providers to use prone restraint be narrowed to exclude students with specified risk factors, including students with exceptional needs?*

- 7) ***Length of time in restraint.*** Existing law prohibits the use of restraint on a student with exceptional needs “for longer than is necessary to contain the behavior.” This bill prohibits the use of restraint for more than 15 consecutive minutes, while authorizing the California Department of Education to allow, by regulation, an exception when it is necessary to protect the immediate health and safety of the student or others from the risk of imminent serious physical harm. **Staff recommends an amendment** to allow a restraint to be immediately reapplied, for no more than 15 consecutive minutes, if a student continues to pose a danger.

On page 5, lines 36-37: (7) (A) Use behavioral restraint for more than 15 consecutive minutes, except as authorized pursuant to subparagraph (B). **If the pupil continues to pose a clear and present danger of serious physical harm to the pupil or others, a behavioral restraint may be reapplied, for no more than 15 consecutive minutes, after the educational provider first attempts a less restrictive intervention.**

- 8) ***Unintended consequences?*** Could this bill discourage school personnel from intervening when students display behaviors that endanger themselves or others, or even result in the police being called? Do school personnel need to resort to restraint or seclusion to control a student’s behavior?
- 9) ***Report to CDE.*** This bill requires local educational agencies (LEAs) to collect and report annually to the California Department of Education (CDE), no later than three months after the end of the school year, on the use of behavioral restraints and seclusion for students enrolled in or served by the LEA for all or part of the prior school year. This bill requires the report to include specified information, disaggregated by race or ethnicity, and gender, with separate counts for students with an individualized education program (IEP), 504 plan, and

students without an IEP or 504 plan. This bill requires the CDE to annually post the data from the report on its website within three months after the report is due to CDE. Is this three month timeframe sufficient for CDE to compile reports from potentially thousands of LEAs?

- 10) **Federal guidance.** In 2016, the federal Office of Civil Rights (OCR) issued a “Dear Colleague” letter to explain the limits that federal civil rights laws impose on the use of seclusion and restraint in public schools. OCR stated that a “school district discriminates on the basis of disability in its use of restraint or seclusion by (1) unnecessarily treating students with disabilities differently from students without disabilities; (2) implementing policies, practices, procedures, or criteria that have an effect of discriminating against students on the basis of disability or defeating or substantially impairing accomplishment of the objectives of the school district’s program or activity with respect to students with disabilities; or (3) denying the right to a free appropriate public education.” <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf>

The United States Department of Education issued a *Restraint and Seclusion: Resource Document* on May 15, 2012, with fifteen principles to help states develop a framework of policies that ensure “restraint or seclusion in schools does not occur, except when there is a threat of imminent danger of serious physical harm to the student or others.” <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>

- 11) **Prior regulations.** California statutes enacted in 1990, known as the “Hughes Bill” (AB 2586, Chapter 959, Statutes of 1990), required the Superintendent of Public Instruction (SPI) to develop regulations governing the use of appropriate behavioral interventions for students with exceptional needs. Implementing regulations of the Hughes Bill required plans developed by special education local plan areas to include procedures governing the systematic use of behavioral and emergency interventions, as well as the qualifications and training required of personnel designated as behavioral intervention case managers. The regulations required, in cases where the student had a behavior intervention plan (BIP) and an emergency intervention was implemented, the IEP team to review and determine whether the incident constituted a need to modify the BIP. In cases where the student did not have a BIP, the regulations required scheduling an IEP meeting to determine the necessity for assessment and for an interim BIP. Regulations required notification of the student’s parents within one school day when an emergency intervention was used.

The issue of whether the state should reimburse local educational agencies (LEAs) for costs relative to the BIP provision was pending in the mandate reimbursement process and the courts for *over 17 years* before the Legislature addressed the issue in AB 86, the Education Omnibus Trailer Bill of 2012-13, in which it repealed the costliest portions of the implementing regulations, including the BIP mandate, and codified the regulatory provisions surrounding emergency interventions

- 12) **Fiscal impact.** According to the Assembly Appropriations Committee, this bill would impose:
- a) Unknown Proposition 98 general fund (GF) costs for LEAs to debrief after incidents, with costs depending on the number of incidents statewide. If the Commission on State Mandates determines the bill's requirements to be a reimbursable state mandate, potential cost pressures on the K-12 Mandate Block Grant.
  - b) Ongoing GF costs in the low hundreds of thousands of dollars for the CDE to incorporate a new data collection component and post the data on the website, field questions, and issue guidance to LEAs on how and what data to report.
- 13) **Prior legislation.** AB 519 (Hernández, 2012) would have prohibited an educational provider from using chemical and mechanical restraints, and limited the use of physical restraint and seclusion in specified circumstances. AB 519 was never heard.

AB 1538 (Ma, 2010) would have prohibited certain types of restraint, including restraint used for the purposes of punishment, coercion, convenience, or retaliation by staff, as well as chemical restraint, mechanical restraint, or any technique that interferes with a pupil's ability to breathe. AB 1538 also authorized physical restraint during emergencies and as a component of a student's behavioral intervention plan if certain conditions were met, including prior staff training in proper restraint techniques, tracking of the frequency of physical restraint use, and use of restraint in the continuous presence of a staff member responsible for observing the pupil for signs of distress or impaired breathing. AB 1538 passed the Assembly Education Committee but was never heard on the Assembly Floor.

SB 1515 (Kuehl, 2008) would have prohibited an educational provider from using chemical restraint or seclusion, and limited the use of specified types of behavioral, physical, and mechanical restraints. SB 1515 was vetoed by Governor Schwarzenegger with the following veto message:

***The safety of California students is of the utmost importance. The California Constitution and state law provide for the protection and safety of all California students. While undue seclusion and restraints, including physical, chemical and mechanical on students are never acceptable, the provisions of this bill are too prescriptive.***

***Unfortunately, this bill could result in inhibiting school employees from intervening in an emergency situation and place more students at risk of potential harm. I am concerned that it may have unintended consequences that can be detrimental to the best interest of all students. I encourage school districts to be more conscious of maintaining a fair balance between protecting the safety of all their teachers and***

*students, while using reasonable, common sense standards in ensuring that seclusion and restraints are not overly applied in a way that may harm the welfare of specific students.*

**SUPPORT**

Disability Rights California (sponsor)  
Alameda County Board of Supervisors  
American Academy of Pediatrics, California  
American Civil Liberties Union  
Autism Business Association  
Bay Area Student Activists  
California Alliance of Child and Family  
California State Conference of the national Association for the Advancement of Colored People  
California Youth Empowerment Network  
Common Sense Kids Action  
County Behavioral Health Directors Association of California  
Disability Rights Advocates  
Disability Rights Education & Defense Fund  
East Bay Developmental Disabilities Legislative Coalition  
Educate. Advocate.  
Learning Rights Law Center  
Mental Health America of California  
Port View Preparatory  
Seneca Family of Agencies  
Special Education Local Plan Areas  
State Council on Developmental Disabilities  
The Arc and United Cerebral Palsy California Collaboration  
Transformative Justice in Education

**OPPOSITION**

California School Employees Association  
Peace Officers Research Association of California

**-- END --**