SENATE BILL 319

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Linda M. Lopez

AN ACT

RELATING TO PUBLIC SCHOOLS; CREATING REQUIREMENTS FOR SCHOOLS TO BE ABLE TO USE RESTRAINT; PROVIDING WHAT RESTRAINT TECHNIQUES SCHOOLS CANNOT USE; BANNING THE USE OF SECLUSION IN SCHOOLS; PROVIDING PUBLIC INPUT FOR SCHOOL POLICIES ON RESTRAINT; PROVIDING TRAINING FOR SCHOOL PERSONNEL ON ALTERNATIVE FORMS OF RESTRAINT; CREATING NEW REQUIREMENTS FOR REPORTING AND DOCUMENTATION PROCEDURES; DEFINING "MEDICATION RESTRAINT"; DEFINING "PRONE RESTRAINT".

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 22-5-4.12 NMSA 1978 (being Laws 2017, Chapter 33, Section 1) is amended to read:

"22-5-4.12. USE OF RESTRAINT [AND SECLUSION]--TECHNIQUES--REQUIREMENTS.--

A. It is the policy of this state that all school
students shall enjoy an educational experience free from trauma and fear of mental and physical abuse. Physical restraint should not be used except in situations where the student's actions pose an imminent danger of serious physical harm to self or others, and restraint should be avoided to the greatest extent possible. Physical restraint shall not be used as a strategy implemented to address instructional problems or inappropriate student behavior, as punishment or discipline, as a means of coercion or retaliation or as a convenience.

[A] B. A school may permit the use of restraint [or seclusion] techniques on any student only if [both] all 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] have been insufficient to mitigate the imminent danger of serious physical harm; and

(3) the school has in place and maintains an organized and functional method of documenting and timely reporting incidents of restraint to interested parties, including parents and government agencies.

[B] C. If a restraint [or seclusion] technique is used on a student:

(1) school employees shall maintain continuous
visual observation and monitoring of the student while the restraint [or seclusion] technique is in use;

(2) the restraint [or seclusion] technique shall end when the student's behavior no longer presents an imminent danger of serious physical harm to the student or others;

(3) the restraint [or seclusion] technique shall be used only by school employees who are trained in [the safe and effective use of restraint and seclusion techniques unless an emergency situation does not allow sufficient time to summon those trained school employees] less restrictive, evidence-based, trauma-informed behavioral interventions, restraint and de-escalation techniques;

(4) the restraint technique employed shall not impede the student's ability to breathe or speak; and

(5) the restraint technique shall not be out of proportion to the student's age or physical condition.

D. Schools shall never use any of the following techniques:

(1) mechanical restraint;

(2) medication restraint;

(3) seclusion; or

(4) prone restraint.

E. School districts shall annually establish or ratify policies and procedures for the use of restraint [or
seclusion techniques in a school safety plan. Prior to the establishment of each school district's respective restraint policies and procedures, community members shall be afforded a reasonable opportunity to comment publicly upon those proposed policies and procedures before those policies and procedures are ratified in an approved school safety plan. These restraint policies and procedures shall be distributed by each school prior to the start of each school year to each student's responsible parent or guardian. Distribution via electronic means is considered sufficient for purposes of this subsection. Each school district's annual plan shall govern the policies and procedures for the use of restraint techniques for schools within that district; provided that:

(1) the school district's safety plan shall state explicitly that restraint is an emergency safety measure that may be used only if a student's behavior presents an imminent danger of serious physical harm to the student or others and when less restrictive interventions have been insufficient to mitigate the imminent danger of serious physical harm;

(2) the school district's safety plan shall not be specific to any individual student; [and]

(3) any policies restricting the use of restraint shall apply to all students, not just students with disabilities; however, this section does not limit the rights
of students with disabilities to individualized determination of appropriate special education and related services, as well as accommodations, modifications and positive behavioral interventions planning by the student's individualized educational program team; and

(4) any school district's safety plan shall be drafted by a planning team that includes at least one special education expert, at least one licensed behavior specialist and at least one speech-language pathologist, and all members of the team shall be trained in evidence-based, trauma-informed alternatives to physical restraint.

F. School personnel shall be trained prior to the start of each school year on the appropriate use of effective alternatives to physical restraint, such as less restrictive, evidence-based, trauma-informed behavioral interventions and, only for cases involving imminent danger of serious physical harm, on the safe use of de-escalation and physical restraint techniques.

G. Schools shall establish reporting and documentation procedures to be followed when a restraint or seclusion technique has been used on a student. The procedures shall include the following provisions:

(1) a school employee shall provide the student's parent or guardian with written notice on the same day that the incident occurred, unless extenuating
circumstances prevent same-day notification. If the notice is not provided on the same day of the incident, notice shall be given within twenty-four hours after the incident. A copy of this notice shall also be provided to the school principal or administrator within this same time period;

(2) [within a reasonable time following the incident] no later than two school days after the incident, a school employee shall provide the student's parent or guardian with written documentation that includes information about any persons, locations, or activities or other antecedent events that may have preceded the behavior, if known, and specific information about the behavior and its precursors, including any less intrusive interventions that were attempted or determined to be inappropriate prior to the restraint or seclusion, the type of restraint or seclusion technique used and, the duration of its use and the names of any adults, regardless of their status as school employees, present for or in any way involved with the techniques;

(3) all of the data in the written notice required in Paragraph (2) of this subsection shall be submitted to the department's data collection and reporting system within five school days of the documented incident;

[(4) (4)] (4) schools shall review strategies used to address a student's dangerous behavior if use of restraint or seclusion techniques for an individual student has occurred.
[two or more times during any thirty-calender-day period]. The review shall include:

(a) a review of the student's behavior plan, if any;

[(a)] (b) a review of the incidents in which restraint or seclusion techniques were used, antecedent events, context or causes for the student's behavior, the de-escalation strategy, positive behavioral supports used by school personnel involved and an analysis of how future incidents may be avoided, including whether the student requires a functional behavioral assessment; and

[(b)] (c) a meeting of the student's individualized education program team, behavioral intervention plan team or student assistance team within [two weeks] seven calendar days of each use of restraint or seclusion [after the second use within a thirty-calender-day period] to provide recommendations for avoiding future incidents requiring the use of restraint or seclusion; and

(5) schools shall report annually to the department prior to the start of each school year a list of each incident in which a technique of restraint or seclusion was used during the prior school year. The annual report shall include, at a minimum:

(a) the date of each incident;

(b) the location of each incident,
include the specific school and classroom location within each school;

(c) a brief description of each incident, including antecedent events, context or causes for the student's behavior, the de-escalation strategies and evidence-based, trauma-informed positive behavioral supports used by school personnel involved, and a description of the technique used;

(d) a description of the notification method and timing to the student's parent or guardian; and

(e) a brief description of the methods employed to reintegrate the student into the classroom.

H. The restraint reporting and documentation procedures shall be subject to random audits completed at the direction of the department. Failure to comply with random audits and report requirements required under Subsection G of this section or if the school district's data shows use of techniques prohibited by Subsection D of this section, or high numbers of incidents of restraint or repeated incidents for particular students, the department shall:

(1) audit and monitor that school district's use of restraint or seclusion and provide technical assistance, training and other supports to reinforce the requirement that restraint be limited to emergency interventions of last resort; and

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(2) where appropriate, issue and make public a corrective action plan requiring the school district's compliance with this section, including revision of strategies currently in place to address dangerous behavior.

[E.] I. If a school summons law enforcement, including a school security employee or sworn law enforcement officer serving in the capacity as a school resource officer, instead of using a restraint [or seclusion] technique on a student, the school shall comply with the reporting, documentation and review procedures established pursuant to Subsection [B] G of this section.

[F.] J. Policies regarding restraint [and seclusion] shall consider school district support and strategies for school employees to successfully reintegrate a student who has been restrained [or secluded] back into the school or classroom environment.

[G.] K. The provisions of this section shall not be interpreted as addressing the conduct of law enforcement or first responders.

[H.] L. The provisions of this section do not apply to any school located within a county juvenile detention center, state-licensed residential treatment center or a state-operated juvenile facility.

M. The provisions of this section are not intended to provide any individual using a restraint technique upon a
student with immunity from criminal or civil liability.

For the purposes of this section:

(1) "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;

(2) "mechanical restraint" means the use of any device or material attached or adjacent to the student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove, but "mechanical restraint" does not include mechanical supports or protective devices. "Mechanical restraint" does not include devices implemented by trained school personnel or used by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were prescribed and designed;

(3) "medication restraint" means the administration of medication for the purpose of temporarily controlling behavior;

(4) "physical restraint" means the use of physical force without the use of any device or material that restricts the free movement of all or a portion of a student's body, but "physical restraint" does not include physical escort;
(5) "prone restraint" means a physical restraint in which a student is placed face down on the floor or another surface and physical pressure is applied to the student's body to keep the student in the face-down position;

(6) "restraint" when not otherwise modified means mechanical, medication or physical restraint.

"Restraint" does not include behavioral interventions used as a response to calm and comfort an upset student, such as verbal soothing; and

(7) "seclusion" means the involuntary confinement of a student alone in a room from which egress is prevented. "Seclusion" does not mean the use of a voluntary behavior management technique, including a timeout location, as part of a student's education plan, individual safety plan, behavioral plan or individualized education program that involves the student's separation from a larger group for purposes of calming. "Seclusion" does not include the aforementioned techniques so long as the student's freedom of movement is not forcibly restricted and the student retains the ability to voluntarily enter and exit a given location."