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## Building Safer Schools: Policy Measures and Considerations on Restraint and Seclusion

Attention to the use of restraint and seclusion has risen in the past 15 years. Allegations of abuse in school settings have increased from advocates and families of students with disabilities, both in New Mexico and nationally. Some school staff maintain the use of restraint and seclusion is essential to keeping all students and staff safe. They argue that restrictions on these practices in New Mexico state law and rule have fostered a culture of fear at schools and made staff afraid to touch students, even to intervene in fights or prevent a student from running away.

Restraint, defined as the physical or mechanical restriction of all or a portion of a student’s body, and seclusion, defined as the involuntary confinement of a student alone in a room they cannot leave, are usually implemented in an attempt to keep students safe from themselves or others. However, the U.S. Department of Education (ED) [reports](#) there continues to be no evidence that using restraint or seclusion is effective in reducing the occurrence of problem behaviors that frequently precipitate the use of such techniques, and less restrictive techniques and de-escalation practices should always be prioritized. Furthermore, [evidence](#) shows students can experience physical injuries, long-lasting trauma, and in severe cases, students have died as a result of these measures.

[Data](#) from the federal Office of Civil Rights illustrates students with disabilities experience restraint and seclusion at higher rates than their general education peers; while students with disabilities only comprised 17 percent of students in the 2020-2021 school year, they comprised 58 percent of restraint and seclusion incidents.

The Restraint and Seclusion Working Group was formed as a result of [Senate Memorial 68](#) (SM68), School Restraint and Seclusion Techniques, which was introduced in the 2023 legislative session. SM68 created a working group to review the use of restraint and seclusion in public schools and issue a report with findings and recommendations for LESC and other legislative committees. Although the memorial was not adopted, the Developmental Disabilities Council (DDC)—the group requested to convene the working group in SM68—convened the working group regardless and began work in November 2023.

### Key Takeaways

There is no evidence restraint or seclusion is effective in reducing the occurrence of problem behaviors.

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New Mexico state law and administrative code guide the use of restraint and seclusion in schools as there is no federal law comprehensively addressing the topic.

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Several states have moved to ban seclusion practices altogether, and even more have taken steps to limit the use of restraint in schools.

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The Restraint and Seclusion Working Group report provides recommendations for the Legislature, PED, and school districts and charter schools to consider.

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This brief will provide a history of restraint and seclusion policy and practices in New Mexico, an overview of best practices and other state policies, and outline the work and recommendations of the Restraint and Seclusion Working Group for the 2025 legislative session.

## History of Restraint and Seclusion Policy in New Mexico

In 2009, the federal Government Accountability Office (GAO) published a [report](#) that found “no federal laws restricting the use of seclusion and restraint in public and private schools and widely divergent laws at the state level.”

There is no federal law comprehensively regulating the use of restraint and seclusion in schools, so state law and rule provide guardrails for their use in New Mexico public schools. In 2010, the Public Education Department (PED) convened a working group to consider legislation or rulemaking on the subject of restraint and seclusion of children in New Mexico public schools following [guidance](#) to chief state school officers from ED in 2009. The working group reported that while there was law in the Children’s Code addressing restraint and seclusion, it was inapplicable to school settings.

However, PED issued guidance on the topic noting the use of physical restraint should be approved by student’s individualized education program (IEP) team, documented in student’s behavior intervention plan (BIP), and have the express written agreement of the parent or guardian. In addition, PED guidance stated a mental health professional should be a member of the IEP team if physical restraint is being considered as an intervention, and physical restraint must be performed by trained personnel only, and only in emergency situations.

### Restraint and Seclusion Restrictions in Statute in New Mexico

The Public School Code lacked provisions addressing restraint and seclusion until [Laws 2017, Chapter 33 \(House Bill 75\)](#) specified the conditions in which restraint and seclusion may be used in public schools. Since the 2017-2018 school year, 22-5-4.12 NMSA 1978 has required schools to use restraint and seclusion techniques only if the following two conditions exist:

1. If 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.

State law is clear that before resorting to the use of restraint and seclusion, a school must use de-escalation strategies and positive behavioral intervention supports to take steps to actively avoid the use of restraint and seclusion. If a restraint or seclusion technique is used on a student, statute specifies the following requirements must be in place:

- School employees must maintain visual contact with the student while the restraint or seclusion technique is in use;
- Restraint or seclusion must end when the student’s behavior no longer presents imminent danger to self or others;
- Only trained employees can use restraint or seclusion techniques unless there is an emergency situation;
- Restraint must not impede a student’s ability to breathe or speak; and

- Restraint techniques must not be out of proportion to a student’s age or physical condition.

Statute also requires schools to adopt policies and procedures for the use of restraint or seclusion techniques in a school safety plan, and requires schools to establish reporting and documentation procedures when restraint or seclusion is used on a student, including notifying the student’s parent or guardian.

State law governing restraint and seclusion —as well as rules laid out in administrative code—apply to all students, not just those with disabilities. Since 2017, there have been bills proposed almost annually to amend state law regarding restraint and seclusion.

### **Restraint and Seclusion in Administrative Code**

PED rule related to restraint and seclusion, NMAC 6.11.2.10(E), provides specificity on the implementation of New Mexico law concerning restraint and seclusion of students in public schools as set forth in 22-5-4.12 NMSA 1978.

***Policies and Procedures.*** All schools are required to establish policies and procedures for the use of restraint and seclusion techniques, as well as for the documentation and reporting of restraint and seclusion incidents, in their safe school plans (SSP). These policies and procedures must be approved by the local school board or governing body of a charter school. Administrative code notes policies must consider supports and strategies for successfully reintegrating a student who has been restrained or secluded back into the school or classroom environment. Schools are required to review such policies and procedures on a triennial basis before submitting the SSP.

Rule specifies that SSPs must be developed by a team that includes at least one administrator, one educator, one special education expert, and may include a counselor or social worker, nurse, and school resource officer or security staff.

***Training.*** Schools must appropriately train designated staff regarding de-escalation strategies, positive behavioral intervention supports or other comparable behavioral management techniques, including the use of restraint and seclusion techniques. Rule requires designated staff to attend training at least every two years and receive a certificate or a comparable demonstration of competency that provides evidence the individual has up-to-date knowledge on proper restraint and seclusion techniques. A newly designated staff member has 60 days to complete appropriate training.

***Review.*** Code requires schools to implement review procedures if an individual student has been restrained or secluded two or more times within 30 calendar days. In this case, the school must review strategies used to address the student’s behavior and determine whether the student needs a functional behavior assessment or a referral to a student assistant team, BIP team, or to the student’s IEP team (if the student has an IEP). In addition, the student’s IEP team, BIP team, or student assistance team must meet within two weeks of each subsequent use of restraint and seclusion to provide recommendations for avoiding future incidents requiring the use of restraint or seclusion. The review must include whether school staff involved in the incidents were trained in the use of de-escalation strategies, positive behavioral intervention supports, or restraint and seclusion techniques, and whether school staff who restrained or secluded the student need additional training.

All schools are required to do an annual review and analysis of all incidents of restraint and seclusion, including the number of incidents, the type of incident, staff involved, the need for additional training, and student demographics.

**Documentation and Reporting.** Schools are required to report all incidents of restraint and seclusion to a student’s parent or guardian, as well as to PED. Parents or guardians must be provided with written or oral notice on the same day a restraint or seclusion incident occurred, unless circumstances prevent same-day notification, in which case notice must be given within 24 hours. Schools must report to PED through Nova—the department’s data collection and reporting system—all instance of restraint and seclusion including names of students and school personnel involved, the type of restraint used, and if law enforcement was summoned.

It is important to note that despite these reporting requirements, New Mexico currently has no reliable data on the use of restraint and seclusion in the schools, as indicated in the Restraint and Seclusion Working Group Report (see **Appendix 1: Restraint and Seclusion in New Mexico Public Schools Working Group Report**, page 4-5, and page 7). Restraint and seclusion is reported as “school discipline” in Nova, however, restraint or seclusion should never be used as “school discipline,” which leads to confusion for schools over where and how to report. Ultimately, this means a failure to accurately report incidents of restraint and seclusion, and indicates a need for better guidance from PED as well as training for school staff.

## Best Practices and Other State Policies

Although there is no federal law addressing the use of restraint and seclusion in schools, ED maintains [guidance](#) on the provision of restraint and seclusion. This guidance includes a [resource document](#) ED encourages states, as well as local education agencies (LEAs), to consider when developing and implementing policies and procedures related to the provision of restraint and seclusion techniques. The guidance stresses that restraint and seclusion should only be used when there is a threat of imminent danger of serious physical harm to the student or others, and should occur in a manner that protects the safety of all children and adults at school.

Restraint and seclusion leads to a loss of instructional time for students, which is associated with lower academic achievement, according to the 2024 policy paper [A Review of U.S. Policy Guidance and Legislation on Restraint and Seclusion in Schools: Considerations for Improvement](#).

The Restraint and Seclusion: Resource Document published by ED identifies 15 principles for states to consider as a framework when crafting restraint and seclusion policy.

The principles highlight that every effort should be made to prevent the use of restraint and seclusion, and that restraint or seclusion should never be used as discipline or punishments, as a means of coercion or retaliation, or as a convenience. Additionally, the principles note behavioral strategies to address dangerous behavior that results in the use of restraint or seclusion should address the underlying cause or purpose of the dangerous behavior. Finally, the principles stress that policies regarding the use of restraint and seclusion should provide that each incident involving the use of restraint or seclusion should be documented in writing and provide for the collection of specific data that would enable teachers, staff, and other personnel to implement restraint and seclusion within best practices.



## Restraint and Seclusion Laws in Other States

In the absence of federal legislation, several states have moved to ban seclusion practices altogether, and even more have taken steps to limit the use of restraint in schools.

According to [How Safe Is the Schoolhouse: An Analysis of State Seclusion and Restraint Laws and Policies](#), as of July 1, 2019:

- 29 state laws provide meaningful protections against restraint and seclusion for all students, 38 states have these protections for students with disabilities;
- 23 state laws require an emergency threatening physical danger exist before restraint can be used on all students, 28 for students with disabilities;
- 41 state laws or guidance define seclusion as a room a child cannot exit (door is locked or egress is prevented in another way);\*
- 21 state laws protect all students from non-emergency seclusion, 28 for students with disabilities;\*
- 31 states forbid in law restraints that impede breathing and threaten life, 35 for students with disabilities;
- 21 states ban mechanical restraint for all students, 25 for students with disabilities;\*
- 21 states prohibit chemical or drug restraints for children with and without disabilities;\* and
- 30 state laws require parental notification of both restraint and seclusion, 40 for students with disabilities.

The indicators New Mexico does not meet or only partially meets are highlighted (New Mexico does not ban all instances of seclusion, it does not ban mechanical restraints, it does not prohibit chemical or drug restraints, and while New Mexico state law does define seclusion as a room a child cannot exist, the report notes that while New Mexico's prior guidance pointed out locked seclusion was a state fire code violation, its current law does not).

The report notes that while many states have adopted comprehensive protections from restraint and seclusion since the first nationwide restraint and seclusion bill was introduced in Congress in 2009, significant work remains. Even in states with meaningful laws limiting the use of restraint and seclusion, states must monitor school districts and otherwise check for compliance with state laws.

## Recommendations from the Working Group

The Restraint and Seclusion Working Group final report was published on July 17, 2024, and provides findings and recommendations from the working group for the LESC, other appropriate interim committees, and the Legislature as a whole; **see Appendix 1: Restraint and Seclusion in New Mexico Public Schools Working Group Report** for the report in its entirety. The report outlines seven findings where the working group achieved consensus, with multiple recommendations related to each finding. The findings are often broad—for example, the first finding is “the use of restraint and seclusion practices in schools is an important health and safety issue for New Mexico students, families and schools”—but recommendations are specific.

While the [Keeping All Students Safe Act](#), which proposes to ban seclusion and limit the use of physical restraint in schools, has been introduced to Congress for several years, it has never passed.

Below is an overview of the restraint and seclusion working group report recommendations through the lens of what is applicable for implementation by the Legislature, PED, and school districts and charter schools.

*The Legislature could consider:*

- **Amending existing statute on restraint and seclusion to add and improve definitions.** While existing law, if implemented with fidelity, provides a good foundation for ensuring restraint and seclusion are not overused, the working group recognized the need for improvement, particularly among definitions. For example, the working group recommended adding a definition for physical escort and de-escalation, defining and banning prone restraint and chemical restraint, and amending statute to ensure the requirements for seclusion comply with state and local safety requirements (specially related to locked doors/preventing a student from leaving a room).
- **Determining whether a state standard for training should be developed, required, and/or funded for implementation by PED.** While statute and rule only permit restraint and seclusion to be used by “school employees who are trained in de-escalation strategies, positive behavioral intervention supports, and the safe and effective use of restraint or seclusion techniques, unless an emergency does not allow sufficient time to summon trained employees,” there is no state standard for the training that schools must provide. Currently, PED does not provide training or recommend any specific training, and no state funding is provided specifically for this training.
- **Providing PED with technological and staff resources to provide additional oversight and monitoring of school districts on the use of restraint and seclusion, including adequate resources to support schools in reporting data accurately.** There is no oversight by PED to ensure school are following state law and rule requirements related to restraint and seclusion, and no specific oversight of the use of restraint and seclusion for students with disabilities. As the report notes, in the past, the Special Education Division of PED disclaimed responsibility for implementation and monitoring of restraint and seclusion laws and rules, recognizing they were “general education” laws and rules, applicable to all students. However, the lack of PED oversight of the implementation of restraint and seclusion laws and rules leaves a significant gap that leaves the state without the information needed to support schools in ensuring consistency and fidelity in implementation.

*PED could consider:*

- **Improving monitoring of restraint and seclusion.** Practice and implementation of restraint and seclusion requirements is different around the state. PED could regularly monitor the use of restraint and seclusion in schools and follow-up on restraint and seclusion incidents, as well as provide technical assistance to school districts, including the development of templates for restraint and seclusion notices, documentation, and review for schools to use.

- **Ensuring that PED’s data system does not require restraint and seclusion to be reported as “school discipline” and that schools are adequately trained on the reporting of restraint and seclusion.** PED could place restraint and seclusion reporting in another category in Nova other than “school discipline” and provide training and/or technical assistance to schools to ensure accurate reporting. Given that most restraint and seclusion incidents involve students with disabilities, the PED Office of Special Education could assign at least 1 FTE to monitor and provide technical assistance to schools who are restraining or secluding students with disabilities.

*School districts and charter schools could consider:*

- **Ensuring that each school posts its restraint and seclusion policy on its public website and reports posting to PED.** Although schools are required by current law and rules to develop a school board policy for restraint and seclusion, the only requirement for that policy is that the agency provide assurance in its SSP that such a policy exist. If LEAs ensured all schools posted their restraint and seclusion policy on its website, it would ensure parents and other community members have access to board policies and are informed of their child’s rights related to restraint and seclusion.
- **Improving training opportunities and support for schools.** LEAs should work to ensure all schools and staff are following the requirements related to restraint and seclusion. This includes not only the use of de-escalation, positive behavior intervention supports, and the use of restraint and seclusion techniques, but also ensuring schools are providing the required parental notice for restraint and seclusion use.