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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/20/17

SPONSOR Lopez LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE School Protections for Certain Students SB 397

ANALYST Fernandez

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Implications				

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to CS/HB75

#### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Health (DOH)  
 Public School Insurance Authority (PSIA) on file  
 Public Education Department (PED) on file  
 Children, Youth and Families Department (CYFD)

#### No Response Received From

Public Education Department (PED)

#### SUMMARY

##### Synopsis of Bill

Senate Bill 397 enacts a new section of the Public School Code known as “Michael’s Law”, which requires all school districts and charter schools to adopt a “student supports plan” to protect students in need of accommodation from violations of their rights under state and federal law. This bill requires all local school districts and charter schools to develop first-response policies and procedures for students who have committed a first offense as defined by the school code of conduct and discipline as determined by the local school board. Senate Bill 397 requires all school districts and charter schools to adopt policies and procedures with respect to the use of restraint and seclusion.

## FISCAL IMPLICATIONS

This bill does not contain an appropriation.

CYFD indicates the fiscal impact will be minimal to moderate as fiscal implication cannot be determined with any specificity as the number of students who would qualify as being in need of accommodation is not known by CYFD. Most of the assessments and screenings used by CYFD require licensing, training, and certification to administer, score, and interpret.

In response to a similar bill, PED indicated there would be additional costs associated with informing school districts and state charter schools about the new section of the Public School Code and with the annual reporting requirements to PED.

PED also noted potential costs for school districts and charter schools to write and adopt policies and procedures regarding the use of physical restraints and seclusion and training costs for school district personnel in evidence based crisis intervention training, including de-escalation techniques and first aid.

In response to a similar bill regarding physical restraints and seclusion, PSIA indicated that they will provide defense costs and negotiate settlements for claims arising out of improper or inappropriate restraint and seclusion. PSIA estimated the cost for at least six claims per fiscal year for improper seclusion and restraint could be \$500 thousand for defense costs and \$1.5 million for settlement costs for a total cost of \$1.8 million per year.

## SIGNIFICANT ISSUES

A “student in need of accommodation” is defined as a student who: has been diagnosed as having a serious mental illness, serious emotional disturbance or other behavioral health condition; has received an adverse childhood events screening and has been identified as having experienced at least two adverse childhood events; or has been diagnosed as having an intellectual or developmental disability.

A “student supports plan” must include provisions for:

- The training of state and local law enforcement officers and school employees who respond to situations that involve students in need of accommodation to minimize aversive intervention or the classification of the responses of students in need of accommodation;
- Ensuring compliance with the provisions of restraint and seclusion;
- Recognizing common characteristics and behaviors associated with students in need of accommodation;
- Interaction with students in need of accommodation and with physical disabilities;
- Reasonable accommodation for students in need of accommodation and with physical disabilities;
- Experiential realities of students in need of accommodation;
- Communication with students in need of accommodation;
- Identification of resources to provide services to students in need of accommodation;
- Protocols for using various intervention and crisis teams; and
- Rights of students against unlawful search and seizure.

All local school districts and charter schools must develop first-response policies and procedures for students who have committed a first offense. SB397 specifies what the policies and procedures shall include.

SB397 adds a new section to the Public School Code to require school districts and charter schools to adopt policies and procedures that limit the use of restraint and seclusion on students, requires notification of the parent of a student who has been subject to seclusion or physical restraint within 24 hours, and to report annually to PED all uses of physical restraint and seclusion on students.

DOH provides the following significant issues:

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

The NM Department of Health (NMDOH) operates Sequoyah Adolescent Treatment Center (SATC), which is both a school district that would be subject to SB397’s requirements, should it be enacted, and a treatment setting, currently governed by the Children’s Mental Health and Developmental Disabilities Act.

Some of the language in SB397 mirrors language from the Children’s Mental Health and Developmental Disabilities Act; however, there are some conflicts. For example, SB397 would require parental notification in person or by phone within twenty-four (24) hours and written notification within five business days. Section 32A-6A-10(E) NMSA 1978 requires immediate notification to a child’s legal custodian after each application of restraint or seclusion and written notification within one (1) business day. Without a carve-out for “state agencies” or “state institutions” providing treatment or habilitation services, SB397 could lead to confusion regarding the use of physical restraint and seclusion in a school setting.

In addition, SATC already has policies and procedures in place that outline the type of assessments a resident receives both prior to admission and throughout his treatment stay and include a resident’s personal, family, medical and social history, resident and family abuse of substances, and a resident’s history as a victim of physical abuse, sexual abuse, or neglect. These assessments are incorporated into the resident’s treatment planning at SATC, and the resident and the resident’s parent/legal guardian are involved throughout the treatment planning process.

SATC also has policies and procedures in place outlining the appropriate use of physical restraint and seclusion in accordance with the Children’s Mental Health and Developmental Disabilities Act, NMSA 1978, §32A-6A-1, *et seq.*

CYFD provides the following significant issues:

It is unclear whether the requirements concerning referrals to Juvenile Justice apply only to those students who meet the standard of a “student in need of accommodation”, or to all students.

The requirement for a needs assessment to match those used in juvenile facilities will require investment in licensing, training, and certification; and these assessments are not necessarily guaranteed to address many of these students’ issues.

Section 3(B)(3)(a) requires an adverse childhood events screening, which is required to find that a child is a child in need of accommodation. Sec. 3(B)(3)(c) would require a behavioral health screening for all students for a first offense. This would occur prior to any finding that they are a student in need of accommodation. There is no mention of parental consent to either screening.

Section 3(B)(4) requires a delay in referrals to juvenile justice, but does not specify how long that delay should be. It also requires a determination of whether intervention could deter escalation or repetition of the offense, but does not identify the party responsible for making this determination.

Section 3(C) requires the school to perform an assessment of the student’s family and home, but does not limit the target population for this assessment.

Section 3(D) requires *all* documents be turned over to the parent that pertain to the assessment/screening/intervention of the student. If these records include mental and behavioral health records of children 14 years of age and older, there is a potential conflict with §32A-6A-1 *et seq.*

Section 3(F) requires that “evidence” from Protective Services “involvement” shall be included in a student’s prevention plan of action. It is unclear how this interacts with the confidentiality provisions of §32A-4-33, and who would have access to the plan.

Section 3(L) requires consultation with CYFD on the creation of a student’s “prevention plan” but does not define in what way. If there has been no referral to CYFD (Juvenile Justice Services or Protective Services), CYFD has no legal authority to interact with the child or the child’s family at that point.

Section 3(M) prohibits schools from referring a child 13 years of age or younger to juvenile justice with no limiting or modifying language to account for violent delinquent acts or present and ongoing dangerousness of the child. While this could affect CYFD workloads by possibly reducing delinquency referrals if it is determined that the behavior was a direct manifestation of the youth’s adverse childhood or mental health or if the child is under the age of 13, any reduction would be offset by the requirement that schools consult with CYFD when devising a student’s prevention plan of action. Further, the majority of students that meet the definition of habitually truant and are required to be referred to CYFD are under the age of 13 and as such the age restriction under this bill conflicts with the Compulsory School Attendance Act for truancy. Early intervention strategies and opportunities would not be available to the youth that fall in this category.

The language in this bill does not indicate who will be providing the training of law enforcement and school personnel safeguarding the students with disabilities or in need of accommodations. The language in the bill does not provide an alternative to the consequences of students who are under 13 years of age and who have committed a criminal offense.

In response to a similar bill regarding physical restraints and seclusion, PED provided the following:

PED notes the reporting requirement in this bill is similar to one already in place. The Office of Civil Rights (OCR) already requires the reporting of the number of instances where students are subjected to mechanical restraints, physical restraints, and/or seclusion. The Civil Rights Data Collection (CRDC) collects a variety of student information, and the data is disaggregated by race/ethnicity, sex, Limited English Proficiency and disability. This data collection is authorized under the statutes and regulations implementing Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973 and under the Department of Education Organization Act (20 U.S.C. 3413). This may be a duplication of effort for the school districts, charter schools and the PED.

In March 2006, the PED issued comprehensive guidance on the use of physical restraints as a behavioral intervention for students with disabilities. The guidance indicates that it does not condone the use of mechanical restraints for students, requires the application of physical restraint to be performed by trained personnel only, and provides recommendations for documentation and reporting of restraint and the development of local policies. This bill would require physical restraints and seclusion to only be administered by staff trained in evidence-based crisis intervention, de-escalation training, first aid, and identifying signs of medical distress.

## **PERFORMANCE IMPLICATIONS**

CYFD indicates this bill would affect an agency performance measure concerning caseload management.

## **ADMINISTRATIVE IMPLICATIONS**

PED would need to communicate this new section of the Public School Code to school districts and charter schools, develop an annual reporting process for school districts and state charter schools which would require additional staff resources.

CYFD indicates that additional resources would be necessary to carry out the administrative and caseload implications as required in the bill

## **RELATIONSHIP**

SB397 is related to CS/HB75 which adds a new section to the Public School Code to require school districts and charter schools to adopt policies and procedures that limit the use of restraint on and seclusion of students, to notify the parent of a student who has been subject to seclusion or physical restraint within 24 hours, and to report annually to PED all uses of physical restraint on and seclusion of students.

**TECHNICAL ISSUES**

CYFD indicates that the bill requires sharing of information which is confidential under other portions of statute which are not addressed within the bill.

**OTHER SUBSTANTIVE ISSUES**

In response to a similar bill regarding physical restraints and seclusion, PED provided the following:

Although this bill addresses the use of physical restraint and seclusion for all students in New Mexico, the use of physical restraint and seclusion with students with severe developmental disabilities receiving treatment or habilitation differs (32A-6A-10 NMSA 1978) in the area of parental notification and the requirement. In addition, 32A-6A-10 NMSA 1978 requires staff to debrief with students after an incident of restraint and seclusion in order to possibly prevent future restraint and seclusion. During a seclusion event, the student must be provided with an explanation of the behavior that resulted in the seclusion and instructions on the behavior required to return to the environment.

Neither the Office of Special Education and Rehabilitative Services (OSERS) nor the Office of Special Education Programs (OSEP) within the USDE expressly prohibits the use of physical restraints on students with disabilities. This is evidenced by two policy letters from the USDE OSEP and OSERS, Letter to Anonymous, 50 IDELR 228, and Letter to Trader, 48 IDELR 47. However, it is important to note that both require IEP Teams to consider the use of PBIS in relation to student discipline. There could be the potential for conflict between state and federal laws and/or interpretation.

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