

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 567

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO CHILDREN; ENACTING NEW SECTIONS OF THE PUBLIC
SCHOOL CODE AS "MICHAEL'S LAW"; PROVIDING FOR THE PROTECTION OF
STUDENTS IN NEED OF ACCOMMODATION WHO ARE ACCUSED OF SANCTIONED
OFFENSES TO PROVIDE SUPPORTS AND DUE PROCESS; LIMITING THE USE
OF RESTRAINT AND SECLUSION; PROVIDING FOR NOTICE TO PARENTS;
AMENDING A SECTION OF THE CHILDREN'S MENTAL HEALTH AND
DEVELOPMENTAL DISABILITIES ACT TO PROVIDE PARENTS WITH
TEMPORARY ACCESS TO INFORMATION IN CERTAIN CIRCUMSTANCES.

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

SECTION 1. A new section of the Public School Code is
enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 5 of this
act may be cited as "Michael's Law"."

SECTION 2. A new section of the Public School Code is

1 enacted to read:

2 "[~~NEW MATERIAL~~] DEFINITIONS.--As used in Michael's Law:

3 A. "adverse childhood experience" means any of the
4 following:

- 5 (1) emotional abuse or neglect;
6 (2) physical abuse or neglect;
7 (3) sexual abuse;
8 (4) substance abuse in the student's
9 household;
10 (5) mental illness of a household member of
11 the student;
12 (6) violence against the student's parent or
13 caregiver;
14 (7) incarceration of a household member of the
15 student;
16 (8) loss of contact with a parent of the
17 student;
18 (9) homelessness;
19 (10) persistent poverty; or
20 (11) the experience of being a child parent,
21 or being raised by a child parent, without adequate social
22 supports;

23 B. "at-risk student" means a student who has been
24 referred to juvenile justice, has been adjudicated, is in
25 danger of not graduating or being promoted to the next grade

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1 level and is not attending class on a regular basis;

2 C. "aversive intervention" means any device or
3 intervention, consequences or procedure intended to cause pain
4 or unpleasant sensations, including interventions causing
5 physical pain, tissue damage, physical illness or injury;
6 electric shock; isolation; forced exercise; withholding of
7 food, water or sleep; humiliation; water mist; noxious taste,
8 smell or skin agents; and overcorrection;

9 D. "crisis team" means any of the following groups
10 of persons who offer support in a crisis of a student and are
11 trained to implement research-based practices designed to
12 assist students and staff in identifying early warning signs
13 and developing prevention, intervention and crisis plans:

- 14 (1) a crisis intervention resource team;
15 (2) a mobile crisis team;
16 (3) an assertive community treatment team; or
17 (4) a team composed of a behavioral health
18 provider and any school employee;

19 E. "disability" means a student that has been
20 identified and met the criteria of the Developmental
21 Disabilities Act, the federal Americans with Disabilities Act
22 of 1990 or the Individuals with Disabilities Education Act;

23 F. "evidence-based practice" means a practice that
24 integrates individual expertise with the best available
25 external evidence from systemic research;

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1 G. "IEP" means an individual education plan for a
2 student with a disability;

3 H. "manifestation determination" means that within
4 ten school days of any decision to change the placement of a
5 child with a disability because of a violation of a code of
6 student conduct, in which all relevant information in the
7 student's file and information provided by the parent and
8 teachers to determine if the conduct in question was caused by
9 or had a direct and substantial relationship to the child's
10 disability or if the conduct in question was the direct result
11 of the failure to implement the IEP;

12 I. "present danger" means imminent bodily harm or
13 death to oneself or another or would pose a substantial threat
14 to school safety;

15 J. "seclusion":

16 (1) means the involuntary confinement of a
17 student alone in a room from which egress is prevented;
18 "seclusion" does not mean the use of a voluntary behavior
19 management technique, including a time out location, as part of
20 a student's education plan, individual safety plan, behavioral
21 plan or individualized education program that involves the
22 student's separation from a larger group for purpose of
23 calming; and

24 (2) does not mean time out, where a child can
25 leave when the child feels ready to reengage in the educational

1 placement;

2 K. "student in need of accommodation" means a
3 student who has:

4 (1) been suspected of or notified by the
5 parent or guardian as having a serious mental illness, serious
6 emotional disturbance or other behavioral health condition;

7 (2) received an adverse childhood experiences
8 screening and has been identified as having experienced at
9 least two adverse childhood experiences;

10 (3) has been identified and met the criteria
11 of disability;

12 (4) been referred multiple times for
13 disciplinary action;

14 (5) had formal or informal changes of
15 educational setting; or

16 (6) been exhibiting behaviors that constitute
17 a pattern for academic failure;

18 L. "supports screenings" includes screenings of a
19 student to determine whether the student is in need of
20 accommodation or to assess a student as having one of the
21 conditions that qualify the student as a student in need of
22 accommodation; and

23 M. "time out" means the brief removal, by choice of
24 a student or at the request of a teacher, of a student to a
25 quiet classroom area for students to self-regulate or become

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1 calm and from which the student can freely and voluntarily
2 leave."

3 SECTION 3. A new section of the Public School Code is
4 enacted to read:

5 "[NEW MATERIAL] STUDENT SUPPORTS PLAN.--A school shall
6 adopt a "student supports plan" for protecting students in need
7 of accommodation from violations of the student's rights under
8 state and federal law, including the student's right to
9 accommodation of the student's disability, parental involvement
10 and due process. The student supports plan shall include a
11 plan for restorative, preventive and intervention services,
12 which plan shall be documented and agreed upon by the student
13 in need of accommodation, the student's parent and the school
14 principal; provided that the parent of the student may refuse
15 support and shall not be penalized for refusing services. A
16 student supports plan shall include provisions for:

17 A. training local law enforcement officers and
18 school employees in responding to situations involving the
19 student in need of accommodation so as to minimize aversive
20 intervention or the classification of the responses of the
21 student as intentional infractions of school policy;

22 B. ensuring compliance with the provisions of
23 Section 5 of Michael's Law relating to restraint and seclusion;

24 C. recognizing the common characteristics and
25 behaviors associated with students in need of accommodation;

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1 D. interaction and communication with the student
2 in need of accommodation;

3 E. recognition of the factors that have led the
4 student to need accommodation;

5 F. finding local resources to help deal with the
6 child's problems and how to involve those resources, including
7 crisis intervention teams and behavioral health providers;

8 G. prevention of re-traumatization and
9 accommodation;

10 H. protecting students from unlawful searches and
11 seizures;

12 I. protocols for using crisis intervention teams,
13 mobile crisis teams, assertive community treatment teams and
14 behavioral health providers. These protocols shall incorporate
15 training in the following areas:

16 (1) health education;

17 (2) social-emotional learning;

18 (3) trauma-informed care;

19 (4) youth mental health first aid; and

20 (5) adult mental health first aid; and

21 J. the rights of the student against unlawful
22 search and seizure. The student has the right against unlawful
23 search and seizure. The parent shall be notified and provided
24 notice to be present unless not doing so would pose a
25 substantial threat to school safety."

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1 SECTION 4. A new section of the Public School Code is
2 enacted to read:

3 "[NEW MATERIAL] STUDENTS IN NEED OF ACCOMMODATION--
4 IDENTIFICATION--PREVENTATIVE PLANS OF ACTION.--

5 A. A local school board shall develop first-
6 response policies and procedures for a student who has
7 committed a first offense as defined by the school code of
8 conduct and discipline that would result in a referral to
9 juvenile justice or law enforcement involvement as determined
10 by the local school board. These policies and procedures shall
11 include:

12 (1) a requirement that, before any arrest or
13 referral for supports is made, the student, the student's
14 parent and school principal meet after the student's first
15 offense to discuss the events surrounding the first offense;
16 provided that:

17 (a) an advocate of the student's or
18 parent's choosing shall be allowed to attend the meeting; and

19 (b) unless the student is alleged to
20 have committed a delinquent act where there is a present danger
21 or would pose a threat to school safety, any referral to the
22 juvenile justice division of the children, youth and families
23 department shall be delayed pending the completion of supports
24 screenings and a determination of whether preventative supports
25 could deter escalation of the offense;

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- 1 (2) protocols for seeking and the
2 administering of crisis intervention supports;
- 3 (3) the provision to the student of:
- 4 (a) an adverse childhood experiences
5 screening;
- 6 (b) a needs assessment, in accordance
7 with the provisions of Subsection B of this section;
- 8 (c) a behavioral health screening; and
9 (d) any contractual agreement
10 established between school districts that shall: 1) stipulate
11 access to crisis intervention training, mobile crisis teams,
12 assertive community treatment teams and youth mental health
13 first aid training and certification; 2) establish policies,
14 procedures and protocols for ensuring that the training of
15 local law enforcement officers on responding to intentional
16 infractions of school policy and student supports plans and
17 provide that local law enforcement be notified that a student
18 has a student supports plan; and 3) training school employees
19 to respond to situations involving students in need of
20 accommodation to minimize adverse interactions or
21 classification of the responses of students in need of
22 accommodation as intentional infractions of school policy;
- 23 (4) provisions for the review of the student's
24 disciplinary records to examine formal and informal offenses as
25 defined by the student code of conduct and any measures taken

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1 to address the infractions by:

2 (a) the school principal;

3 (b) the appropriate instructional
4 support providers; or

5 (c) a licensed or certified behavioral
6 health professional employed by or under contract to the school
7 or school district; and

8 (5) a requirement that the student's teachers
9 and parents be consulted during records review and supports
10 screening but shall not be solely responsible for administering
11 the supports screening, making referrals or contacting
12 providers, completing reports or any other activity required
13 pursuant to this subsection; provided that the records are
14 shared in strict accordance with federal privacy laws.

15 B. A needs assessment shall be developmentally
16 specific, strengths-based, culturally sensitive and trauma-
17 informed. It shall integrate the supports screening of the
18 student's family and home environment, the classroom context,
19 sensory integration needs, the family's spoken language,
20 communication needs or deficit and educational history.

21 C. Any record or document pertaining to the
22 student, the student's education, supports screening and
23 interventions shall be provided to the student's parent no
24 later than thirty days after the first offense has occurred.

25 D. After a student's first offense as defined by

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1 the school code of conduct and discipline as determined by the
2 school principal, or within thirty days of exiting a juvenile
3 detention center, the student, the student's parent, school
4 officials, teachers and service providers shall develop a
5 preventative plan of action that shall be documented in
6 writing. The preventative plan of action shall include:

7 (1) reports from any crisis intervention,
8 incident of restraint or seclusion, behavioral health screening
9 or supports screening needs assessment;

10 (2) the identification of goals for optimizing
11 the student's well-being; and

12 (3) recommendations and considerations related
13 to achieving the goals for the student, including:

14 (a) non-discriminatory, accessible and
15 high-quality modifications and evidence-based practices for
16 learning that coincide with any crisis intervention, behavioral
17 health screening or needs assessment;

18 (b) daily schedules, expectations and
19 monitoring of student activity and learning time;

20 (c) in-home and community-based models
21 that include viable options for: 1) assisting the student with
22 the acquisition of needed social and behavioral skills; or 2)
23 providing other necessary services to the student;

24 (d) positive reinforcement and behavior
25 support;

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1 (e) goal-setting and assistance for
2 reaching those goals, such as college preparatory or career
3 preparatory guidance;

4 (f) parent training, involvement and
5 support;

6 (g) individual, group or class services
7 that respect evidence-based student-to-teacher ratios;

8 (h) communication interventions and the
9 use of assistive technology;

10 (i) social skills support, including
11 assistance in helping students participate in public school
12 activities whenever possible so as to diminish or remove any
13 stigma;

14 (j) creative outlets, including
15 movement, exercise, art or music;

16 (k) assistance and training for
17 appropriate school employees in implementing the preventative
18 plan of action; and

19 (l) a trauma-informed approach to
20 seclusion and restraint that: 1) identifies the impact of
21 trauma on a student that has experienced adverse childhood
22 experiences or other trauma; and 2) actively addresses the risk
23 of re-traumatizing the student.

24 E. A student's preventative plan of action shall
25 include evidence from supporting documents, including

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1 information relating to any child protective services
2 involvement, foster care placement, drug court involvement,
3 past individual education plans and any past assessment or
4 evaluation that was considered in determining the best
5 interests of the student.

6 F. A school shall not make a referral for a
7 supports screening pursuant to a student's preventative plan of
8 action without the approval of the student's parent. Supports
9 identified in the plan shall be pragmatic and cannot unfairly
10 burden the student's family. Any referral shall take into
11 account the schedules of the student's parent and the student's
12 family's access to transportation and include any necessary
13 arrangements.

14 G. Supports identified in the preventative plan of
15 action shall not detract from a student's education.

16 H. Supports identified in the preventative plan of
17 action shall be available to all students in need of
18 accommodation and shall not be dependent on a disability.

19 I. The student, the student's parent and providers
20 of supports indicated on the student's preventative plan of
21 action shall evaluate the effectiveness and appropriateness of
22 supports provided pursuant to the preventative plan of action
23 every thirty days, and make modifications to the plan as
24 needed, until the goals identified in the plan are reached.
25 Supports shall not terminate solely by reason of a school year

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1 or a fiscal year ending. Supports must follow students as
2 public schools, teachers, home environments and service
3 providers change. A student's preventative plan of action
4 shall:

5 (1) be implemented regardless of whether the
6 student has been adjudicated; and

7 (2) not be used during the adjudication
8 process unless the student's parent requests it.

9 J. The student, the student's parent and identified
10 supports indicated on the student's preventative plan of action
11 shall work collaboratively on whether the goals identified in a
12 student's preventative plan of action are reached and provide a
13 two-month step-down plan for transition from supports. At the
14 end of the two-month step-down plan, a transition monitoring
15 plan shall be developed by the school and provided to the
16 student, the student's parent and identified supports. The
17 transition monitoring plan shall provide, at minimum, the needs
18 assessments to be completed at least twice a year and the
19 student may exit the monitoring plan after a year if the
20 student is doing well in school.

21 K. On the same calendar day of the referral, a
22 school shall notify a student's parent verbally and in writing
23 if the school refers the student to the juvenile justice
24 division of the children, youth and families department.

25 L. A school shall consult with the children, youth

1 and families department when making a determination for
 2 referral of a student to the juvenile justice division for
 3 actions of the student that took place during the restraint or
 4 during a crisis team intervention.

5 M. A school shall use state or local law
 6 enforcement as a last resort and not as a first response.
 7 School security or school resource officers shall defer to a
 8 student's social worker, psychologist, psychiatrist, counselor
 9 or therapist before taking action relating to a student.

10 N. A school that refers a student with a known
 11 disability or an IEP to the juvenile justice division of the
 12 children, youth and families department must conduct a
 13 manifestation determination hearing. If the hearing determines
 14 that the student's behavior is not related to a disability,
 15 then a copy of the findings shall be provided to the student's
 16 parent and the juvenile justice division."

17 SECTION 5. A new section of the Public School Code is
 18 enacted to read:

19 "[NEW MATERIAL] ALTERNATIVES TO SECLUSION AND RESTRAINT.--
 20 A local school board shall adopt and promulgate rules limiting
 21 use of restraint and seclusion on students in order to avoid
 22 re-traumatization. The rules shall:

23 A. fully integrate evidence-based practices
 24 relating to trauma;

25 B. provide for the recognition of the signs and

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1 symptoms of trauma in families and students; and

2 C. provide for the restriction of interventions
3 that would have a reasonable possibility of re-traumatizing a
4 student."

5 SECTION 6. Section 32A-6A-24 NMSA 1978 (being Laws 2007,
6 Chapter 162, Section 24, as amended) is amended to read:

7 "32A-6A-24. DISCLOSURE OF INFORMATION.--

8 A. Except as otherwise provided in the Children's
9 Mental Health and Developmental Disabilities Act, a person
10 shall not, without the authorization of the child, disclose or
11 transmit any confidential information from which a person well-
12 acquainted with the child might recognize the child as the
13 described person or any code, number or other means that could
14 be used to match the child with confidential information
15 regarding the child.

16 B. When the child is under fourteen years of age,
17 the child's legal custodian is authorized to consent to
18 disclosure on behalf of the child. Information shall also be
19 disclosed to a court-appointed guardian ad litem without
20 consent of the child or the child's legal custodian.

21 C. Except as provided pursuant to Subsection K of
22 this section, a child fourteen years of age or older with
23 capacity to consent to disclosure of confidential information
24 shall have the right to consent to disclosure of mental health
25 and habilitation records. A legal custodian who is authorized

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1 to make health care decisions for a child has the same rights
2 as the child to request, receive, examine, copy and consent to
3 the disclosure of medical or other health care information when
4 evidence exists that such a child whose consent to disclosure
5 of confidential information is sought does not have capacity to
6 give or withhold valid consent and does not have a treatment
7 guardian appointed by a court. If the legal custodian is not
8 authorized to make decisions for a child under the Children's
9 Mental Health and Developmental Disabilities Act, the person
10 seeking authorization shall petition the court for the
11 appointment of a treatment guardian to make a decision for such
12 a child.

13 D. Authorization from the child or legal custodian
14 for a child less than fourteen years of age shall not be
15 required for the disclosure or transmission of confidential
16 information when the disclosure or transmission:

17 (1) is necessary for treatment of the child
18 and is made in response to a request from a clinician;

19 (2) is necessary to protect against a clear
20 and substantial risk of imminent serious physical injury or
21 death inflicted by the child on self or another;

22 (3) is determined by a clinician not to cause
23 substantial harm to the child and a summary of the child's
24 assessment, treatment plan, progress, discharge plan and other
25 information essential to the child's treatment is made to a

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1 child's legal custodian or guardian ad litem;

2 (4) is to the primary caregiver of the child
3 and the information disclosed was necessary for the continuity
4 of the child's treatment in the judgment of the treating
5 clinician who discloses the information;

6 (5) is to an insurer contractually obligated
7 to pay part or all of the expenses relating to the treatment of
8 the child at the residential facility. The information
9 disclosed shall be limited to data identifying the child,
10 facility and treating or supervising physician and the dates
11 and duration of the residential treatment. It shall not be a
12 defense to an insurer's obligation to pay that the information
13 relating to the residential treatment of the child, apart from
14 information disclosed pursuant to this section, has not been
15 disclosed to the insurer;

16 (6) is to a protection and advocacy
17 representative pursuant to the federal Developmental
18 Disabilities Assistance and Bill of Rights Act and the federal
19 Protection and Advocacy for Individuals with Mental Illness
20 Act; or

21 (7) is pursuant to a court order issued for
22 good cause shown after notice to the child and the child's
23 legal custodian and opportunity to be heard is given. Before
24 issuing an order requiring disclosure, the court shall find
25 that:

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1 (a) other ways of obtaining the
2 information are not available or would not be effective; and

3 (b) the need for the disclosure
4 outweighs the potential injury to the child, the clinician-
5 child relationship and treatment services.

6 E. A disclosure ordered by the court shall be
7 limited to the information that is essential to carry out the
8 purpose of the disclosure. Disclosure shall be limited to
9 those persons whose need for the information forms the basis
10 for the order. An order by the court shall include such other
11 measures as are necessary to limit disclosure for the
12 protection of the child, including sealing from public scrutiny
13 the record of a proceeding for which disclosure of a child's
14 record has been ordered.

15 F. An authorization given for the transmission or
16 disclosure of confidential information shall not be effective
17 unless it:

18 (1) is in writing and signed; and

19 (2) contains a statement of the child's right
20 to examine and copy the information to be disclosed, the name
21 or title of the proposed recipient of the information and a
22 description of the use that may be made of the information.

23 G. The child has a right of access to confidential
24 information about the child and has the right to make copies of
25 information about the child and submit clarifying or correcting

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1 statements and other documentation of reasonable length for
2 inclusion with the confidential information. The statements
3 and other documentation shall be kept with the relevant
4 confidential information, shall accompany it in the event of
5 disclosure and shall be governed by the provisions of this
6 section to the extent the statements or other documentation
7 contain confidential information. Nothing in this subsection
8 shall prohibit the denial of access to the records when a
9 physician or other mental health or developmental disabilities
10 professional believes and notes in the child's medical records
11 that the disclosure would not be in the best interests of the
12 child. In all cases, the child has the right to petition the
13 court for an order granting access.

14 H. Information concerning a child disclosed under
15 this section shall not be released to any other person, agency
16 or governmental entity or placed in files or computerized data
17 banks accessible to any persons not otherwise authorized to
18 obtain information under this section. Notwithstanding the
19 confidentiality provisions of the Delinquency Act and the Abuse
20 and Neglect Act, information disclosed under this section shall
21 not be re-released without the express consent of the child or
22 legal custodian authorized under the Children's Mental Health
23 and Developmental Disabilities Act to give consent and any
24 other consent necessary for redisclosure in conformance with
25 state and federal law, including consent that may be required

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1 from the professional or the facility that created the
2 document.

3 I. Nothing in the Children's Mental Health and
4 Developmental Disabilities Act shall limit the confidentiality
5 rights afforded by federal statute or regulation.

6 J. The department shall promulgate rules for
7 implementing disclosure of records pursuant to this section and
8 in compliance with state and federal law and the children's
9 court rules.

10 K. If a student is referred to the juvenile justice
11 division of the department, the parent shall be allowed to
12 fully participate in the process of developing or amending a
13 student supports plan with the student and the student's school
14 in accordance with the provisions of Michael's Law."

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underscored material = new
[bracketed material] = delete