

1 SENATE BILL 387

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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9  
10 AN ACT

11 RELATING TO PUBLIC SCHOOLS; REQUIRING LESS RESTRICTIVE  
12 INTERVENTION BEFORE USE OF RESTRAINT OR SECLUSION ON A STUDENT;  
13 PROHIBITING THE USE OF MECHANICAL, CHEMICAL OR PRONE RESTRAINTS  
14 ON A STUDENT; REQUIRING A WRITTEN SUMMARY OF A REVIEW OF ANY  
15 USE OF RESTRAINT OR SECLUSION ON A STUDENT.

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

20 "22-5-4.12. USE OF RESTRAINT AND SECLUSION--TECHNIQUES--  
21 REQUIREMENTS.--

22 A. ~~[A school may permit the use of restraint or~~  
23 ~~seclusion techniques on any student only if both of the~~  
24 ~~following apply]~~ The use of restraint or seclusion techniques  
25 on any student is prohibited unless:

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1 (1) the student's behavior presents an  
2 imminent danger of serious physical harm to the student or  
3 others; and

4 (2) less restrictive interventions appear  
5 insufficient to mitigate the imminent danger of serious  
6 physical harm.

7 B. If a restraint or seclusion technique is used on  
8 a student:

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

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

15 (3) the restraint or seclusion technique shall  
16 be used only by school employees who are trained in [~~the safe~~  
17 ~~and effective~~] less restrictive interventions, including de-  
18 escalation strategies and use of restraint and seclusion  
19 techniques unless, in an emergency situation, [~~does not allow~~  
20 there is not sufficient time to summon those trained school  
21 employees;

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

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

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1                    C. Schools shall not use any of the following  
2 restraint techniques:

- 3                    (1) mechanical restraint;
- 4                    (2) chemical restraint; or
- 5                    (3) prone restraint.

6                    D. Physical restraint shall not be used:

- 7                    (1) as punishment or discipline;
- 8                    (2) as a means of coercion to force  
9 compliance;
- 10                   (3) as retaliation;
- 11                   (4) as a substitute for appropriate  
12 educational or behavioral support;
- 13                   (5) as a routine school safety measure;
- 14                   (6) as a planned behavior intervention in  
15 response to behavior that does not pose imminent danger of  
16 serious physical harm to self or others;
- 17                   (7) as a convenience for staff; or
- 18                   (8) to prevent property damage, unless the act  
19 of damaging property causes imminent danger of serious physical  
20 harm to self or others.

21                   ~~[C.]~~ E. Schools shall establish policies and  
22 procedures for the use of restraint or seclusion techniques,  
23 which the local school board or charter school governing body  
24 shall approve and include in a school safety plan; provided  
25 that:

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1                   ~~[(1) the school safety plan shall not be~~  
2 ~~specific to any individual student; and~~

3                   ~~(2) any school safety plan shall be drafted by~~  
4 ~~a planning team that includes at least one special education~~  
5 ~~expert;]~~

6                   (1) the school policies and procedures shall  
7 state that restraint is an emergency safety measure that may be  
8 used only if a student's behavior presents an imminent danger  
9 of serious physical harm to the student or others and when less  
10 restrictive interventions are insufficient to mitigate the  
11 imminent danger of serious physical harm;

12                   (2) policies for restraint and seclusion shall  
13 require and describe appropriate training for school personnel  
14 on the appropriate use of less restrictive interventions and  
15 the use of restraint or seclusion; and

16                   (3) policies regarding restraint and seclusion  
17 shall consider school district support and strategies for  
18 school employees to successfully reintegrate a student who has  
19 been restrained or secluded back into the school or classroom  
20 environment.

21                   ~~[D.]~~ F. Schools shall establish reporting and  
22 documentation procedures to be followed when a restraint or  
23 seclusion technique has been used on a student. The procedures  
24 shall include the following provisions:

25                   (1) on the same day that the incident occurs,

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1 unless circumstances prevent same-day notification, a school  
2 employee shall provide the student's parent or guardian with  
3 written or oral notice [~~on the same day that the incident~~  
4 ~~occurred, unless circumstances prevent same-day notification~~]  
5 that a restraint or seclusion was used. If the notice is not  
6 provided on the same day of the incident, notice shall be given  
7 within twenty-four hours after the incident. A copy of the  
8 notice shall also be provided to the school principal or  
9 administrator within the same time period;

10 (2) within [~~a reasonable time following the~~  
11 ~~incident~~] two school days following an incident of restraint or  
12 seclusion, a school employee shall provide the student's parent  
13 or guardian with written documentation that includes  
14 information, with student names redacted, about any persons,  
15 locations, [~~or~~] activities [~~that may have triggered the~~  
16 ~~behavior, if known, and specific information about the behavior~~  
17 ~~and its precursors, the type of restraint or seclusion~~  
18 ~~technique used and the duration of its use; and~~

19 ~~(3) schools~~] or other earlier events preceding  
20 the behavior, information about any less restrictive  
21 interventions that were attempted and the response to the less  
22 restrictive interventions, if any, a description of the type of  
23 restraint or seclusion technique used and the duration of its  
24 use and the students and names of school personnel involved in  
25 the incident in which restraint or seclusion was used;

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1                   (3) within two school days following an  
2 incident of restraint or seclusion, the school shall conduct a  
3 review [~~strategies used to address a student's dangerous~~  
4 ~~behavior if~~] of each use of restraint or seclusion techniques  
5 [for an individual student has occurred two or more times  
6 during any thirty-calendar-day period]. The school shall  
7 provide a written summary of the review to the parents of the  
8 student within two days after the review. The review shall  
9 include:

10                               ~~[(a) a review of the incidents in which~~  
11 ~~restraint or seclusion techniques were used and an analysis of~~  
12 ~~how future incidents may be avoided, including whether the~~  
13 ~~student requires a functional behavioral assessment; and~~

14                               ~~(b) a meeting of the student's~~  
15 ~~individualized education program team, behavioral intervention~~  
16 ~~plan team or student assistance team within two weeks of each~~  
17 ~~use of restraint or seclusion after the second use within a~~  
18 ~~thirty-calendar-day period to provide recommendations for~~  
19 ~~avoiding future incidents requiring the use of restraint or~~  
20 ~~seclusion;]~~

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

22                               (b) details of the incident in which  
23 restraint or seclusion techniques were used, including whether  
24 the student requires a functional behavioral assessment to  
25 guide a proactive behavior plan; and

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1                                   (c) an analysis of how future incidents  
2 may be avoided, including whether the student requires a  
3 functional behavioral assessment; and

4                                   (4) the school shall convene a meeting of the  
5 student's individualized education program team, behavior  
6 intervention plan team pursuant to Section 504 of the federal  
7 Rehabilitation Act of 1973, New Mexico's multilayered system of  
8 supports or student assistance team within two weeks after each  
9 use of restraint or seclusion to consider recommendations to  
10 avoid future incidents requiring the use of restraint or  
11 seclusion and whether changes to the individualized education  
12 program, behavior intervention plan or student assistance team  
13 plan are required.

14                                   [E.] G. If a school summons law enforcement instead  
15 of using a restraint or seclusion technique on a student, the  
16 school shall comply with the reporting, documentation and  
17 review procedures established pursuant to Subsection [D] F of  
18 this section.

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

24                                   G.] H. The provisions of this section shall not be  
25 interpreted as addressing the conduct of law enforcement or

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1 first responders.

2 ~~[H.]~~ I. The provisions of this section do not apply  
3 to any school located within a county juvenile detention center  
4 or a state-operated juvenile facility.

5 ~~[I.]~~ J. For the purposes of this section:

6 (1) "chemical restraint" means a drug or  
7 medication used to control behavior or restrict a student's  
8 freedom of movement that is either not medically prescribed for  
9 the standard treatment of a student's medical or psychiatric  
10 condition or not administered as prescribed, or the use of a  
11 chemical irritant, such as pepper spray or tear gas;

12 ~~[(1)]~~ (2) "first responder" means a person  
13 based outside of a school who functions within the emergency  
14 ~~[medical services system and who is dispatched to a school to~~  
15 ~~provide initial emergency aid];~~

16 ~~[(2)]~~ (3) "mechanical restraint" means the use  
17 of any device or material attached or adjacent to the student's  
18 body that restricts freedom of movement or normal access to any  
19 portion of the student's body and that the student cannot  
20 easily remove; ~~[but]~~ provided that "mechanical restraint" does  
21 not include: ~~[mechanical supports or protective devices]~~

22 (a) devices implemented by trained  
23 school personnel or used by a student that have been prescribed  
24 by an appropriate medical or related services professional and  
25 are used for the specific and approved purpose for which the

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1 devices were designed; and

2 (b) seatbelts and other safety equipment  
3 when used to secure students during transportation;

4 [~~(3)~~] (4) "physical restraint" means the use  
5 of physical force without the use of any device or material  
6 that restricts the free movement of all or a portion of a  
7 student's body, but "physical restraint" does not include  
8 physical escort;

9 (5) "prone restraint" means a physical  
10 restraint in which a student is placed face down on the floor  
11 or another surface and physical pressure is applied to the  
12 student's body to keep the student in the face-down position;

13 [~~(4)~~] (6) "restraint" when not otherwise  
14 modified means mechanical or physical restraint; and

15 [~~(5)~~] (7) "seclusion" means the involuntary  
16 confinement of a student alone in a room from which egress is  
17 prevented. "Seclusion" does not mean the use of a voluntary  
18 behavior management technique, including a timeout location, as  
19 part of a student's education plan, individual safety plan,  
20 [~~behavioral~~] behavior plan or individualized education program  
21 that involves the student's separation from a larger group for  
22 purposes of calming."