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SENATE BILL 283

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Bill B. O'Neill and James E. Smith

AN ACT

RELATING TO PUBLIC SCHOOLS; LIMITING THE USE OF RESTRAINT AND
SECLUSION; PROVIDING FOR NOTICE TO PARENTS; PROVIDING A PRIVATE
RIGHT OF ACTION; PROVIDING FOR ANNUAL REPORTS.

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]~~ LIMITATION ON USE OF RESTRAINT AND
SECLUSION--INFORMATION TO BE PROVIDED TO PARENTS--PRIVATE RIGHT
OF ACTION--REPORTING REQUIREMENTS.--

A. As used in this section:

(1) "chemical restraint" means the
administration of a medication that is not standard treatment
for the student's medical or psychiatric condition that is used
to control behavior or to restrict a student's freedom of

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1 movement;

2 (2) "mechanical restraint" means the use of
3 any device or material attached or adjacent to the student's
4 body that restricts freedom of movement or normal access to any
5 portion of the student's body and that the student cannot
6 easily remove, but "mechanical restraint" does not include
7 mechanical supports or protective devices;

8 (3) "physical restraint" means the use of
9 physical force without the use of any device or material that
10 restricts the free movement of all or a portion of a student's
11 body;

12 (4) "protective devices" means helmets, safety
13 goggles or glasses, guards, mitts, gloves, pads and other
14 common safety devices that are normally used or recommended for
15 use by persons without disabilities while engaged in a sport or
16 occupation or during transportation;

17 (5) "restraint" when not otherwise modified
18 means chemical, mechanical or physical restraint;

19 (6) "seclusion" means the confinement of a
20 student alone in a room from which the student is physically
21 prevented from leaving; and

22 (7) "support" means a device used to achieve
23 proper body position, designed by a physical therapist and
24 approved by a physician or designed by an occupational
25 therapist, such as braces, standers or gait belts, but not

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1 including protective devices.

2 B. All school districts and charter schools shall
3 adopt policies and procedures with respect to the use of
4 restraints and seclusion that provide, at a minimum, that:

5 (1) restraint and seclusion is prohibited,
6 except in the event of emergency situations, and shall not be
7 used as planned educational interventions or as disciplinary
8 measures;

9 (2) restraint and seclusion may be used in an
10 emergency situation only to the extent necessary to protect a
11 student or another person from imminent, serious physical harm,
12 and using the least amount of force necessary to protect the
13 student or another person from harm, and only when another less
14 intrusive, nonphysical intervention has failed or been
15 determined ineffective;

16 (3) the use of prone physical restraint and
17 any life-threatening restraints are strictly prohibited even in
18 emergency situations;

19 (4) when a student is placed in seclusion, the
20 student shall be visually monitored on a continual basis. Any
21 room or structure used for the purpose of seclusion shall meet
22 all applicable building, fire and safety codes and any
23 applicable rules promulgated by the department;

24 (5) an emergency situation no longer exists
25 when:

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1 (a) a medical condition occurs that puts
2 the student at equal or greater risk of harm;

3 (b) the student's behavior no longer
4 poses immediate danger of serious physical harm to the student
5 or others; or

6 (c) less restrictive interventions would
7 be effective in preventing such immediate danger of serious
8 physical harm; and

9 (6) the parent of a student who has been
10 subject to seclusion or restraint shall be provided notice
11 within twenty-four hours in person or by phone, whenever
12 possible, of any use of restraint or seclusion, and provided
13 written notice within five business days. The notice shall
14 include:

15 (a) an explanation of the reasons for
16 the use of restraint or seclusion;

17 (b) the location, manner and duration of
18 the seclusion or restraint, and, in the case of restraint, a
19 description of the chemical, mechanical or physical restraint
20 used; and

21 (c) the names of school personnel or
22 other persons who were involved or were witnesses to the
23 restraint or seclusion.

24 C. A parent who does not receive written
25 notification pursuant to the provisions of this section may

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1 bring an action in district court against the school district
2 or charter school. If the court finds that the school district
3 or charter school failed to provide written notice of an
4 instance of the use of seclusion or restraint, the school
5 district or charter school shall be required to pay actual
6 damages or the sum of five hundred dollars (\$500), whichever is
7 greater, and reasonable attorney fees, to the parent.

8 D. School districts and charter schools shall
9 report annually to the department all uses of chemical
10 restraint, mechanical restraint, physical restraint and
11 seclusion against students in a uniform manner determined by
12 the department, but reports shall not identify a student who
13 was restrained or secluded. The reports shall be published on
14 the department's web site."

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