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FISCAL IMPACT REPORT

ORIGINAL DATE 3/12/15

SPONSOR SJC LAST UPDATED _____ HB _____

SHORT TITLE School Use Of Restraint & Seclusion SB 283/SJCS

ANALYST Chavez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From (for original bill)

Administrative Office of the Courts (AOC)
 Human Services Department (HSD)
 Developmental Disabilities Planning Council (DDPC)
 Children, Youth and Families Department (CYFD)
 Public Education Department (PED)

Responses Received for Committee Substitute

Human Services Department (HSD)
 Public Education Department (PED)

SUMMARY

Synopsis of the SJC Substitute

The Senate Judiciary Committee Substitute for Senate Bill 283 enacts a new section of the Public School Code to prohibit school districts and charter schools from using physical restraint and seclusion, except in emergency situations, and not as planned educational interventions, disciplinary measures, or included in individual education program documents or in emergency plan documents for individual students. The bill requires any restraint and seclusion administered in emergency situations by trained staff. Aversive interventions, chemical restraint and mechanical restraint as defined in the bill are prohibited. The bill details parental notification criteria and requires school districts and charter schools to report all uses of restraint and seclusion used against students to PED annually.

FISCAL IMPLICATIONS

This bill does not contain an appropriation.

SB 283/SJCS would require PED to communicate with school districts and state charter schools regarding the new section of the Public School Code and reporting requirements, and would need to clarify the new section of the Public School Code in relation to the Individuals with Disabilities Education Act (IDEA). PED analysis notes the bill would require collaboration among the Coordinated School Health and Wellness Bureau, the Special Education Bureau, the Information Technology Division and the PED's General Counsel. PED adds the bill would also require updating and/or creating a data system within the PED's Student Teacher Accountability Reporting System (STARS) if the current federal report does not meet the criteria of SB283/SJCS. PED adds that the administrative costs to accomplish the requirements of the bill cannot be quantified at this time.

SB 283/SJCS requires school districts and charter schools to adopt policies and procedures with respect to the use of restraints and seclusion. There may be costs associated with this effort.

Additionally, SB 283/SJCS requires the use of staff trained in evidence-based crisis intervention training. It is not clear how many staff in the state currently possesses such training, and how many staff would require training to meet the provisions of this bill, for which there may also be additional costs.

AOC noted in analysis for the original bill that there will be a minimal administrative cost for AOC for statewide update, distribution and documentation of statutory changes. AOC also notes that in general, new laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

The bill provides that the following exceptions to the use of restraint and seclusion in school districts and charters schools (see Technical Issues):

- restraint and seclusion be used in an emergency situation only to the extent necessary to protect someone from imminent, serious physical harm, using the least amount of force necessary to protect the person from harm, and only when another less intrusive, nonphysical intervention has failed or been determined ineffective;
- the use of prone physical restraint and any life-threatening restraints are strictly prohibited even in emergency situations;
- a student placed in seclusion shall be visually monitored on a continual basis;
- a room or structure used for seclusion shall meet all applicable building, fire and safety codes and any rules promulgated by PED; and
- an emergency situation no longer exists when a medical condition occurs that puts the student at equal or greater risk of harm, the student's behavior no longer poses immediate danger of serious physical harm to the student or others, or less restrictive interventions would be effective in preventing such immediate danger of serious physical harm.

The bill also requires that any physical restraint and seclusion in emergency situations be administered by staff trained in evidence-based crisis intervention training that provides de-

escalation training and first aid, including how to identify signs of medical distress.

SB 283 requires a parent of a student who has been subject to seclusion or restraint to be provided notice within 24 hours in person or by phone, whenever possible, of the use of restraint or seclusion, and provided written notice, containing specific details related to the seclusion or restraint, within 5 business days.

PED analysis discusses current practice relating to students covered under the Individuals with Disabilities Education Act (IDEA), and is still relevant to the committee substitute:

A student covered under IDEA is required to have Individualized Education Program (IEP) and may also have an Individualized Healthcare Plan (IHP) that works in conjunction with a student's IEP. For those students requiring nursing services, the IHP outlines the type, amount, and degree of care needed by the student. The IHP will be inclusive of nursing and healthcare interventions specific to a child's conditions. In some situations, restraining a child in response to not only an emergency situation, but also as part of a nursing and/or healthcare intervention and maintenance of care may be deemed appropriate. As the bill does not specify who would deem a situation as an emergency situation, there may be concerns within school districts and state charter schools as to the appropriate use of restraints and/or seclusion and what does and doesn't qualify as an emergency situation.

PED analysis also notes that currently, IEPs for students with disabilities include plans for physical restraint in case of emergency:

In situations where a student with a disability demonstrates behavior that impedes his or her learning or that of others, the IDEA 2004 at 20 U.S.C. 1414(d)(3)(B)(i) requires the student's IEP team to consider positive behavioral interventions, strategies, and supports to address that behavior. In a case where the student's problematic behavior is severe, persistent, and frequent, PED has consistently interpreted this requirement to mean that the IEP team develops a behavioral intervention plan (BIP) based on a functional behavioral assessment as part of the IEP for that student...However, an effective BIP must also address and specifically provide for emergency situations where a particular student exhibits aggressive, violent, or dangerous behavior that requires an immediate aversive intervention, such as physical restraint. In that case, physical restraint is designed to protect the student and others from serious injury; or safeguard physical property; and should be used only in an emergency.

The bill prohibits physical restraint and seclusion and does not allow them to be included in emergency plan documents except as necessary to document their prohibition.

PED also notes that current federal reporting requirements regarding the use of restraint:

SB283/SJCS requires school districts and state charter schools to report annually to the PED all incidents involving the use of restraints, as defined in the new section of the Public School Code, and seclusion. The Office of Civil Rights (OCR) already requires the reporting of the number of instances where students with disabilities under IDEA or Section 504 students without disabilities 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). The PED would need to determine if the OCR report meets the requirements of the bill.

CYFD analysis for the original bill noted the limitation of the use of restraints and seclusion is in alignment with the value of supporting least-restrictive interventions and environments. However, CYFD also notes that the requirement to notify a parent within twenty-four hours in person or by phone is too long for notification to a parent or guardian if behaviors exist that are a danger to self or others. In such situations, it is imperative the parent or guardian be notified immediately, at maximum the end of the school day, so that they may seek immediate, same-day behavioral health and/or crisis support services as well as the support and intervention of their established team, if such a team already exists. CYFD adds delay of notification for twenty-four hours may result in the child or youth to continue to present as a danger to self or others or act upon such behaviors without immediate, same-day behavioral health assessment and intervention.

HSD analysis includes the following additional concerns:

- SB 283 does not address the trauma that could potentially be inflicted, created or activated for the student by being restrained or secluded. SB 283 does not address whether referral for after care or psychological treatment will occur or is required.
- While SB 283 includes important reporting requirements, the requirements do not go far enough to monitor the practice. NM PED would need to maintain records of deaths or other complications which occur during the use of these practices.
- While SB 283 includes important protections, the bill would benefit from additional protections to ensure that a student's age, developmental needs, gender issues, ethnicity, and history of sexual or physical abuse be taken into account before implementing such practices.

PERFORMANCE IMPLICATIONS

SB 283 may support PED's strategic lever of ensuring all students are provided a safe and supportive learning environment.

ADMINISTRATIVE IMPLICATIONS

PED would need to communicate with school districts and state charter schools regarding the new section of the Public School Code and reporting requirements. The bill allows PED to accept reports required by other laws as long as such reports meet the requirements of the bill.

SB 283/SJCS requires school districts and charter schools to adopt policies and procedures with respect to the use of restraints and seclusion. It is unclear if there are costs associated with this effort and how policies and procedures would be reviewed and monitored.

TECHNICAL ISSUES

PED notes page 1, lines 19 and 20 states "Private Right to Action". Since this provision is not a part of the committee substitute, it will need to be deleted from the bill.

There is an apparent contradiction in the bill regarding the prohibition of restraint and its

exception in emergency situations. Subsection B on page 4 prohibits aversive interventions and chemical and mechanical restraint. However, page 4, lines 21 through 22 states that “restraint and seclusion may be used in an emergency situation only to the extent necessary...” The bill defines “restraint” on page 3, lines 16 and 17 to mean “chemical, mechanical or physical restraint.” It is not clear whether or not chemical and mechanical restraint may be used in some emergency situations.

PED notes neither the Office of Special Education nor Rehabilitative Services within the United States Department of Education (USDE) expressly prohibits the use of physical restraints on students with disabilities. However, both require IEP Teams to consider the use of positive behavioral intervention supports (PBIS) in relation to student discipline. PED adds there could be the potential for conflict between state and federal laws and/or interpretation.

Some terms used in the bill may need to be defined to avoid confusion, especially “emergency situations”, “emergency intervention”, “life-threatening restraint.” Additionally, the Legislature may wish to clarify who has the authority to declare an emergency situation under the bill.

OTHER SUBSTANTIVE ISSUES

DDPC notes that this bill addresses the concerns and policy recommendations of the National Association of Councils of Developmental Disabilities (NACDD) as outlined in its policy announcement addressing the use of aversives, restraint and seclusion (ARS) in residential treatment facilities and schools. NACDD notes that ARS has resulted in hundreds of deaths and thousands of injuries among students with developmental disabilities, and is not consistent with proactive approaches or best practices in addressing the behavior needs of students with developmental disabilities.

PED notes it has published a comprehensive technical assistance manual focused on PBIS and strategies and Behavioral Intervention Plans for individual students. The report, *Response to Intervention Framework 2014*, consists of a three-tier, problem-solving model that uses a set of increasingly intensive academic and/or behavioral supports/intervention. PED adds that utilizing the Response to Intervention (RtI) model is a state requirement (NMAC 6.29.1.9.D.).

In March 2006, 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 on restraint and the development of local policies.

KC/bb/je