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HOUSE BILL 190

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

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FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC SCHOOLS; LIMITING THE USE OF RESTRAINT AND
SECLUSION; PROVIDING FOR NOTICE TO PARENTS; 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) "aversive intervention" means any device
or intervention, consequences or procedure intended to cause
pain or unpleasant sensations, including interventions causing
physical pain, tissue damage, physical illness or injury;

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1 electric shock; isolation; forced exercise; withholding of
2 food, water or sleep; humiliation; water mist; noxious taste,
3 smell or skin agents; and overcorrection;

4 (2) "chemical restraint" means the
5 administration of a medication that is not standard treatment
6 for a student's medical or psychiatric condition that is used
7 to control behavior or to restrict a student's freedom of
8 movement and does not include medical restraint prescribed by a
9 physician as a health-related protective measure in a specific
10 circumstance as outlined by the physician and administered by
11 trained medical personnel;

12 (3) "mechanical restraint" means the use of
13 any device or material attached or adjacent to the student's
14 body that restricts freedom of movement or normal access to any
15 portion of the student's body and that the student cannot
16 easily remove, but "mechanical restraint" does not include
17 mechanical supports or protective devices;

18 (4) "mechanical support" means a device used
19 to achieve proper body position, designed by a physical
20 therapist and approved by a physician or designed by an
21 occupational therapist, including braces, standers or gait
22 belts, but not including protective devices;

23 (5) "physical escort" means the brief, gentle
24 touching or holding of a hand, wrist, arm, shoulder, waist, hip
25 or back for the purpose of inducing a student to move to a safe

1 location;

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

7 (7) "prone restraint" means to restrain a
8 student in a face-down position;

9 (8) "protective devices" means helmets, safety
10 goggles or glasses, guards, mitts, gloves, pads and other
11 common safety devices that are normally used or recommended for
12 use by persons without disabilities while engaged in a sport or
13 occupation or during transportation. If atypical use of a
14 protective device is planned for a student with a disability,
15 it must be recommended by a physician;

16 (9) "restraint", when not otherwise modified,
17 means chemical, mechanical or physical restraint; and

18 (10) "seclusion" means the confinement of a
19 student alone in a room from which the student is physically
20 prevented from leaving.

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

24 (1) aversive interventions are prohibited;

25 (2) chemical restraint is prohibited;

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- 1 (3) mechanical restraint is prohibited;
- 2 (4) physical restraint and seclusion are
- 3 prohibited, except in the event of emergency situations, and
- 4 shall not:
- 5 (a) be used as planned educational
- 6 interventions;
- 7 (b) be included in individual education
- 8 program documents for individual students;
- 9 (c) be included in emergency plan
- 10 documents for individual students except as necessary to
- 11 document when restraint and seclusion are prohibited even in
- 12 emergency situations for individual students; or
- 13 (d) be used as disciplinary measures;
- 14 (5) restraint and seclusion may be used in an
- 15 emergency situation only to the extent necessary to protect a
- 16 student or another person from imminent, serious physical harm,
- 17 using the least amount of force necessary to protect the
- 18 student or another person from harm, and only when another less
- 19 intrusive, nonphysical intervention has failed or been
- 20 determined ineffective;
- 21 (6) the use of prone physical restraint and
- 22 any life-threatening restraints are strictly prohibited even in
- 23 emergency situations;
- 24 (7) physical restraint and seclusion in
- 25 emergency situations must be administered by staff trained in

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1 evidence-based crisis intervention training that provides de-
2 escalation training and first aid, including how to identify
3 signs of medical distress;

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

9 (9) an emergency situation no longer exists
10 when:

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

13 (b) the student's behavior no longer
14 poses immediate danger of serious physical harm to the student
15 or others; or

16 (c) less restrictive interventions would
17 be effective in preventing such immediate danger of serious
18 physical harm; and

19 (10) the parent of a student who has been
20 subject to seclusion or restraint shall be provided notice
21 within twenty-four hours in person or by phone, whenever
22 possible, of any use of restraint or seclusion and provided
23 written notice within five business days. The notice shall
24 include:

25 (a) an explanation of the reasons for

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1 the use of restraint or seclusion;

2 (b) the location, manner and duration of
3 the restraint or seclusion, and, in the case of restraint, a
4 description of the chemical, mechanical or physical restraint
5 used; and

6 (c) the names of school personnel or
7 other persons who were involved or were witnesses to the
8 restraint or seclusion.

9 C. School districts and charter schools shall
10 report annually to the department all uses of chemical
11 restraint, mechanical restraint, physical restraint and
12 seclusion on students in a uniform manner determined by the
13 department. The department may accept reports required by
14 other laws as long as such reports meet the requirements of
15 this section. School district reports shall not identify a
16 student who was restrained or secluded. The reports shall be
17 published on the department's website."