

HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR
HOUSE BILL 75

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

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, including interventions causing physical pain, tissue
damage, physical illness or injury; electric shock; isolation;

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

4 (2) "chemical restraint" means the
5 administration of a medication that is not standard treatment
6 for the 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 doctor as a health-related protective measure in a specific
10 circumstance as outlined by the doctor and administered by
11 trained medical personnel;

12 (3) "in-school suspension" means an
13 administrative action suspending a student from one or more
14 regular classes while requiring the student to spend the time
15 in a designated area at the same school or elsewhere while
16 under adult supervision;

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

23 (5) "mechanical support" means a device used
24 to achieve proper body position, designed by a physical
25 therapist and approved by a physician or designed by an

1 occupational therapist, such as braces, standers or gait belts,
2 but not including protective devices;

3 (6) "physical escort" means the brief, gentle
4 touching or holding of a hand, wrist, arm, shoulder, waist, hip
5 or back for the purpose of inducing a student to move to a safe
6 location;

7 (7) "physical restraint" means the use of
8 physical force without the use of any device or material that
9 restricts the free movement of all or a portion of a student's
10 body, but "physical restraint" does not include physical
11 escort;

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

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

21 (10) "restraint" when not otherwise modified
22 means chemical, mechanical or physical restraint;

23 (11) "seclusion" means the confinement of a
24 student alone in a room from which the student is physically
25 prevented from leaving, but "seclusion" does not include time

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1 out or in-school suspension; and

2 (12) "time out" means a behavior management
3 technique that may involve allowing a student to be supervised
4 in a setting separate from the group for the purpose of
5 calming, if there is no restriction on the student's ability to
6 rejoin the group at will and such separation is not to a
7 location from which the student cannot voluntarily rejoin the
8 group.

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

- 12 (1) aversive interventions are prohibited;
13 (2) chemical restraint is prohibited;
14 (3) mechanical restraint is prohibited;
15 (4) physical restraint and seclusion are
16 prohibited, except in the event of emergency situations, and
17 shall not be:

- 18 (a) used as planned educational
19 interventions;
20 (b) included in individualized education
21 plan documents for individual students except as necessary to
22 document when restraint and seclusion are prohibited even in
23 emergency situations for individual students; or

- 24 (c) used as disciplinary measures;
25 (5) restraint and seclusion may be used in an

1 emergency situation only to the extent necessary to protect a
2 student or another person from imminent, serious physical harm,
3 and using the least amount of force necessary to protect the
4 student or another person from harm, and only when another less
5 intrusive, nonphysical intervention has failed or been
6 determined ineffective;

7 (6) the use of prone physical restraint and
8 any life-threatening restraints are strictly prohibited even in
9 emergency situations;

10 (7) physical restraint and seclusion in
11 emergency situations shall be administered by staff trained in
12 evidence-based crisis intervention training that provides de-
13 escalation training and first aid, including ways to identify
14 signs of medical distress; provided that if trained staff is
15 not available, physical restraint and seclusion shall be used
16 only to the least degree necessary to prevent the student from
17 harming the student's own self or others;

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

23 (9) an emergency situation no longer exists
24 when:

25 (a) a medical condition occurs that puts

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1 the student at equal or greater risk of harm;

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

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

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

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

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

20 (c) the names of school personnel or
21 other persons, without individually identifying students, who
22 were involved or were witnesses to the restraint or seclusion.

23 C. School districts and charter schools shall
24 report annually to the department all uses of chemical
25 restraint, mechanical restraint, physical restraint and

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1 seclusion against students in a uniform manner determined by
2 the department. The department may accept reports required by
3 other laws as long as such reports meet the requirements of
4 this section. School district reports shall not identify a
5 student who was restrained or secluded. The reports shall be
6 published on the department's website.

7 D. The provisions of this section shall not be
8 interpreted as addressing the conduct of law enforcement.
9 Students shall retain all substantive and procedural rights
10 afforded them under the state and federal laws that govern
11 actions by law enforcement."

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