

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 75

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

AN ACT

RELATING TO EDUCATION; ENACTING A NEW SECTION OF THE PUBLIC  
SCHOOL CODE TO LIMIT THE USE OF RESTRAINT AND SECLUSION IN  
SCHOOLS; PROVIDING FOR NOTICE TO PARENTS.

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]~~ USE OF RESTRAINT AND SECLUSION--  
TECHNIQUES--REQUIREMENTS.--

A. A school may permit the use of restraint or  
seclusion techniques on any student only if both of the  
following apply:

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

1 (2) less restrictive interventions appear  
2 insufficient to mitigate the imminent danger of serious  
3 physical harm.

4 B. If a restraint or seclusion technique is used on  
5 a student:

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

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

12 (3) the restraint or seclusion technique shall  
13 be used only by school employees who are trained in the safe  
14 and effective use of restraint and seclusion techniques unless  
15 an emergency situation does not allow sufficient time to summon  
16 those trained school employees;

17 (4) the restraint technique employed shall not  
18 impede the student's ability to breath or speak; and

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

21 C. Schools shall establish policies and procedures  
22 for the use of restraint or seclusion techniques in a school  
23 safety plan; provided that:

24 (1) the school safety plan shall not be  
25 specific to any individual student; and

1                   (2) any school safety plan shall be drafted by  
2 a planning team that includes at least one special education  
3 expert.

4                   D. Schools shall establish reporting and  
5 documentation procedures to be followed when a restraint or  
6 seclusion technique has been used on a student. The procedures  
7 shall include the following provisions:

8                   (1) a school employee shall provide the  
9 student's parent or guardian with written or oral notice on the  
10 same day that the incident occurred, unless circumstances  
11 prevent same-day notification. If the notice is not provided  
12 on the same day of the incident, notice shall be given within  
13 twenty-four hours after the incident;

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

21                   (3) schools shall review strategies used to  
22 address a student's dangerous behavior if use of restraint or  
23 seclusion techniques for an individual student has occurred two  
24 or more times during any thirty-calendar-day period. The  
25 review shall include:

.207037.4

1 (a) a review of the incidents in which  
2 restraint or seclusion techniques were used and an analysis of  
3 how future incidents may be avoided, including whether the  
4 student requires a functional behavioral assessment; and

5 (b) a meeting of the student's  
6 individualized education program team, behavioral intervention  
7 plan team or student assistance team within two weeks of each  
8 use of restraint or seclusion after the second use within a  
9 thirty-calendar-day period to provide recommendations for  
10 avoiding future incidents requiring the use of restraint or  
11 seclusion.

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

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

22 G. The provisions of this section shall not be  
23 interpreted as addressing the conduct of security aides, school  
24 police officers, law enforcement or first responders.

25 H. For the purposes of this section:

.207037.4

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

7 (2) "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 (3) "restraint" when not otherwise modified  
13 means mechanical or physical restraint; and

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