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SENATE BILL 397

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

INTRODUCED BY

Linda M. Lopez

AN ACT

RELATING TO PUBLIC SCHOOLS; ENACTING NEW SECTIONS OF THE PUBLIC SCHOOL CODE AS "MICHAEL'S LAW"; PROVIDING FOR THE PROTECTION OF STUDENTS IN NEED OF ACCOMMODATION WHO ARE ACCUSED OF SANCTIONED OFFENSES TO PROVIDE SUPPORTIVE SERVICES AND DUE PROCESS; LIMITING THE USE OF RESTRAINT AND SECLUSION; PROVIDING FOR NOTICE TO PARENTS AND GUARDIANS; 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] SHORT TITLE.--This act may be cited as "Michael's Law"."

SECTION 2. A new section of the Public School Code is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in Michael's Law:

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- 1 A. "adverse childhood event" means any of the
2 following events or conditions:
- 3 (1) emotional abuse or neglect;
 - 4 (2) physical abuse or neglect;
 - 5 (3) sexual abuse;
 - 6 (4) substance abuse in the student's
7 household;
 - 8 (5) mental illness of a household member of
9 the student;
 - 10 (6) violence against the student's mother or
11 stepmother;
 - 12 (7) incarceration of a household member of the
13 student;
 - 14 (8) loss of a contact with a parent of the
15 student;
 - 16 (9) homelessness;
 - 17 (10) persistent poverty; or
 - 18 (11) the experience of being a child parent,
19 or being raised by a child parent, without adequate social
20 supports;

21 B. "aversive intervention" means any device or
22 intervention, consequences or procedure intended to cause pain
23 or unpleasant sensations, including interventions causing
24 physical pain, tissue damage, physical illness or injury;
25 electric shock; isolation; forced exercise; withholding of

1 food, water or sleep; humiliation; water mist; noxious taste,
2 smell or skin agents; and overcorrection;

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

11 D. "developmental disability" means a severe
12 chronic disability that:

13 (1) is attributable to a mental or physical
14 impairment or a combination of mental or physical impairments;

15 (2) is manifested before a person reaches
16 twenty-two years of age;

17 (3) is expected to continue indefinitely;

18 (4) results in substantial functional
19 limitations in three or more of the following areas of major
20 life activities:

21 (a) self-care;

22 (b) receptive and expressive language;

23 (c) learning;

24 (d) mobility;

25 (e) self-direction;

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- 1 (f) capacity for independent living; or
2 (g) economic self-sufficiency; and
3 (5) reflects a person's need for a combination
4 and sequence of special, interdisciplinary or other supports
5 and services that are of lifelong or extended duration that are
6 individually planned or coordinated;

7 E. "in-school suspension" means suspending a
8 student from one or more regular classes while requiring the
9 student to spend the time in a designated area at the same
10 school or elsewhere while under adult supervision;

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

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

22 H. "physical escort" means the brief, gentle
23 touching or holding of a hand, wrist, arm, shoulder, waist, hip
24 or back for the purpose of providing comfort or helping a
25 student to move to a safe location;

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

5 J. "present danger" means imminent bodily harm or
6 death to oneself or another;

7 K. "prone restraint" means restraint of a student
8 in a face-down position;

9 L. "protective devices" means helmets, safety
10 goggles or glasses, guards, mitts, gloves, pads or other common
11 safety devices that are normally used or recommended for use by
12 persons without disabilities while engaged in a sport or
13 occupation or during transportation;

14 M. "seclusion" means the confinement of a student
15 alone in a room from which the student is physically prevented
16 from leaving, but "seclusion" does not include time out or in-
17 school suspension;

18 N. "student in need of accommodation" means a
19 student who:

20 (1) has been diagnosed as having a serious
21 mental illness, serious emotional disturbance or other
22 behavioral health condition;

23 (2) has received an adverse childhood events
24 screening and has been identified as having experienced at
25 least two adverse childhood events; or

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1 (3) has been diagnosed as having an
2 intellectual or developmental disability;

3 O. "supports screenings" include screenings to
4 determine whether a student is a student in need of
5 accommodation or to assess or diagnose a student as having one
6 of the conditions that qualify the student as a student in need
7 of accommodation; and

8 P. "time out" means the brief removal, by choice of
9 a student or at the request of a teacher, of a student to a
10 quiet classroom area for students to self-regulate or become
11 calm and from which the student can freely and voluntarily
12 leave."

13 SECTION 3. A new section of the Public School Code is
14 enacted to read:

15 "[NEW MATERIAL] STUDENT SUPPORTS PLAN--IDENTIFICATION OF
16 STUDENTS IN NEED OF ACCOMMODATION--PREVENTION PLANS OF
17 ACTION.--

18 A. All school districts and charter schools shall
19 adopt a "student supports plan" for protecting students in need
20 of accommodation from violations of their rights under state
21 and federal law, including their rights to accommodation of
22 disability, parental or guardian involvement and due process.
23 The student supports plan shall include provisions for:

24 (1) training state and local law enforcement
25 officers and school employees in responding to situations

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1 involving students in need of accommodation so as to minimize
2 aversive intervention or the classification of the responses of
3 students in need of accommodation as intentional infractions of
4 school policy;

5 (2) ensuring compliance with the provisions of
6 Section 4 of Michael's Law relating to restraint and seclusion;

7 (3) recognizing the common characteristics and
8 behaviors associated with students in need of accommodation;

9 (4) interaction with students in need of
10 accommodation and students with physical disabilities;

11 (5) reasonable accommodation for students in
12 need of accommodation and students with physical disabilities;

13 (6) the experiential realities of students in
14 need of accommodation and how they affect their interactions
15 with others;

16 (7) communication with students in need of
17 accommodation;

18 (8) identification of local resources for
19 providing services and supports to students in need of
20 accommodation;

21 (9) protocols for using crisis intervention
22 teams, mobile crisis teams, assertive community treatment teams
23 and behavioral health providers; and

24 (10) the rights of students against unlawful
25 search and seizure.

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1 B. All local school districts and charter schools
2 shall develop first-response policies and procedures for
3 students who have committed a first offense as defined by the
4 school code of conduct and discipline as determined by the
5 local school board. These policies and procedures shall
6 include:

7 (1) a requirement that, before any arrest or
8 referral for services is made, the student, the student's
9 parent or guardian and school administrators meet after the
10 student's first offense to discuss the events surrounding the
11 first offense;

12 (2) protocols for seeking and the
13 administration of crisis intervention services;

14 (3) the provision to the student of:

15 (a) an adverse childhood events
16 screening;

17 (b) a needs assessment, in accordance
18 with the provisions of Subsection C of this section; and

19 (c) behavioral health screening;

20 (4) a requirement that, unless the student is
21 alleged to have committed a violent crime or there is a present
22 danger, any referral to juvenile justice authorities be delayed
23 pending the completion of supports screenings and a
24 determination of whether prevention services could deter
25 escalation or repetition of the offense;

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1 (5) the creation of a student supports plan
2 for the student that includes a plan for restorative,
3 preventive and intervention services, which shall be documented
4 and agreed upon by the student, the student's parent or
5 guardian and school administrators; provided that the parent or
6 guardian of a student may refuse services;

7 (6) provisions for the review of the student's
8 disciplinary records to examine formal and informal offenses as
9 defined by the student code of conduct and any measures taken
10 to address the offenses by:

11 (a) the school administrator, principal
12 or dean of students; or

13 (b) a behavioral health professional
14 employed by or under contract to the school or school district;
15 and

16 (7) a requirement that the student's teachers
17 be consulted during records review and assessment but shall not
18 be solely responsible for administering the assessment, making
19 referrals or contacting providers, completing reports or any
20 other activity required pursuant to this subsection.

21 C. A needs assessment shall be developmentally
22 specific, strengths-based, culturally sensitive and trauma-
23 informed. It shall integrate an assessment of the student's
24 family and home environment, the classroom context, sensory
25 integration needs and educational history. The needs

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1 assessment and the interventions and screenings provided
2 pursuant to Paragraphs (2) and (3) of Subsection B of this
3 section shall be used to match those assessments, interventions
4 and screenings that the children, youth and families department
5 provides in its secure facilities and may be supplemented to
6 meet the provisions of Michael's Law.

7 D. Any record or document pertaining to the
8 student, the student's education, assessments, screenings and
9 interventions shall be provided to the student's parent or
10 guardian no later than thirty days after the first offense has
11 occurred.

12 E. After a student's first offense as defined by
13 the school code of conduct and discipline as determined by the
14 local school board, or within thirty days of exiting juvenile
15 justice custody, the student, the student's parent or guardian,
16 school officials, teachers and service provider shall develop a
17 prevention plan of action that shall be documented in writing.
18 The prevention plan of action shall include:

- 19 (1) reports from any crisis intervention,
20 behavioral health screening or needs assessment;
- 21 (2) the identification of goals for optimizing
22 the student's well-being; and
- 23 (3) recommendations and considerations related
24 to achieving the goals for the student, including:
- 25 (a) non-discriminatory, accessible and

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1 high-quality modifications for learning that coincide with any
2 crisis intervention, behavioral health screening or needs
3 assessment;

4 (b) daily schedules, expectations and
5 monitoring of student activity and learning time;

6 (c) in-home and community-based models
7 that include viable options for: 1) assisting the student with
8 the acquisition of needed social and behavioral skills; or 2)
9 providing other necessary services to the student;

10 (d) positive reinforcement and behavior
11 support services;

12 (e) goal-setting and assistance for
13 reaching those goals, such as college preparatory and career
14 preparatory guidance;

15 (f) parent training, involvement and
16 support;

17 (g) individual, group or class services
18 that respect evidence-based student-to-teacher ratios;

19 (h) communication interventions and the
20 use of assistive technology;

21 (i) any needed physical therapy,
22 occupational therapy or speech therapy;

23 (j) social skills support, including
24 assistance in helping children participate in the mainstream
25 student activities whenever possible so as to diminish or

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1 remove any stigma;

2 (k) creative outlets, including
3 movement, exercise, art, music or sensory integration; and

4 (l) assistance and training for school
5 employees and administrators in implementing the prevention
6 plan of action.

7 F. A student's prevention plan of action shall
8 include evidence from supporting documents, including
9 information relating to any child protective services
10 involvement, foster care placement, drug court involvement,
11 past individual education plans and any past assessment that
12 was considered in determining the best interests of the
13 student.

14 G. A school shall not make a referral pursuant to a
15 student's prevention plan of action without the approval of the
16 student's parent or guardian. Services identified in the plan
17 shall be pragmatic and cannot unfairly burden the student's
18 family. Any referral shall take into account the schedules of
19 the student's parent or guardian and the student's family's
20 access to transportation and include any necessary arrangements
21 for providing transportation to needed services.

22 H. Services identified in the prevention plan of
23 action shall not detract from a student's education.

24 I. Services identified in the prevention plan of
25 action shall not be dependent on a diagnosis or an individual

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1 education plan. The services shall be provided free of charge
2 to the student.

3 J. The student, the student's parent or guardian
4 and providers of services indicated on the student's prevention
5 plan of action shall evaluate the effectiveness and
6 appropriateness of services provided pursuant to the prevention
7 plan of action every thirty days, and make modifications to the
8 plan as needed, until the goals identified in the plan are
9 reached. Services shall not terminate solely by reason of a
10 school year or a fiscal year ending. Services must follow
11 students as schools, teachers, home environments and service
12 providers change. A student's prevention plan of action shall
13 be implemented regardless of whether the student has been
14 adjudicated.

15 K. The student, the student's parent or guardian
16 and providers of services indicated on the student's prevention
17 plan of action shall reach consensus on whether the goals
18 identified in a student's prevention plan of action are reached
19 and provide a two-month step-down plan for transition from
20 services. At the time of discharge, a transition monitoring
21 plan shall be developed and provided to the student, the
22 student's parent or guardian and providers of services. The
23 transition monitoring plan shall provide, at minimum, for
24 behavioral, educational and needs assessments to be completed
25 at least every three months.

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1 L. A school shall consult with the juvenile justice
2 division of the children, youth and families department when
3 devising a student's prevention plan of action pursuant to
4 Subsection E of this section. The school is ultimately
5 responsible for the implementation of the prevention plan of
6 action.

7 M. A school shall not refer a child thirteen years
8 of age or younger to the juvenile justice division of the
9 children, youth and families department.

10 N. A school shall use state or local law
11 enforcement as a last resort and not as a first response.
12 School law enforcement shall defer to a student's social
13 worker, psychologist, psychiatrist, counselor or therapist
14 before taking action relating to a student."

15 SECTION 4. A new section of the Public School Code is
16 enacted to read:

17 "[NEW MATERIAL] LIMITATION ON RESTRAINT AND SECLUSION--
18 INFORMATION TO BE PROVIDED TO PARENTS AND GUARDIANS--PRIVATE
19 RIGHT OF ACTION--REPORTING REQUIREMENTS.--

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

23 (1) aversive interventions, chemical
24 restraint, mechanical restraint and prone restraint are
25 prohibited, even in emergency situations;

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1 (2) physical restraint and seclusion are
2 prohibited, except in the event of emergency situations, and
3 shall not:

4 (a) be used as planned educational
5 interventions;

6 (b) be included in individual education
7 program documents for individual students;

8 (c) be used as disciplinary measures; or

9 (d) be included in emergency plan
10 documents for individual students except as necessary to: 1)
11 describe the methods, techniques or circumstances for the
12 allowable use of seclusion or physical restraint in the event
13 of an emergency involving the individual student; or 2)
14 describe the methods, techniques or circumstances when physical
15 restraint and seclusion are prohibited, even in emergency
16 situations involving the individual student;

17 (3) whenever a student's emergency plan
18 proposes or adopts provisions related to the use of physical
19 restraint or seclusion, the student's parent or guardian shall
20 be provided with a prior written notice detailing why the
21 school believes it is necessary to include physical restraint
22 or seclusion in the student's emergency plan, advising of the
23 dangers associated with use of physical restraint and
24 seclusion, identifying and explaining all physical holds that
25 have been approved by the school district and that may be

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1 included or excluded in the student's plan documents and
2 providing the parent or guardian with information regarding
3 available legal assistance;

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

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

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

25 (7) an emergency situation no longer exists

1 when:

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

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

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

10 (8) if an atypical use of a protective device
11 is planned for a student with a disability, it shall be
12 recommended by a physician; and

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

19 (a) an explanation of the reasons for
20 the use of physical restraint or seclusion;

21 (b) the location, manner and duration of
22 the physical restraint or seclusion; and

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

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1 B. School districts and charter schools shall
2 report annually to the department all uses of physical
3 restraint and seclusion on students in a uniform manner
4 determined by the department. The department may accept
5 reports required by other laws as long as the reports meet the
6 requirements of this section. School district reports shall
7 not identify a student who was restrained or secluded. The
8 reports shall be published on the department's website.

9 C. All school districts and charter schools shall
10 provide written agreements demonstrating cooperation with law
11 enforcement, the courts, disability service providers and
12 behavioral health professionals documenting procedures that
13 conform to the provisions against unlawful restraint and
14 seclusion pursuant to the provisions of this section. These
15 written agreements supersede any local memoranda of
16 understanding or local contracts. These written agreements
17 shall:

- 18 (1) be presented before the start of each
19 school year at the first district school board meeting;
20 (2) be integrated into the school district
21 handbook of student code of conduct and fairness;
22 (3) be posted in a manner easily accessible to
23 the public on the school district's webpage; and
24 (4) evaluated for effectiveness at the end of
25 every school year at the district school board meeting."

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