

HOUSE RULES AND ORDER OF BUSINESS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 341

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
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.

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:

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

2           A. "adverse childhood event" means any of the  
3 following events or conditions:

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

22           B. "aversive intervention" means any device or  
23 intervention, consequences or procedure intended to cause pain  
24 or unpleasant sensations, including interventions causing  
25 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 C. "child parent" means a parent who is less than  
5 eighteen years of age;

6 D. "developmental disability" means a severe  
7 chronic disability that:

8 (1) is attributable to a mental or physical  
9 impairment or a combination of mental or physical impairments;

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

12 (3) is expected to continue indefinitely;

13 (4) results in substantial functional  
14 limitations in three or more of the following areas of major  
15 life activities:

16 (a) self-care;

17 (b) receptive and expressive language;

18 (c) learning;

19 (d) mobility;

20 (e) self-direction;

21 (f) capacity for independent living; or

22 (g) economic self-sufficiency; and

23 (5) reflects a person's need for a combination  
24 and sequence of special, interdisciplinary or other supports  
25 and services that are of lifelong or extended duration that are

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1 individually planned or coordinated;

2 E. "first responder" means a person based outside  
3 of a school who functions within the emergency medical services  
4 system and who is dispatched to a school to provide initial  
5 emergency aid;

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

12 G. "physical restraint" means the use of physical  
13 force without the use of any device or material that restricts  
14 the free movement of all or a portion of a student's body, but  
15 "physical restraint" does not include physical escort;

16 H. "present danger" means imminent bodily harm or  
17 death to oneself or another;

18 I. "restraint" when not otherwise modified means  
19 mechanical or physical restraint;

20 J. "seclusion" means the involuntary confinement of  
21 a student alone in a room from which egress is prevented.

22 "Seclusion" does not mean the use of a voluntary behavior  
23 management technique, including a timeout location, as part of  
24 a student's education plan, individual safety plan, behavioral  
25 plan or individualized education program that involves the

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1 student's separation from a larger group for purposes of  
2 calming;

3 K. "student in need of accommodation" means a  
4 student who:

5 (1) has been diagnosed as having a serious  
6 mental illness, serious emotional disturbance or other  
7 behavioral health condition;

8 (2) has received an adverse childhood events  
9 screening and has been identified as having experienced at  
10 least two adverse childhood events; or

11 (3) has been diagnosed as having an  
12 intellectual or developmental disability; and

13 L. "supports screenings" include screenings to  
14 determine whether a student is a student in need of  
15 accommodation or to assess or diagnose a student as having one  
16 of the conditions that qualify the student as a student in need  
17 of accommodation."

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

20 "[NEW MATERIAL] STUDENT SUPPORTS PLAN--IDENTIFICATION OF  
21 STUDENTS IN NEED OF ACCOMMODATION--PREVENTION PLANS OF  
22 ACTION.--

23 A. All school districts and charter schools shall  
24 adopt a "student supports plan" for protecting students in need  
25 of accommodation from violations of their rights under state

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1 and federal law, including their rights to accommodation of  
2 disability, parental or guardian involvement and due process.

3 The student supports plan shall include provisions for:

4 (1) training state and local law enforcement  
5 officers and school employees in responding to situations  
6 involving students in need of accommodation so as to minimize  
7 aversive intervention or the classification of the responses of  
8 students in need of accommodation as intentional infractions of  
9 school policy;

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

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

14 (4) interaction with students in need of  
15 accommodation and students with physical disabilities;

16 (5) reasonable accommodation for students in  
17 need of accommodation and students with physical disabilities;

18 (6) the experiential realities of students in  
19 need of accommodation and how they affect their interactions  
20 with others;

21 (7) communication with students in need of  
22 accommodation;

23 (8) identification of local resources for  
24 providing services and supports to students in need of  
25 accommodation;

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1 (9) protocols for using crisis intervention  
2 teams, mobile crisis teams, assertive community treatment teams  
3 and behavioral health providers; and

4 (10) the rights of students against unlawful  
5 search and seizure.

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

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

16 (2) protocols for seeking and the  
17 administration of crisis intervention services;

18 (3) the provision to the student of:

19 (a) an adverse childhood events  
20 screening;

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

23 (c) a behavioral health screening;

24 (4) a requirement that, unless the student is  
25 alleged to have committed a violent crime or there is a present

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1 danger, any referral to juvenile justice authorities be delayed  
2 pending the completion of supports screenings and a  
3 determination of whether prevention services could deter  
4 escalation or repetition of the offense;

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

11 (6) provisions for the review of the student's  
12 disciplinary records to examine formal and informal offenses as  
13 defined by the student code of conduct and any measures taken  
14 to address the offenses by:

15 (a) the school administrator, principal  
16 or dean of students; or

17 (b) a behavioral health professional  
18 employed by or under contract to the school or school district;  
19 and

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

25 C. A needs assessment shall be developmentally

1 specific, strengths-based, culturally sensitive and trauma-  
2 informed. It shall integrate an assessment of the student's  
3 family and home environment, the classroom context, sensory  
4 integration needs and educational history. The needs  
5 assessment and the interventions and screenings provided  
6 pursuant to Paragraphs (2) and (3) of Subsection B of this  
7 section shall be used to match those assessments, interventions  
8 and screenings that the children, youth and families department  
9 provides in its secure facilities and may be supplemented to  
10 meet the provisions of Michael's Law.

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

16 E. After a student's first offense as defined by  
17 the school code of conduct and board discipline policy, or  
18 within thirty days of exiting juvenile justice custody, the  
19 student, the student's parent or guardian, school officials,  
20 teachers and service providers shall develop a prevention plan  
21 of action that shall be documented in writing. The prevention  
22 plan of action shall include:

- 23 (1) reports from any crisis intervention,  
24 behavioral health screening or needs assessment;  
25 (2) the identification of goals for optimizing

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1 the student's well-being; and

2 (3) recommendations and considerations related  
3 to achieving the goals for the student, including:

4 (a) nondiscriminatory, accessible and  
5 high-quality modifications for learning that coincide with any  
6 crisis intervention, behavioral health screening or needs  
7 assessment;

8 (b) daily schedules, expectations and  
9 monitoring of student activity and learning time;

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

14 (d) positive reinforcement and behavior  
15 support services;

16 (e) goal-setting and assistance for  
17 reaching those goals, such as college preparatory and career  
18 preparatory guidance;

19 (f) parent training, involvement and  
20 support;

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

23 (h) communication interventions and the  
24 use of assistive technology;

25 (i) any needed physical therapy,

1 occupational therapy or speech therapy;

2 (j) social skills support, including  
3 assistance in helping children participate in the mainstream  
4 student activities whenever possible so as to diminish or  
5 remove any stigma;

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

8 (l) assistance and training for school  
9 employees and administrators in implementing the prevention  
10 plan of action.

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

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

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

3           I. Services identified in the prevention plan of  
4 action shall not be dependent on a diagnosis or an individual  
5 education plan. The services shall be provided free of charge  
6 to the student.

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

19           K. The student, the student's parent or guardian  
20 and providers of services indicated on the student's prevention  
21 plan of action shall reach consensus on whether the goals  
22 identified in a student's prevention plan of action are reached  
23 and provide a two-month step-down plan for transition from  
24 services. At the time of discharge, a transition monitoring  
25 plan shall be developed and provided to the student, the

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1 student's parent or guardian and providers of services. The  
 2 transition monitoring plan shall provide, at minimum, for  
 3 behavioral, educational and needs assessments to be completed  
 4 at least every three months.

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

8 M. A school shall consult with the juvenile justice  
 9 division of the children, youth and families department when  
 10 devising a student's prevention plan of action pursuant to  
 11 Subsection E of this section. The school is ultimately  
 12 responsible for the implementation of the prevention plan of  
 13 action.

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

19 **SECTION 4.** A new section of the Public School Code is  
 20 enacted to read:

21 "[NEW MATERIAL] USE OF RESTRAINT AND SECLUSION--  
 22 TECHNIQUES--REQUIREMENTS.--

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

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1 (1) the student's behavior presents a present  
2 danger of serious physical harm to the student or others; and

3 (2) less restrictive interventions appear  
4 insufficient to mitigate the present danger of serious physical  
5 harm.

6 B. If a restraint or seclusion technique is used on  
7 a student:

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

11 (2) the restraint or seclusion technique shall  
12 end when the student's behavior no longer presents a present  
13 danger of serious physical harm to the student or others;

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

19 (4) the restraint technique employed shall not  
20 impede the student's ability to breathe or speak; and

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

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

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

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

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

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

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

23 (3) schools shall review strategies used to  
24 address a student's dangerous behavior if use of restraint or  
25 seclusion techniques for an individual student has occurred two

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1 or more times during any thirty-calendar-day period. The  
2 review shall include:

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

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

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

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

24 G. The provisions of this section shall not be  
25 interpreted as addressing the conduct of security aides, school

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1 police officers, law enforcement or first responders."

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