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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
54th Legislature, 1st Session, 2019

Bill Number HB567 **Sponsor** Martinez, J.
Tracking Number .213817.1 **Committee Referrals** HCPAC/HJC
Short Title School Treatment of Student with Disabilities
Analyst Ochoa **Original Date** 2/18/19
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BILL SUMMARY

Synopsis of Bill

House Bill 567 (HB567) would add new sections to the Public School Code comprising “Michael’s Law,” providing for the protection of students in need of accommodation, limiting school use of restraint and seclusion, and giving notice to parents and guardians of students subjected to restraint and seclusion. The bill would also require school districts and charter schools to provide annual reports to the Public Education Department (PED) regarding the use of restraint and seclusion.

The bill would define “student in need of accommodation” as those who have been diagnosed with behavioral and mental health conditions or developmental disabilities; identified as having experienced at least two adverse childhood experiences, received multiple disciplinary referrals, experienced high mobility, or exhibited at-risk behaviors. Other defined terms include: “adverse childhood experience,” “aversive intervention,” “crisis team,” “developmental disability,” “seclusion,” “support screenings,” and “time out.”

HB567 would require all school districts and charter schools to adopt “student supports plans,” designed to protect “students in need of accommodation.” The student supports plan would provide for the training of state and local law enforcement and school employees on dealing with “students in need of accommodation.” The plan would also be required to ensure compliance with the bill’s restraint and seclusion limitations, identify resources for these students, and include crisis intervention protocols.

Additionally, all school districts and charter schools would be required to develop first-response policies and procedures for students who commit first offenses as defined by their school code of conduct. These policies and procedures would include a requirement that, before any arrest or referral to services is made, the student and their guardian and school administrator meet to discuss the offense and surrounding circumstances, as well as requirements for adverse childhood experience screenings and needs assessments.

After a student’s first offense, the student and their parent or guardian, school administrators, teachers, and service providers would develop a written prevention plan of action, to include

reports on crisis interventions and goals for the student's well-being. The prevention plan of action would be reevaluated every 30 days, and modified until the student's goals would be achieved. Students, their parents and guardians, and their service providers would be required to reach consensus on whether goals have been attained before discharging the student. Schools would only be permitted to summon state and local law enforcement as a last resort, and school law enforcement would defer to the student's social worker or mental health care provider before undertaking any action relating to the student. The bill would include provisions for limitations on restraint and seclusion, permitting physical restraint and seclusion only in emergencies, and only to the least degree necessary. The bill would require notice to a restrained or secluded student's parent or guardian within 24 hours of the restraint and seclusion, as well as annual reports from school districts and charter schools to PED on the use of restraint and seclusion.

Finally, the bill would amend Section 32A-6A-24 NMSA 1978 of the Children's Code providing parent's with temporary consent for information relating to the mental health services of a student who is fourteen years or older and is at risk for referral to the juvenile justice division in accordance with "Michael's Law".

FISCAL IMPACT

HB567 does not contain an appropriation. The New Mexico Public Schools Insurance Authority (NMPSIA) estimates at least six claims per fiscal year for improper restraint and seclusion, resulting in approximately \$1.8 million in court and settlement costs. Provision for the training of school and law enforcement personnel, the development of student supports plans, first response policies and procedures, prevention plans of action may require additional, indeterminate funding from school districts and charter schools. The required training could be a significant factor in the provision of a defense in the case of a parent or student pursuing a tort claim against a school for an injury allegedly caused by restraint or seclusion.

SUBSTANTIVE ISSUES

Practical Implications. Under HB567, school districts and charter schools would be required to adopt student supports plans for students in need of accommodation. Schools are already required to communicate with parents and document interventions for students who require accommodation by way of individualized educational plans (IEPs), student assistance teams (SAT), 504 plans, and behavior intervention plans (BIPs). Student supports plans may duplicate the work accomplished through these modes of documentation because they address academic, social, emotional, and health related services for students.

Individual schools would be required to modify their code of conduct by adding a requirement of meeting with the student, parent or guardian, and school administrator before any arrest or referral to services is made potentially creating additional risk for students and school staff within a school. Analysis from the Children, Youth, & Families Department (CYFD) notes the bill could reduce delinquency referrals if the cause of the behavior is determined to be a manifestation of adverse childhood experiences.

Duplication of Statute. Many of the provisions of HB567 duplicate what is currently in Section 22-5.4-12 NMSA 1978 regarding the techniques and requirements for the use of restraint and seclusion. Currently, schools can only exercise restraint or seclusion if there is imminent danger to the student or others and other interventions are not successful in mitigating the situation. Only school employees who are trained can employ restraint and seclusion techniques. Schools are

required to establish policies regarding restraint and seclusion including documentation as well as communicating an incident to a parent or guardian on the same day. Additionally, statute cites a functional behavior assessment to be conducted in order to better serve the needs of the student. The sponsor may wish to amend this section of statute in order to align “Michael’s Law” with current law.

Childhood Trauma. HB567 would define an adverse childhood experience as emotional abuse or neglect, physical abuse or neglect, sexual abuse, substance abuse in the home, mental illness or incarceration of a household member, violence, and loss of a parent. Additionally, the bill would add homelessness, persistent poverty, and being raised by a child parent to the definition, however, these are not included in the body of research on adverse childhood experiences. According to the National Association of School Psychologists (NASP), children can experience many different sorts of trauma, which can be significant risk factors for poor health, academic failure, and poor quality of life. The Adverse Childhood Experience Study (ACES) examined the prevalence and impact of such childhood trauma by tracking more than 17 thousand individuals. The most commonly experienced childhood traumas, in order of prevalence are: physical abuse (28 percent), residence in households with substance abuse (27 percent), emotional neglect (25 percent), parental separation or divorce (24 percent), sexual abuse (21 percent), family members with mental illness (20 percent), and witnessing domestic violence (13 percent). At least 66 percent of ACES participants reported at least one such trauma, with 20 percent reporting three or more. Trauma’s potential impact on education include developmental delays, higher dropout, suspension and expulsion rates, lower academic achievement, higher rates of special education referrals, and adverse effects on concentration and memory.

Children spend a significant portion of their childhood in school under the care and guidance of school personnel. Therefore, NASP contends, schools have a responsibility to help children feel supported and safe. Effective trauma prevention and interventions need to be closely connected to supportive mental health services. The school climate needs to balance student behavioral expectations with compassionate and trusting relationships between students and adults. All school staff members should be aware of the warning signs of serious emotional trauma and how to respond to these children thoughtfully. With many communities experiencing high levels of trauma, entire school systems should be knowledgeable about the potential impacts of trauma and ensure that school is an environment where students feel safe disclosing traumatic experiences.

According to a 2016 *Child Trends* report, as many as one in seven New Mexico children have experienced three or more adverse childhood experiences. Additionally, the New Mexico Sentencing Commission cites 86 percent of incarcerated New Mexico juveniles experienced four or more adverse childhood experiences.

Restraint and Seclusion. Attention to issues of physical restraint and seclusion of students has risen across the United States through published accounts of alleged abuse, which prompted an investigation by the Government Accountability Office (GAO) at the request of the U.S. House Education and Labor Committee. The GAO report, published May 19, 2009, found “no federal laws restricting the use of seclusion and restraint in public and private schools, and widely divergent laws at the state level.”

In 2009, U.S. Education Secretary Arne Duncan sent a letter to all chief state school officers encouraging them to review their state’s current policies and guidelines regarding the use of restraint and seclusion in schools, and if necessary, to develop or revise their policies and guidelines. In compliance with Secretary Duncan’s request and in response to the requests of

various advocacy groups, PED convened a work group to consider legislation or rulemaking on the subject of restraint and seclusion of children in New Mexico public schools.

In September 2010, PED concluded their report on behalf of the restraint and seclusion work group, which indicated that, while law addressing the issue of seclusion and restraint exists in the Children’s Code (albeit inapplicable to school settings), the Public School Code lacked any such provisions. However, PED issued guidance on the topic, which noted that:

- The use of physical restraint should be approved by the student’s IEP team, documented in the student’s behavior intervention plan, and have the expressed written agreement of the parent or guardian;
- A mental health professional should be a member of the IEP team if physical restraint is being considered as an intervention;
- Physical restraint may be performed by trained personnel only, and only in emergency situations; and
- Although no case law directly pertinent to the issue of restraint and seclusion existed in New Mexico at this time, a New Mexico Supreme Court case held that a school district’s failure to follow through on safety policies for at-risk students was an act of negligence, suggesting that the lack of clear policy governing such practices might pose a risk of liability to public schools.

The U.S. Department of Education issued a “Dear Colleague” letter in December 2016, noting the ways in which application of restraint and seclusion may lead to disparate impact discrimination against students who have special needs, possibly violating Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act of 1990. The Office for Civil Rights indicates that students with disabilities are restrained and secluded at higher rates than students without disabilities; during the 2013-2014 school year, for example, students with disabilities served by the Individuals with Disabilities Education Act represented only 12 percent of public school students nationally, but 64 percent of students subjected to restraint and seclusion.

Local Considerations. According to analysis by the Human Services Department (HSD), HSD, PED, and CYFD are collaborating with other stakeholders to develop a behavioral health plan that addresses the needs of children and youth in New Mexico. Additionally, HSD and CYFD work together to provide wraparound services to children and youth with complex behavioral health challenges.

ADMINISTRATIVE IMPLICATIONS

The bill would require school districts and charter schools to train school personnel and local and state law enforcement in addressing situations involving “students in need of accommodations.” Moreover, restraint and seclusion may only be administered by staff trained in crisis intervention, de-escalation, first aid, and mental health first aid.

The requirement that school districts provide the necessary training to law enforcement may necessitate some kind of formal understanding between law enforcement and the local school district or charter school. It is unclear whether law enforcement may provide evidence of similar training to satisfy this requirement.

It is unclear how many personnel at school districts and charter schools have the training needed to deal with “students in need of accommodation,” or to intervene in situations where a student

might need to be restrained or secluded. Providing such training may place burdens on school districts and charter schools, both fiscally and in terms of personnel-hours needed to deliver and receive the training. While the bill permits untrained personnel to restrain or seclude students in emergency situations where trained personnel are unavailable, the provision of such training may affect the disposition of any tortious claims brought against a school district or charter school for improper use of restraint or seclusion.

TECHNICAL ISSUES

Subsection 3(F), page 7, line 10, would require student supports plans include provision for the “experiential realities of students in need of accommodation and how they affect their interactions with others.” It is uncertain what is meant by “experiential realities” or how they might be provided for in student supports plans.

Subsection 4(A)(1), page 8, line 12, would require school district and charter school first response policies to include a requirement that the student, his or her parent or guardian, and school officials meet to discuss a student’s first offense before any arrest or referral to services is made. This provision may unreasonably tie the hands of law enforcement in dealing with situations where they are better judges of what warrants an arrest than school administrators, particularly in emergencies.

Subsection 4(J), page 14, line 15, would require a transition monitoring plan be developed and provided to the student, the parent or guardian, and the student’s service provider “at the time of discharge.” It is unclear what is meant by “discharge,” an undefined term, or from what the student is being discharged.

Subsection 4(O), page 15, line 14 would require schools use state or local law enforcement only as a last resort, but provides for no exceptions in emergency situations.

RELATED BILLS

Duplicate of SB467, School Treatment of Students with Disability
Contains provisions in opposition to SB441, School Security Duty to Report

SOURCES OF INFORMATION

- LESC Files
- Children, Youth, & Families Department (CYFD)
- Human Services Department (HSD)

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