

1 SENATE BILL 319

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Linda M. Lopez

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10 AN ACT

11 RELATING TO PUBLIC SCHOOLS; CREATING REQUIREMENTS FOR SCHOOLS
12 TO BE ABLE TO USE RESTRAINT; PROVIDING WHAT RESTRAINT
13 TECHNIQUES SCHOOLS CANNOT USE; BANNING THE USE OF SECLUSION IN
14 SCHOOLS; PROVIDING PUBLIC INPUT FOR SCHOOL POLICIES ON
15 RESTRAINT; PROVIDING TRAINING FOR SCHOOL PERSONNEL ON
16 ALTERNATIVE FORMS OF RESTRAINT; CREATING NEW REQUIREMENTS FOR
17 REPORTING AND DOCUMENTATION PROCEDURES; DEFINING "MEDICATION
18 RESTRAINT"; DEFINING "PRONE RESTRAINT".

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

21 SECTION 1. Section 22-5-4.12 NMSA 1978 (being Laws 2017,
22 Chapter 33, Section 1) is amended to read:

23 "22-5-4.12. USE OF RESTRAINT [~~AND SECLUSION~~]
24 TECHNIQUES--REQUIREMENTS.--

25 A. It is the policy of this state that all school

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1 students shall enjoy an educational experience free from trauma
2 and fear of mental and physical abuse. Physical restraint
3 should not be used except in situations where the student's
4 actions pose an imminent danger of serious physical harm to
5 self or others, and restraint should be avoided to the greatest
6 extent possible. Physical restraint shall not be used as a
7 strategy implemented to address instructional problems or
8 inappropriate student behavior, as punishment or discipline, as
9 a means of coercion or retaliation or as a convenience.

10 [A.] B. A school may permit the use of restraint
11 [~~or seclusion~~] techniques on any student only if [~~both~~] all of
12 the following apply:

13 (1) the student's behavior presents an
14 imminent danger of serious physical harm to the student or
15 others; [~~and~~]

16 (2) less restrictive interventions [~~appear~~]
17 have been insufficient to mitigate the imminent danger of
18 serious physical harm; and

19 (3) the school has in place and maintains an
20 organized and functional method of documenting and timely
21 reporting incidents of restraint to interested parties,
22 including parents and government agencies.

23 [B.] C. If a restraint [~~or seclusion~~] technique is
24 used on a student:

25 (1) school employees shall maintain continuous

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1 visual observation and monitoring of the student while the
2 restraint [~~or seclusion~~] technique is in use;

3 (2) the restraint [~~or seclusion~~] technique
4 shall end when the student's behavior no longer presents an
5 imminent danger of serious physical harm to the student or
6 others;

7 (3) the restraint [~~or seclusion~~] technique
8 shall be used only by school employees who are trained in [~~the~~
9 ~~safe and effective use of restraint and seclusion techniques~~
10 ~~unless an emergency situation does not allow sufficient time to~~
11 ~~summon those trained school employees~~] less restrictive,
12 evidence-based, trauma-informed behavioral interventions,
13 restraint and de-escalation techniques;

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

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

18 [~~C.~~] D. Schools shall never use any of the
19 following techniques:

20 (1) mechanical restraint;

21 (2) medication restraint;

22 (3) seclusion; or

23 (4) prone restraint.

24 E. School districts shall annually establish or
25 ratify policies and procedures for the use of restraint [~~or~~

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1 ~~seclusion~~] techniques in a school safety plan. Prior to the
2 establishment of each school district's respective restraint
3 policies and procedures, community members shall be afforded a
4 reasonable opportunity to comment publicly upon those proposed
5 policies and procedures before those policies and procedures
6 are ratified in an approved school safety plan. These
7 restraint policies and procedures shall be distributed by each
8 school prior to the start of each school year to each student's
9 responsible parent or guardian. Distribution via electronic
10 means is considered sufficient for purposes of this subsection.
11 Each school district's annual plan shall govern the policies
12 and procedures for the use of restraint techniques for schools
13 within that district; provided that:

14 (1) the school district's safety plan shall
15 state explicitly that restraint is an emergency safety measure
16 that may be used only if a student's behavior presents an
17 imminent danger of serious physical harm to the student or
18 others and when less restrictive interventions have been
19 insufficient to mitigate the imminent danger of serious
20 physical harm;

21 [~~(1)~~] (2) the school district's safety plan
22 shall not be specific to any individual student; [~~and~~]

23 (3) any policies restricting the use of
24 restraint shall apply to all students, not just students with
25 disabilities; however, this section does not limit the rights

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1 of students with disabilities to individualized determination
2 of appropriate special education and related services, as well
3 as accommodations, modifications and positive behavioral
4 interventions planning by the student's individualized
5 educational program team; and

6 [~~2~~] (4) any school district's safety plan
7 shall be drafted by a planning team that includes at least one
8 special education expert, at least one licensed behavior
9 specialist and at least one speech-language pathologist, and
10 all members of the team shall be trained in evidence-based,
11 trauma-informed alternatives to physical restraint.

12 F. School personnel shall be trained prior to the
13 start of each school year on the appropriate use of effective
14 alternatives to physical restraint, such as less restrictive,
15 evidence-based, trauma-informed behavioral interventions and,
16 only for cases involving imminent danger of serious physical
17 harm, on the safe use of de-escalation and physical restraint
18 techniques.

19 [~~D.~~] G. Schools shall establish reporting and
20 documentation procedures to be followed when a restraint or
21 seclusion technique has been used on a student. The procedures
22 shall include the following provisions:

23 (1) a school employee shall provide the
24 student's parent or guardian with written [~~or oral~~] notice on
25 the same day that the incident occurred, unless extenuating

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1 circumstances prevent same-day notification. If the notice is
2 not provided on the same day of the incident, notice shall be
3 given within twenty-four hours after the incident. A copy of
4 this notice shall also be provided to the school principal or
5 administrator within this same time period;

6 (2) [~~within a reasonable time following the~~
7 ~~incident~~] no later than two school days after the incident, a
8 school employee shall provide the student's parent or guardian
9 with written documentation that includes information about any
10 persons, locations, [~~or~~] activities or other antecedent events
11 that may have [~~triggered~~] preceded the behavior, if known, and
12 specific information about the behavior and its precursors,
13 including any less intrusive interventions that were attempted
14 or determined to be inappropriate prior to the restraint or
15 seclusion, the type of restraint or seclusion technique used
16 [~~and~~], the duration of its use and the names of any adults,
17 regardless of their status as school employees, present for or
18 in any way involved with the techniques;

19 (3) all of the data in the written notice
20 required in Paragraph (2) of this subsection shall be submitted
21 to the department's data collection and reporting system within
22 five school days of the documented incident;

23 [~~3~~] (4) schools shall review strategies used
24 to address a student's dangerous behavior if use of restraint
25 or seclusion techniques for an individual student has occurred

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

3 (a) a review of the student's behavior
4 plan, if any;

5 ~~[(a)]~~ (b) a review of the incidents in
6 which restraint or seclusion techniques were used, antecedent
7 events, context or causes for the student's behavior, the
8 de-escalation strategy, positive behavioral supports used by
9 school personnel involved and an analysis of how future
10 incidents may be avoided, including whether the student
11 requires a functional behavioral assessment; and

12 ~~[(b)]~~ (c) a meeting of the student's
13 individualized education program team, behavioral intervention
14 plan team or student assistance team within ~~[two weeks]~~ seven
15 calendar days of each use of restraint or seclusion ~~[after the~~
16 ~~second use within a thirty-calendar-day period]~~ to provide
17 recommendations for avoiding future incidents requiring the use
18 of restraint or seclusion; and

19 (5) schools shall report annually to the
20 department prior to the start of each school year a list of
21 each incident in which a technique of restraint or seclusion
22 was used during the prior school year. The annual report shall
23 include, at a minimum:

24 (a) the date of each incident;

25 (b) the location of each incident, to

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1 include the specific school and classroom location within each
2 school;

3 (c) a brief description of each
4 incident, including antecedent events, context or causes for
5 the student's behavior, the de-escalation strategies and
6 evidence-based, trauma-informed positive behavioral supports
7 used by school personnel involved, and a description of the
8 technique used;

9 (d) a description of the notification
10 method and timing to the student's parent or guardian; and

11 (e) a brief description of the methods
12 employed to reintegrate the student into the classroom.

13 H. The restraint reporting and documentation
14 procedures shall be subject to random audits completed at the
15 direction of the department. Failure to comply with random
16 audits and report requirements required under Subsection G of
17 this section or if the school district's data shows use of
18 techniques prohibited by Subsection D of this section, or high
19 numbers of incidents of restraint or repeated incidents for
20 particular students, the department shall:

21 (1) audit and monitor that school district's
22 use of restraint or seclusion and provide technical assistance,
23 training and other supports to reinforce the requirement that
24 restraint be limited to emergency interventions of last resort;
25 and

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1 (2) where appropriate, issue and make public a
2 corrective action plan requiring the school district's
3 compliance with this section, including revision of strategies
4 currently in place to address dangerous behavior.

5 [~~E.~~] I. If a school summons law enforcement,
6 including a school security employee or sworn law enforcement
7 officer serving in the capacity as a school resource officer,
8 instead of using a restraint [~~or seclusion~~] technique on a
9 student, the school shall comply with the reporting,
10 documentation and review procedures established pursuant to
11 Subsection [~~D~~] G of this section.

12 [~~F.~~] J. Policies regarding restraint [~~and~~
13 ~~seclusion~~] shall consider school district support and
14 strategies for school employees to successfully reintegrate a
15 student who has been restrained [~~or secluded~~] back into the
16 school or classroom environment.

17 [~~G.~~] K. The provisions of this section shall not be
18 interpreted as addressing the conduct of law enforcement or
19 first responders.

20 [~~H.~~] L. The provisions of this section do not apply
21 to any school located within a county juvenile detention
22 center, state-licensed residential treatment center or a state-
23 operated juvenile facility.

24 M. The provisions of this section are not intended
25 to provide any individual using a restraint technique upon a

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1 student with immunity from criminal or civil liability.

2 [~~I.~~] N. For the purposes of this section:

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

7 (2) "mechanical restraint" means the use of
8 any device or material attached or adjacent to the student's
9 body that restricts freedom of movement or normal access to any
10 portion of the student's body and that the student cannot
11 easily remove, but "mechanical restraint" does not include
12 mechanical supports or protective devices. "Mechanical
13 restraint" does not include devices implemented by trained
14 school personnel or used by a student that have been prescribed
15 by an appropriate medical or related services professional and
16 are used for the specific and approved purposes for which such
17 devices were prescribed and designed;

18 (3) "medication restraint" means the
19 administration of medication for the purpose of temporarily
20 controlling behavior;

21 [~~(3)~~] (4) "physical restraint" means the use
22 of physical force without the use of any device or material
23 that restricts the free movement of all or a portion of a
24 student's body, but "physical restraint" does not include
25 physical escort;

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1 [~~(4)~~] (5) "prone restraint" means a physical
2 restraint in which a student is placed face down on the floor
3 or another surface and physical pressure is applied to the
4 student's body to keep the student in the face-down position;

5 (6) "restraint" when not otherwise modified
6 means mechanical, medication or physical restraint.

7 "Restraint" does not include behavioral interventions used as a
8 response to calm and comfort an upset student, such as verbal
9 soothing; and

10 [~~(5)~~] (7) "seclusion" means the involuntary
11 confinement of a student alone in a room from which egress is
12 prevented. "Seclusion" does not mean the use of a voluntary
13 behavior management technique, including a timeout location, as
14 part of a student's education plan, individual safety plan,
15 behavioral plan or individualized education program that
16 involves the student's separation from a larger group for
17 purposes of calming. "Seclusion" does not include the
18 aforementioned techniques so long as the student's freedom of
19 movement is not forcibly restricted and the student retains the
20 ability to voluntarily enter and exit a given location."