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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
56th Legislature, 1st Session, 2023

Bill Number	<u>SB387</u>	Sponsor	<u>Lopez</u>
Tracking Number	<u>.224712.2</u>	Committee Referrals	<u>SEC/SJC</u>
Short Title	<u>School Student Restraint or Isolation</u>		
Analyst	<u>Condon</u>	Original Date	<u>2/19/23</u>
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BILL SUMMARY

Senate Bill 387 (SB387) amends Section 22-5-4.12 NMSA 1978 to require less restrictive interventions on a student before the use of restraint or seclusion and requires that restraint or seclusion is used only by teachers who are trained in less restrictive interventions.

SB387 prohibits the use of mechanical, chemical, or prone restraints on a student and provides definitions of these methods of restraint.

SB387 adds requirements for what a school must include in their policies and procedures for the use of restraint or seclusion techniques and requires that those policies and procedures be approved by the local school board or charter school governing body.

SB387 requires that a notice of the use of restraint or seclusion be provided to the school principal or administrator and requires schools to provide the student's parent or guardian with written documentation within two school days following an incident. The documentation must include information about the less restrictive interventions that were attempted and the response to those less restrictive methods by the student.

SB387 requires schools to conduct a review of each use of restraint or seclusion within two school days following an incident, sets new requirements for reviews, and requires that the school must provide a written summary to the parents of the student within two days after the review.

FISCAL IMPACT

The bill does not contain an appropriation.

SUBSTANTIVE ISSUES

Restraint and Seclusion. The practice of seclusion generally refers to procedures that isolate a student from others, while restraint refers to the physical holding or mechanical restriction of a student's movement. While these practices are typically utilized as tools for addressing imminent safety concerns, the use of restraint or seclusion on students who are exhibiting problematic

behaviors has been prone to misapplication and abuse, and students with disabilities are restrained or secluded at much higher rates. Data from the Civil Rights Data Collection (CRDC) illustrates that students with disabilities who are served by IDEA are treated far more harshly than their peers without disabilities. Students with disabilities are twice as likely to receive an out-of-school suspension (13 percent) as are students without disabilities (6 percent). Students with disabilities represent 12 percent of students in public schools but 58 percent of students placed in seclusion or involuntary confinement. They also represent 75 percent of students physically restrained at school and make up 25 percent of students arrested and referred to law enforcement.

Many advocates and school systems are moving away from restraint and seclusion techniques as evidence shows that students can experience physical injuries, long-lasting trauma from the aversive techniques, and in severe cases, students have died as a result of these methods. The U.S. Department of Education reports that there continues to be no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of such techniques and that less restrictive and de-escalation methods should always be prioritized.

Several states have moved to ban seclusion practices altogether, and even more have taken steps to limit the use of restraint in schools. In 2022, Maryland banned seclusion practices after an investigation by the U.S. Department of Justice into Frederick County Public Schools found the district violated civil rights law with its use of restraint and seclusion on students with disabilities. Maryland joins other states with similar bans on seclusion of students, including Hawaii, Georgia, Florida and Nevada. Federal legislation has also been introduced for several years to ban seclusion. [The Keeping Children Safe Act](#) seeks to prohibit and prevent seclusion, mechanical restraint, chemical restraint, and dangerous restraints that restrict breathing, and to prevent and reduce the use of physical restraint in schools. This legislation was last introduced in 2021, with identical bills in the U.S. Senate and House, but neither piece of legislation advanced beyond introduction.

Mechanical, Chemical or Prone Restraints. SB387 provides definitions for mechanical, chemical, and prone restraints:

- "Chemical restraint" means a drug or medication used to control behavior or restrict a student's freedom of movement that is either not medically prescribed for the standard treatment of a student's medical or psychiatric condition or not administered as prescribed, or the use of a chemical irritant, such as pepper spray or tear gas;
- "Mechanical restraint" means the use of any device or material attached or adjacent to the student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove; provided that "mechanical restraint" does not include:
 - (a) devices implemented by trained school personnel or used by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purpose for which the devices were designed; and
 - (b) seatbelts and other safety equipment when used to secure students during transportation;
- "Prone restraint" means a physical restraint in which a student is placed face down on the floor or another surface and physical pressure is applied to the student's body to keep the student in the face-down position.

ADMINISTRATIVE IMPLICATIONS

Public and charter schools would need to revise their policies and procedures, and school boards and charter governing bodies would need to approve the updated policies. SB387 does not contain an effective date, and as a result would go into effect June 16, 2023 if signed into law, meaning schools would need to come into compliance with the stipulations of SB387 for the 2023-2024 school year.

It is not clear how many schools would need to update their policies and procedures, and to what extent, and all schools and schools districts would need to have their school board or governing body approve the policies and procedures. School districts and charter schools will likely have varying resources and time availability to make changes to their policies and procedures, and school board/governing body approval could delay compliance with SB387. Additionally, schools may need to provide additional training for teachers in less restrictive methods, which would likewise be subject to their resources and time availability.

TECHNICAL ISSUES

The New Mexico Child, Youth and Families Department (CYFD) reported several concerns:

While CYFD’s Juvenile Justice Services Division operates two schools, the provisions of this bill do not apply to any school located within a county juvenile detention center or a state-operated juvenile facility. However, the bill is silent as to how its provisions apply to students in other specialized settings, including treatment foster care, group homes, residential treatment, or accredited residential treatment centers, all environments which operate under regulatory compliance requirements for restraints and seclusions.

Although CYFD is not statutorily responsible for investigation into allegations of abuse or neglect in school settings, CYFD has provided programs and services to families when children have been subjected to similar restraints and seclusions that this bill proposes to prohibit.

While the bill only allows restraint/seclusion in the event of imminent danger of serious physical harm, there are no definitions for “imminent danger” or “serious physical harm.” This can result in broad interpretations of these terms, resulting in restraints/seclusions being implemented unnecessarily.

The bill allows restraint/seclusion by non-trained school employees if there is insufficient time to summon trained school employees. This puts students and staff at risk of injury. The bill also excludes “physical escort” from the definition for “physical restraint.” This puts clients at risk of being restrained or inappropriately handled (pushed, dragged, forced, pulled, etc.) by staff, due to lack of definition for “physical escort.”

Despite legitimate concerns that involving law enforcement in a behavior management situation heightens the risk of an inappropriate or excessive response, the bill allows for summoning law enforcement instead of using restraint, seclusion, or other less restrictive interventions. If schools lack specific guidelines for when law enforcement assistance should be accessed, there is a risk of law enforcement being used for behavior management.

Finally, the bill does not require that all direct care school staff (and support school staff) are proficient in de-escalation and emergency interventions (restraint/seclusion). There is no reference to how schools will ensure that there are sufficient staff on schedule who can engage in effective prevention and intervention. Nor is there any mention as to a requirement for the ongoing training and support necessary to ensure appropriate and effective behavior management through strategic inclusion in school resource planning and review of effectiveness and means for improvement.

SOURCES OF INFORMATION

- LESC Files
- Children, Youth and Families Department (CYFD)

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