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FISCAL IMPACT REPORT

SPONSOR Smith/O'Neil **ORIGINAL DATE** 2/8/16
LAST UPDATED _____ **HB** 190

SHORT TITLE School Use of Restraint & Seclusion **SB** _____

ANALYST Elkins

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 190 enacts a new section of the Public School Code to prohibit school districts and charter schools from using physical restraint and seclusion, except in emergency situations, and not as planned educational interventions, disciplinary measures, or included in individual education program documents or in emergency plan documents for individual students. The bill requires any restraint and seclusion administered in emergency situations be by trained staff. Aversive interventions, chemical restraint, and mechanical restraint as defined in the bill are prohibited. The bill details parental notification criteria and requires school districts and charter schools to report all uses of restraint and seclusion used against students to PED annually.

FISCAL IMPLICATIONS

PED notes it would need to inform school districts and state charter schools of the new section of the Public School Code within Chapter 22 NMSA 1978; clarify the new section of the Public School Code in relation to the Individuals with Disabilities Education Act (IDEA); and inform school districts and state charter schools on how to annually report the use of restraints and/or seclusion of students to PED. This would require collaboration between the Coordinated School Health and Wellness Bureau, the Special Education Bureau, the Information Technology Division, and PED's General Counsel. This would also require updating and/or creating a data

system within PED's Student Teacher Accountability Reporting System (STARS). The hours required, collectively, to accomplish the above cannot be quantified at this time.

HB 190 requires school districts and charter schools to adopt policies and procedures with respect to the use of restraints and seclusion. It is unclear if there are costs associated with this effort and how policies and procedures would be reviewed and monitored. School districts would be responsible for having staff members trained in evidence-based crisis intervention training, including de-escalation techniques and first aid.

SIGNIFICANT ISSUES

HB 190 puts specific limitations on the use of restraints or seclusions within emergency situations in order to protect the student or another person from imminent, serious physical harm. The use of the term "emergency situation" is not defined; although HB190 includes a provision, with factors for use in determining when "an emergency situation no longer exists," it leaves unclear what constitutes an emergency situation. The adoption of policies and procedures in regards to use of restraints and seclusion would be left to each school district and charter school to determine. HB190 does, however, state that physical restraint and seclusion may only be administered by staff trained in evidence-based crisis intervention, including de-escalation training and first aid as well as the identification of signs of medical distress.

PED's analysis states:

The bill provides that restraint and seclusion shall not be used as planned interventions nor be included in individualized education program (IEP) documents. As IDEA does not prohibit the use of restraint, this amendment may exceed federal requirements and may alter the decision-making abilities of the IEP team, which includes the student's parent(s). In situations where a student with a disability demonstrates behavior that impedes his or her learning or that of others, IDEA 2004 at 20 U.S.C. 1414(d)(3)(B)(i) requires the student's IEP team to consider positive behavioral interventions, strategies, and supports to address that behavior. In a case where the student's problematic behavior is severe, persistent, and frequent, PED has consistently interpreted this requirement to mean that the IEP team develops a Behavioral Intervention Plan (BIP) based on a Functional Behavioral Assessment as part of the IEP for that student. The BIP needs to emphasize positive interventions, strategies, and supports that teach appropriate replacement behaviors. However, an effective BIP must also address and specifically provide for emergency situations where a particular student exhibits aggressive, violent, or dangerous behavior that requires an immediate aversive intervention, such as physical restraint. In that case, physical restraint is designed to protect the student and others from serious injury or safeguard physical property and should be used only in an emergency.

Furthermore, in response to concerns regarding restraint raised by the United States Department of Education (USDE) Secretary, Arne Duncan, in an address to chief public school authorities for all states in 2009, PED convened a statewide Restraint & Seclusion Work group, inclusive of representatives of PED, school districts, charter schools, New Mexico teachers unions, IDEA community representation and representation from the Education for Parents of Indian Children with Special Needs, among others. The findings of the work group included that manual restraint of a student may be warranted in certain circumstances; consistency in the use of physical restraints in relation to a

student’s IEP or BIP is necessary; and the use of seclusion in schools (except for emergency situations), prone restraints and mechanical or chemical restraints, should be prohibited. The work group recommended that definitions, such as emergency intervention and physical escort, be included in any proposed legislation. HB190 does include the definition of “physical escort,” but fails to affirmatively define an “emergency situation,” which is needed. The work group also recommended the use of evidence-based, positive behavioral interventions and support and ongoing training to use such supports. Aside from the requirement for evidence-based crisis intervention training for staff who use physical restraint and seclusion in emergency situations, HB190 does not suggest the use of evidence-based, positive behavioral interventions and supports.

HB190 requires school districts and state charter schools to report annually to the PED all incidents involving the use of restraints, as defined in the new section of the Public School Code, and seclusion. The Office of Civil Rights (OCR) already requires the reporting of the number of instances where students with disabilities (IDEA), or Section 504 students without disabilities, are subjected to mechanical restraints, physical restraints, and/or seclusion. The use of chemical restraints is not a part of the OCR reporting. The Civil Rights Data Collection (CRDC) collects a variety of student information, and the data is disaggregated by race/ethnicity, sex, Limited English Proficiency and disability. This data collection is authorized under the statutes and regulations implementing Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973 and under the Department of Education Organization Act (20 U.S.C. 3413). As a result, HB190 may require a duplication of effort for the school districts, charter schools and PED.

The Children, Youth and Families Department (CYFD) analysis for a similar bill last session noted the limitation of the use of restraints and seclusion is in alignment with the value of supporting least-restrictive interventions and environments. However, CYFD also notes that the requirement to notify a parent within twenty-four hours in person or by phone is too long for notification to a parent or guardian if behaviors exist that are a danger to self or others. In such situations, it is imperative the parent or guardian be notified immediately, at maximum the end of the school day, so that they may seek immediate, same-day behavioral health and/or crisis support services as well as the support and intervention of their established team, if such a team already exists. CYFD adds delay of notification for twenty-four hours may result in the child or youth to continue to present as a danger to self or others or act upon such behaviors without immediate, same-day behavioral health assessment and intervention.

TECHNICAL ISSUES

According to PED, HB190 includes the definitions for several types of restraints, supports, and devices as well as the definitions for seclusion and aversive intervention but does not define all terms used. For instance, the bill prohibits “prone physical restraint” and “any life-threatening restraint” even in emergency situations, but does not define “life-threatening restraint.”

OTHER SUBSTANTIVE ISSUES

PED notes it has published a comprehensive technical assistance manual focused on Positive Behavioral Intervention Supports (PBIS) and strategies and Behavioral Intervention Plans for individual students. The report, *Response to Intervention Framework 2014*, consists of a three-

tier, problem-solving model utilizing a set of increasingly intensive academic and/or behavioral supports/intervention and may be accessed at http://ped.state.nm.us/ped/RtI_index.html. Utilizing the Response to Intervention (RtI) model is a state requirement (NMAC 6.29.1.9.D.).

In March 2006, PED issued comprehensive guidance on the use of physical restraints as a behavioral intervention for students with disabilities. The guidance indicates that the PED does not condone the use of mechanical restraints for students; requires the application of physical restraint to be performed by trained personnel only; and provides recommendations for documentation and reporting of restraint and the development of local policies. HB190 would require physical restraints and seclusion to be administered only by staff trained in evidence-based crisis intervention, de-escalation training, first aid, and identifying signs of medical distress. The full guidance can be viewed at <http://ped.state.nm.us/SEB/law/Restraint.Policy.pdf>.

Developmental Disabilities Planning Council (DDPC) noted in their response to a similar bill last session that this bill addresses the concerns and policy recommendations of the National Association of Councils of Developmental Disabilities (NACDD) as outlined in its policy announcement addressing the use of aversives, restraint and seclusion (ARS) in residential treatment facilities and schools. NACDD notes that ARS has resulted in hundreds of deaths and thousands of injuries among students with developmental disabilities, and is not consistent with proactive approaches or best practices in addressing the behavior needs of students with developmental disabilities.

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