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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/02/21

SPONSOR Lopez LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE School Use of Restraint SB 319

ANALYST Becerra

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB233, Student Bill of Rights.

### SOURCES OF INFORMATION

LFC Files  
LESC Files

#### Responses Received From

Office of the Attorney General (NMAG)  
Public Schools Insurance Authority (PSIA)  
Children, Youth and Families Department (CYFD)  
New Mexico Corrections Department (NMCD)  
Public Education Department (PED)

#### No Response Received

Crime Victims Reparation Commission (CVRC)

### SUMMARY

#### Synopsis of Bill

Senate Bill 319 (SB319) amends the Public School Code to restrict schools' use of physical restraint of students. SB319 prohibits the use of seclusion and three types of restraint, including mechanical, medical, and prone. The bill requires school personnel to receive annual training on appropriate use of effective alternatives to physical restraint, such as less restrictive, evidence-based, traumainformed behavioral interventions and on the safe use of de-escalation and physical restraint techniques.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

## FISCAL IMPLICATIONS

SB319 does not include an appropriation.

School districts may incur the cost of training school personnel annually on the appropriate use of effective alternatives to physical restraint, such as less restrictive, evidence-based, trauma-informed behavioral interventions and, only for cases involving imminent danger of serious physical harm, on the safe use of de-escalation and physical restraint techniques.

## SIGNIFICANT ISSUES

***Current Efforts.*** The Public Education Department (PED) notes that in 2019, PED amended 6.11.2 NMAC, to make changes regarding the use of restraint and seclusion techniques, including reporting requirements. PED requires schools to report all instances in which a restraint or seclusion technique is used, all instances in which law enforcement is summoned instead of using a restraint or seclusion technique, identification numbers of students and school personnel involved in an incident in which restraint or seclusion was used, and, if a student was restrained, the type of restraint, including mechanical restraint or physical restraint, that was used. Since the beginning of the 2020-2021 school year, schools have not reported any incidents of restraint or seclusion. However, this may be due to school closures in response to Covid-19.

Current statute requires the restraint technique to be used only by school employees trained in the use of restraint and seclusion techniques, unless an emergency situation does not allow sufficient time to summon such trained school employees. In contrast, SB319 would require the restraint technique to be used only by school employees trained in less restrictive, evidence-based, trauma-informed behavioral interventions, restraint and de-escalation techniques, and does not make exceptions for emergencies.

***Mental Health.*** The Children, Youth and Families Department (CYFD) indicates that SB319 allows for physical restraints to preserve the safety of students and school personnel; however, if the behaviors are a result of untreated/undiagnosed mental health issues, restraints could exacerbate and/or aggravate existing PTSD/trauma. Identification of students in need of assessments, evaluations, de-escalation techniques, and therapeutic services should be considered before restraints need to be used.

## PERFORMANCE IMPLICATIONS

SB319 requires school employees to provide the student's parent or guardian with written notice on the same day the incident of restraint or seclusion occurred, and would not allow an employee to give oral notice. If a notice could not be given on the same day of the incident due to "extenuating" circumstances, a school employee would be required to provide the notice within 24 hours after the incident. The bill would require a copy of the written notice to be provided to the school principal or administrator within the same time.

SB319 requires written documentation be provided to the parents no later than two school days after the incident. The bill would require documentation to be submitted to the PED's data collection and reporting system within five school days of the documented incident.

SB319 requires schools to submit a report to PED with information about each incident in which a technique of restraint or seclusion was used during the prior school year, including the date, location, and a description of each incident. Additionally, SB319 would require schools to provide a description of methods employed to reintegrate the student into the classroom. The restraint reporting and documentation procedures would be subject to random audits completed at the direction of the PED.

SB319 requires each school to distribute the restraint policies and procedures to each student's parent or guardian.

### **ADMINISTRATIVE IMPLICATIONS**

PED notes that the restraint reporting and documentation procedures would be subject to random audits completed at the direction of the department. If a school district fails to comply with random audits and report requirements or its data shows use of prohibited techniques or high numbers of incidents of restraint or repeated incidents for particular students, PED would be required to audit and monitor that school district's use of restraint or seclusion and provide technical assistance, training, and other supports to reinforce the requirement that restraint be limited to emergency interventions of last resort.

Where appropriate, PED would be required to issue and make public a corrective action plan requiring the school district's compliance with this section, including revision of strategies currently in place to address dangerous behavior.

PED would be required to amend 6.11.2 NMAC (Rights and Responsibilities of the Public Schools and Public School Students) to ensure it is aligned with the provisions of the bill.

CYFD's analysis noted the bill would entail administrative implications for CYFD in ensuring staff, supervisors and licensed and certified providers are informed of the new statute.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates to SB233, Student Bill of Rights.

### **TECHNICAL ISSUES**

Section 1, subsections G and H of SB319 include references to seclusion as related to schools' reporting requirements. However, the bill explicitly prohibits use of seclusion, and in subsections I and J the use of the term seclusion is stricken, causing an incongruity to the reader. CYFD's analysis noted the same and recommended the bill be reviewed for removal of remaining references to 'seclusion' in order to remain congruent with the bill's prohibition of using seclusion.

CYFD notes that SB319 does not include language about the developmental needs of the child regarding restraints. The agency recommends that the bill include different approaches for young children vs. older youth based on their developmental needs.

CYFD notes that if the restrained child or youth is CYFD-involved, the school will need to notify the child's worker right away to help with any possible trauma the restraint would cause.

Both CYFD and PED note the lack of language regarding legal guardians and/or legal custodians. The agencies recommend that the bill is revised to include legal guardian or custodian in addition to parents.

MB/al