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FISCAL IMPACT REPORT

SPONSOR Lopez LAST UPDATED _____
ORIGINAL DATE 2/17/23
SHORT TITLE School Student Restraint or Isolation BILL NUMBER Senate Bill 387
ANALYST Helms

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

| | FY23 | FY24 | FY25 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--|------|---------------------------|---------------------------|-------------------|---------------------------|---------------|
| | | Indeterminate but minimal | Indeterminate but minimal | | | |

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

Children, Youth, and Families Department (CYFD)

No Response Received

Public Education Department (PED)

Department of Health (DOH)

SUMMARY

Synopsis of Senate Bill 387

Senate Bill 387 (SB387) makes amendments to Section 22-5-4.12 NMSA 1978 of the Public School Code, prohibiting the use of restraint and seclusion except for specific cases. In order to enact restraint of seclusion with a student, SB387 would require a two-factor test where student behavior will imminently cause harm to self or others and other interventions are insufficient. Additionally, the bill prohibits mechanical, chemical, and prone restraints; requires that except for emergencies when staff are unavailable, only employees trained in less restrictive techniques be allowed to use restraint or seclusion; and finally, requires any restraint or seclusion-related incidents to be reviewed, for parents and administrators to be notified, and for additional follow-up with parents and school intervention teams in the days and weeks following.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

Senate Bill 387 does not contain an appropriation. SB387 may incur administrative costs for districts to ensure new information on seclusion and restraint is communicated to staff. There are likely costs to the Public Education Department (PED) and districts to ensure adequate staff are trained on less-restrictive interventions and overall aware of changes in the Public School Act regarding seclusion and restraint. It is unclear how schools and districts will understand how to meet the interventions and trainings described in this bill, and this will likely require assistance from PED. LFC analysis estimates while there will be additional training and technical assistance required, current PED and school structures are adequate to absorb any costs.

SIGNIFICANT ISSUES

SB387 has several terms without clear definitions, noted under “Technical Issues.”

SB387 strikes language that said “a school may permit the use of restraint or seclusion techniques only if...” to “the use of restraint or seclusion techniques on any student is prohibited unless...;” the requirement for two factors – a student’s behavior presents imminent danger to self or others, and less restrictive interventions appear insufficient – to be present in order to use restraint or seclusion with a student was already in statute and remains in statute.

SB387 strikes language saying restraint or seclusion techniques must be used only by employees trained in “safe and effective” use of restraint and seclusion techniques, and instead says these employees must be trained in “less restrictive interventions, including de-escalation strategies and use of restraint and seclusion techniques.” The bill does not specify how many employees in a school would be required to have this training, or what training is required, and this could mean schools have insufficient staff or training to meet the intended provisions of the bill.

The bill adds new language prohibiting mechanical, physical, or prone restraint. The bill adds new language to clarify physical restraint cannot be used under a variety of circumstances including retaliation, punishment, coercion, as a substitute for appropriate educational or behavioral support, as a planned intervention, as a convenience for staff, or to prevent property damage. Schools may need additional guidelines to understand these additional provisions.

The bill specifies school policies and procedures need to clarify restraint and seclusion are emergency safety measures, need to include appropriate training, and need to include strategies to reintegrate restrained or secluded students back into the classroom.

Finally, SB387 adds to reporting and documentation procedures for when a student has been secluded or restrained, noting parents are required to have same day notice, the notice will be provided to an administrator, within two days a written report will be provided to parents or guardians, within two days the school will conduct a review of the incident and provide a report to a parent or guardian, and the school will convene a meeting required to comply with multilayered student supports and pursuant to Section 504 of the federal Rehabilitation Act of 1973. It is also possible schools and districts will need additional support and training to fully enact this cascade of reporting and review.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB285, Relating to Special Education and SB283, Reducing Suspensions and Expulsions Act.

TECHNICAL ISSUES

LFC analysis noted several terms without further definition, as included in CYFD’s analysis. CYFD analysis notes:

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.

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