

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SJM 13

49th Legislature, 2nd Session, 2010

Tracking Number: .180275.1

Short Title: Study School Student Seclusion & Restraint

Sponsor(s): Senator Mary Jane Garcia and Senator Cynthia Nava

Analyst: James Ball

Date: February 9, 2010

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

Bill Summary:

SJM 13 requests that the Public Education Department (PED) create a work group to:

- examine the issues related to seclusion and restraint of students at school to ensure that all students are safe and protected from inappropriate treatment;
- have representation from directors of special education and other school personnel, organizations that advocate for the rights of children, parents, and other appropriate stakeholders;
- identify positive behavioral interventions and support systems available to school personnel; and
- present its report to the Legislative Education Study Committee (LESC) and other appropriate interim legislative committees during the 2010 interim.

Fiscal Impact

Legislative memorials do not contain appropriations.

Memorials requesting that state agencies conduct studies are likely to have a fiscal impact in terms of staff time, travel, office supplies, and other items. This impact could be especially pronounced if the agencies are experiencing budget reductions or staff furloughs.

Substantive Issues:

The LESC received a staff report on the issue of restraint and seclusion of students during the 2009 interim. Staff informed the committee that current state law on restraint and seclusion exists solely in the *Children's Code*, but the *Children's Code* does not apply to students in public and private schools, only to children in hospitals or psychiatric residential treatment or rehabilitation facilities. Although the *Public School Code* does not include provisions specific to restraint and seclusion, PED has released two guidance documents on the issue:

- "Use of Time-Out Rooms as a Behavioral Intervention" issued in 2003; and
- "Use of Physical Restraint as a Behavioral Intervention for Students with Disabilities" issued in 2006.

LESC staff also reported that federal laws restricting the use of seclusion and restraints in public and private schools do not exist while state laws, where they do exist, are widely divergent. In this environment, hundreds of cases of alleged abuse and even deaths related to the use of restraint and seclusion have resulted in criminal convictions, findings of civil or administrative liability, or large financial settlements over the past 20 years nationwide.

The LESO report further indicated that, in response to findings of the federal General Accounting Office, US Education Secretary Arne Duncan sent a letter to Chief State School Officers encouraging each state to review its current policies and guidelines regarding the use of restraint and seclusion techniques in schools and, if appropriate, to develop or revise them to ensure the safety of students.

According to PED, the Secretary has already created a work group to study this issue and has charged the members to:

- make recommendations regarding the scope and nature of the use of restraint and seclusion with respect to children with disabilities in public schools;
- study the best ways to address the use of restraint and seclusion with respect to children with disabilities in public schools including surveying practices and methods used in other states where laws and/or rules have been adopted;
- consider the issue of liability that might be placed upon school employees, school districts, and the state when making any recommendations; and
- make recommendations for legislation and/or rulemaking regarding the use of restraint and seclusion on children with disabilities in public schools.

The Secretary asked the work group to report its findings and recommendations to the Governor and the LESO on or before October 1, 2010.

In its analysis of SJM 13, PED recognizes that the scope of the memorial includes studying the issue of restraint and seclusion of all students, not just children with disabilities. As a result, the department would need to broaden its current study.

Related Bills:

None as of 1/28/2010