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AN ACT

RELATING TO EDUCATION; ENACTING A NEW SECTION OF THE PUBLIC SCHOOL CODE TO LIMIT THE USE OF RESTRAINT AND SECLUSION IN SCHOOLS; PROVIDING FOR NOTICE TO PARENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Public School Code is enacted to read:

"USE OF RESTRAINT AND SECLUSION--TECHNIQUES-- REQUIREMENTS.--

A. A school may permit the use of restraint or seclusion techniques on any student only if both of the following apply:

(1) the student's behavior presents an imminent danger of serious physical harm to the student or others; and

(2) less restrictive interventions appear insufficient to mitigate the imminent danger of serious physical harm.

B. If a restraint or seclusion technique is used on a student:

(1) school employees shall maintain continuous visual observation and monitoring of the student while the restraint or seclusion technique is in use;

(2) the restraint or seclusion technique

1 shall end when the student's behavior no longer presents an
2 imminent danger of serious physical harm to the student or
3 others;

4 (3) the restraint or seclusion technique
5 shall be used only by school employees who are trained in the
6 safe and effective use of restraint and seclusion techniques
7 unless an emergency situation does not allow sufficient time
8 to summon those trained school employees;

9 (4) the restraint technique employed shall
10 not impede the student's ability to breathe or speak; and

11 (5) the restraint technique shall not be out
12 of proportion to the student's age or physical condition.

13 C. Schools shall establish policies and procedures
14 for the use of restraint or seclusion techniques in a school
15 safety plan; provided that:

16 (1) the school safety plan shall not be
17 specific to any individual student; and

18 (2) any school safety plan shall be drafted
19 by a planning team that includes at least one special
20 education expert.

21 D. Schools shall establish reporting and
22 documentation procedures to be followed when a restraint or
23 seclusion technique has been used on a student. The
24 procedures shall include the following provisions:

25 (1) a school employee shall provide the

1 student's parent or guardian with written or oral notice on
2 the same day that the incident occurred, unless circumstances
3 prevent same-day notification. If the notice is not provided
4 on the same day of the incident, notice shall be given within
5 twenty-four hours after the incident;

6 (2) within a reasonable time following the
7 incident, a school employee shall provide the student's
8 parent or guardian with written documentation that includes
9 information about any persons, locations or activities that
10 may have triggered the behavior, if known, and specific
11 information about the behavior and its precursors, the type
12 of restraint or seclusion technique used and the duration of
13 its use; and

14 (3) schools shall review strategies used to
15 address a student's dangerous behavior if use of restraint or
16 seclusion techniques for an individual student has occurred
17 two or more times during any thirty-calendar-day period. The
18 review shall include:

19 (a) a review of the incidents in which
20 restraint or seclusion techniques were used and an analysis
21 of how future incidents may be avoided, including whether the
22 student requires a functional behavioral assessment; and

23 (b) a meeting of the student's
24 individualized education program team, behavioral
25 intervention plan team or student assistance team within two

1 weeks of each use of restraint or seclusion after the second
2 use within a thirty-calendar-day period to provide
3 recommendations for avoiding future incidents requiring the
4 use of restraint or seclusion.

5 E. If a school summons law enforcement instead of
6 using a restraint or seclusion technique on a student, the
7 school shall comply with the reporting, documentation and
8 review procedures established pursuant to Subsection D of
9 this section.

10 F. Policies regarding restraint and seclusion
11 shall consider school district support and strategies for
12 school employees to successfully reintegrate a student who
13 has been restrained or secluded back into the school or
14 classroom environment.

15 G. The provisions of this section shall not be
16 interpreted as addressing the conduct of law enforcement or
17 first responders.

18 H. The provisions of this section do not apply to
19 any school located within a county juvenile detention center
20 or a state-operated juvenile facility.

21 I. For the purposes of this section:

22 (1) "first responder" means a person based
23 outside of a school who functions within the emergency
24 medical services system and who is dispatched to a school to
25 provide initial emergency aid;

1 (2) "mechanical restraint" means the use of
2 any device or material attached or adjacent to the student's
3 body that restricts freedom of movement or normal access to
4 any portion of the student's body and that the student cannot
5 easily remove, but "mechanical restraint" does not include
6 mechanical supports or protective devices;

7 (3) "physical restraint" means the use of
8 physical force without the use of any device or material that
9 restricts the free movement of all or a portion of a
10 student's body, but "physical restraint" does not include
11 physical escort;

12 (4) "restraint" when not otherwise modified
13 means mechanical or physical restraint; and

14 (5) "seclusion" means the involuntary
15 confinement of a student alone in a room from which egress is
16 prevented. "Seclusion" does not mean the use of a voluntary
17 behavior management technique, including a timeout location,
18 as part of a student's education plan, individual safety plan,
19 behavioral plan or individualized education program that
20 involves the student's separation from a larger group for
21 purposes of calming."

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