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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
53rd Legislature, 1st Session, 2017

Bill Number	CSCS/HB75/HECS/HJCS/ aHFI#1/aSJC	Sponsor	HJC
Tracking Number	.207037.4	Committee Referrals	HEC/HJC;SEC/SJC
Short Title	Limit School Use of Restraint & Seclusion		
Analyst	Force	Original Date	2/27/17
		Last Updated	3/13/17

BILL SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee (SJC) amendment to the House Judiciary Committee substitute for House Education Committee substitute for HB 75 (CS/CS//HECS/HJCS/aHFI#1) strikes references to the conduct of security aides and school police officers, and clarifies that the provisions of the bill do not apply to law enforcement or a “first responder,” defined as “a person based outside a school who functions within the emergency medical services system and who is dispatched to a school to provide initial emergency aid.”

Synopsis of House Floor Amendment # 1

House Floor Amendment # 1 to the House Judiciary Committee substitute for House Education Committee substitute for HB 75 (CS/CS/HB75/HECS/HJCS) adds an exception to the requirements of the bill for any school located within county juvenile detention centers or state-operated juvenile facilities.

Synopsis of Original Bill

House Judiciary Committee Substitute for House Education Committee Substitute for House Bill 75 (HB75/HECS/HJCS) proposes a new section of the Public School Code to limit and regulate the use of restraint and seclusion in schools. HB75/HECS/HJCS permits restraint and seclusion only when there is imminent danger of serious physical harm to the student or others, and only when less restrictive interventions appear insufficient to mitigate the imminent danger of harm. When a student is restrained or secluded, they must be visually monitored at all times by a school employee, and restraint shall only be used by trained staff, unless trained staff cannot be summoned in time to address the situation.

Schools would be required to establish policies and procedures for the use of restraint and seclusion in a school safety plan, to be drafted by a planning team including at least one special education expert, as long as the plan is not specifically related to an individual student.

Schools must establish documentation and reporting procedures for incidents of restraint and seclusion that must provide for notice to parents or guardians on the same day their student was restrained or secluded; if notice is not given on the same day, it must be done within 24 hours. Within a reasonable time after the incident leading to restraint or seclusion, parents and guardians must be provided with written documentation of the incident, including involved persons, locations, or activities that may have triggered the episode, and the type and duration of restraint and seclusion used on the student.

The bill requires schools to review strategies to address a student's dangerous behavior if an individual student is restrained or secluded two or more times in a 30-day period, including an analysis of how future incidents may be avoided. The student's individualized education program team, behavioral intervention team, or student assistance team must meet within two weeks of each use of restraint or seclusion after the second incident to provide recommendations to avoid future instances of restraint or seclusion.

The bill includes newly defined terms for "mechanical restraint," "physical restraint," "restraint," and "seclusion," which does not mean voluntary calming techniques, such as timeout.

FISCAL IMPACT

CS/CS/HB75/HECS/HJCS/aHFI#1/aSJC does not contain an appropriation.

The New Mexico Public Schools Insurance Authority (NMPSIA) estimates at least six claims per fiscal year for improper restraint and seclusion, resulting in approximately \$1.8 million in court and settlement costs.

It is possible that school districts or charter schools would be required to provide training to staff on the appropriate use of restraint and seclusion. If not already available at the school district or charter school, training may result in additional costs to school districts and charter schools.

SUBSTANTIVE ISSUES

Attention to issues of physical restraint and seclusion of students has risen across the United States through published accounts of alleged abuse, which prompted an investigation by the Government Accountability Office (GAO) at the request of the U.S. House Education and Labor Committee. The GAO report, published May 19, 2009, found "no federal laws restricting the use of seclusion and restraint in public and private schools and widely divergent laws at the state level."

In 2009, U.S. Education Secretary Arne Duncan sent a letter to all chief state school officers encouraging them to review their state's current policies and guidelines regarding the use of restraint and seclusion in schools, and if necessary, to develop or revise their policies and guidelines. In compliance with Secretary Duncan's request and in response to the requests of various advocacy groups, the Public Education Department (PED) convened a work group to consider legislation or rulemaking on the subject of restraint and seclusion of children in New Mexico public schools.

In September 2010, PED concluded their report on behalf of the restraint and seclusion work group, which indicated that, while law addressing the issue of seclusion and restraint exists in the

Children’s Code (albeit inapplicable to school settings), the Public School Code lacked any such provisions. However, PED issued guidance on the topic, which noted that:

- The use of physical restraint should be approved by the student’s individualized education program (IEP) team, documented in the student’s behavior intervention plan, and have the expressed written agreement of the parent or guardian;
- A mental health professional should be a member of the IEP team if physical restraint is being considered as an intervention;
- Physical restraint may be performed by trained personnel only, and only in emergency situations; and
- Although no case law directly pertinent to the issue of restraint and seclusion existed in New Mexico at this time, a New Mexico Supreme Court case held that a school district’s failure to follow through on safety policies for at-risk students was an act of negligence, suggesting that the lack of clear policy governing such practices might pose a risk of liability to the public schools.

The U.S. Department of Education issued a “Dear Colleague” letter in December 2016, noting the ways in which application of restraint and seclusion may lead to disparate impact discrimination against students who have special needs, possibly violating Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act of 1990. The Office for Civil Rights indicates that students with disabilities are restrained and secluded at higher rates than students without disabilities; during the 2013-2014 school year, for example, students with disabilities served by the Individuals with Disabilities Education Act represented only 12 percent of public school students nationally, but 64 percent of students subjected to restraint and seclusion.

According to Wrightslaw, an online resource for special education law and advocacy, as of July 25, 2015:

- 25 states, by law, protected all children from both restraint and seclusion, while 35 states have protections for children with disabilities;
- Nine states, including New Mexico, have only voluntary guidance or policies that impose no mandates or legal obligation;
- 26 states have laws requiring notification to parents of both restraint and seclusion, while 36 states require notification of parents of students with disabilities;
- 21 states require notification by the same or next day for both restraint and seclusion, while 28 states require such timely notification for children with disabilities;
- Children with disabilities may be unable to communicate their situation or distress, leading to potentially greater harm; and
- While many policies, regulations, and laws require that seclusion and restraint be employed as last resorts to last only as long as the emergency situation that triggers them, staff members often skip less restrictive measures.

CONSEQUENCE OF NOT ENACTING THE BILL

The provisions of CS/CS/HB75/HEC/HJC/aHFI#1/aSJC address many of the concerns cited in the December 2016 “Dear Colleague” letter. If current law remains unchanged, New Mexico school districts and charter schools may find themselves in violation of Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act, potentially leading to

more instances of tort claims against school districts and charter schools, with increased legal and settlement costs, as suggested by NMPSIA.

RELATED BILLS

Relates to SB397, School Protections for Certain Students, which proposes to enact “Michael’s Law” limiting the use of restraint and seclusion in schools.

SOURCES OF INFORMATION

- Legislative Education Study Committee Files
- New Mexico Public Schools Insurance Authority
- Office of the Attorney General

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