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

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

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

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

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

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

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

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

(1) a school employee shall provide the
student's parent or guardian with written or oral notice on
the same day that the incident occurred, unless circumstances
prevent same-day notification. If the notice is not provided
on the same day of the incident, notice shall be given within
twenty-four hours after the incident;

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

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

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

   (b) a meeting of the student's
individualized education program team, behavioral
intervention plan team or student assistance team within two
weeks of each use of restraint or seclusion after the second
use within a thirty-calendar-day period to provide
recommendations for avoiding future incidents requiring the
use of restraint or seclusion.

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

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

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

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

I. For the purposes of this section:

(1) "first responder" means a person based
outside of a school who functions within the emergency
medical services system and who is dispatched to a school to
provide initial emergency aid;
(2) "mechanical restraint" means the use of any device or material attached or adjacent to the student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove, but "mechanical restraint" does not include mechanical supports or protective devices;

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

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

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