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HOUSE BILL 354

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

Javier Martínez

AN ACT

RELATING TO CHILDREN; CREATING REPORTING REQUIREMENTS ON USES
OF RESTRAINT AND SECLUSION FOR PUBLIC SCHOOLS.

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

SECTION 1. Section 22-5-4.12 NMSA 1978 (being Laws 2017,
Chapter 33, Section 1) is amended to read:

"22-5-4.12. 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

1 insufficient to mitigate the imminent danger of serious
2 physical harm.

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

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

8 (2) the restraint or seclusion technique shall
9 end when the student's behavior no longer presents an imminent
10 danger of serious physical harm to the student or others;

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

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

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

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

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

25 (2) any school safety plan shall be drafted by

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1 a planning team that includes at least one special education
2 expert.

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

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

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

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

25 (a) a review of the incidents in which

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1 restraint or seclusion techniques were used and an analysis of
2 how future incidents may be avoided, including whether the
3 student requires a functional behavioral assessment; and

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

11 (4) schools shall report all instances of the
12 use of restraint and seclusion and school referrals to juvenile
13 justice services as a result of the restraint and seclusion to
14 the department.

15 E. Schools shall report to the department the names
16 and positions of school personnel trained in the use of
17 restraint and seclusion and the source and method of training.

18 [~~E.~~] F. If a school summons law enforcement instead
19 of using a restraint or seclusion technique on a student, the
20 school shall comply with the reporting, documentation and
21 review procedures established pursuant to Subsection D of this
22 section.

23 [~~F.~~] G. Policies regarding restraint and seclusion
24 shall consider school district support and strategies for
25 school employees to successfully reintegrate a student who has

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1 been restrained or secluded back into the school or classroom
2 environment.

3 ~~[G.]~~ H. The provisions of this section shall not be
4 interpreted as addressing the conduct of law enforcement or
5 first responders.

6 ~~[H.]~~ I. The provisions of this section do not apply
7 to any school located within a county juvenile detention center
8 or a state-operated juvenile facility.

9 ~~[I.]~~ J. For the purposes of this section:

10 (1) "first responder" means a person based
11 outside of a school who functions within the emergency medical
12 services system and who is dispatched to a school to provide
13 initial emergency aid;

14 (2) "mechanical restraint" means the use of
15 any device or material attached or adjacent to the student's
16 body that restricts freedom of movement or normal access to any
17 portion of the student's body and that the student cannot
18 easily remove, but "mechanical restraint" does not include
19 mechanical supports or protective devices;

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

25 (4) "restraint" when not otherwise modified

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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."