

SENATE RULES COMMITTEE SUBSTITUTE FOR
SENATE BILL 284

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

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
CREATING A POLICY; CREATING REQUIREMENTS FOR SCHOOLS TO BE ABLE
TO USE RESTRAINT; PROVIDING WHAT RESTRAINT TECHNIQUES SCHOOLS
CANNOT USE; BANNING THE USE OF SECLUSION IN SCHOOLS; PROVIDING
PUBLIC INPUT FOR SCHOOL POLICIES ON RESTRAINT; PROVIDING
TRAINING FOR SCHOOL PERSONNEL ON ALTERNATIVE FORMS OF
RESTRAINT; CREATING NEW REQUIREMENTS FOR REPORTING AND
DOCUMENTATION PROCEDURES; DEFINING "MEDICATION RESTRAINT";
DEFINING "PRONE RESTRAINT".

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~~]
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TECHNIQUES--REQUIREMENTS.--

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1 A. It is the policy of this state that all school
2 children shall enjoy an educational experience free from fear
3 of mental and physical abuse. Physical restraint should not be
4 used except in situations where the child's actions pose an
5 imminent danger of serious physical harm to self or others, and
6 restraint should be avoided to the greatest extent possible.
7 Physical restraint shall not be used as a routine strategy
8 implemented to address instructional problems or inappropriate
9 student conduct, as punishment or discipline, as a means of
10 coercion or retaliation or as a convenience.

11 ~~[A.]~~ B. A school may permit the use of restraint
12 ~~[or seclusion]~~ techniques on any student only if ~~[both]~~ all of
13 the following apply:

14 (1) the student's ~~[behavior]~~ conduct presents
15 an imminent danger of serious physical harm to the student or
16 others; ~~[and]~~

17 (2) less restrictive interventions appear
18 insufficient to mitigate the imminent danger of serious
19 physical harm; and

20 (3) the school is able to maintain an
21 organized and functional method of documenting and timely
22 reporting incidents of restraint to interested parties,
23 including parents and government agencies.

24 ~~[B.]~~ C. If a restraint ~~[or seclusion]~~ technique is
25 used on a student:

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

4 (2) the restraint [~~or seclusion~~] technique
5 shall end when the student's [~~behavior~~] conduct no longer
6 presents an imminent danger of serious physical harm to the
7 student or others;

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

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

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

17 [~~G.~~] D. Schools shall never use any of the
18 following techniques:

19 (1) mechanical restraint;

20 (2) medication restraint;

21 (3) seclusion; or

22 (4) prone restraint.

23 E. School districts shall annually establish or
24 ratify policies and procedures for the use of restraint [~~or~~
25 ~~seclusion~~] techniques in a school safety plan. Prior to the

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1 establishment of each school's respective restraint policies
2 and procedures, community members shall be afforded a
3 reasonable opportunity to comment publicly upon those proposed
4 policies and procedures before those policies and procedures
5 are ratified in an approved school safety plan. These
6 restraint policies and procedures shall be distributed by each
7 school prior to the start of each school year to each student's
8 responsible parent or guardian. Distribution via electronic
9 means is considered sufficient for purposes of this subsection.
10 Each school district's annual plan shall govern the policies
11 and procedures for the use of restraint techniques for schools
12 within that district; provided that:

13 (1) the school district's safety plan shall
14 not be specific to any individual student; [~~and~~]

15 (2) any policies restricting the use of
16 restraint shall apply to all children, not just children with
17 disabilities; and

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

21 F. School personnel shall be trained prior to the
22 start of each school year on the appropriate use of effective
23 alternatives to physical restraint, such as positive behavioral
24 interventions and supports and, only for cases involving
25 imminent danger of serious physical harm, on the safe use of

1 physical restraint.

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

6 (1) a school employee shall provide the
7 student's parent or guardian with written ~~[or oral]~~ notice on
8 the same day that the incident occurred, unless circumstances
9 prevent same-day notification. If the notice is not provided
10 on the same day of the incident, notice shall be given within
11 twenty-four hours after the incident. A copy of this notice
12 shall also be provided to the school principal or administrator
13 within this same time period;

14 (2) ~~[within a reasonable time following the~~
15 ~~incident]~~ no later than three school days after the incident, a
16 school employee shall provide the student's parent or guardian
17 with written documentation that includes information about any
18 persons, locations or activities that may have triggered the
19 ~~[behavior]~~ conduct, if known, and specific information about
20 the ~~[behavior]~~ conduct and its precursors, the type of
21 restraint ~~[or seclusion]~~ technique used ~~[and]~~, the duration of
22 its use and the names of any adults, regardless of their status
23 as school employees, present for or in any way involved with
24 the restraint techniques;

25 (3) schools shall review strategies used to

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1 address a student's dangerous [~~behavior~~] conduct if use of
2 restraint [~~or seclusion~~] techniques for an individual student
3 has occurred two or more times during any thirty-calendar-day
4 period. The review shall include:

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

9 (b) a meeting of the student's
10 individualized education program team, behavioral intervention
11 plan team or student assistance team within two weeks of each
12 use of restraint [~~or seclusion~~] after the second use within a
13 thirty-calendar-day period to provide recommendations for
14 avoiding future incidents requiring the use of restraint [~~or~~
15 ~~seclusion~~]; and

16 (4) schools shall report annually to the
17 department prior to the start of each school year a list of
18 each incident in which a technique of restraint was used during
19 the prior school year. The annual report shall include, at a
20 minimum:

21 (a) the date of each incident;

22 (b) the location of each incident, to
23 include the specific school and classroom location within each
24 school;

25 (c) a brief description of each incident

1 and a description of the technique used;

2 (d) a description of the notification
3 method and timing to the student's parent or guardian; and

4 (e) a brief description of the methods
5 employed to reintegrate the student into the classroom.

6 H. The restraint reporting and documentation
7 procedures shall be subject to random audits completed at the
8 direction of the department. Failure to comply with these
9 audits shall preclude a school from using restraint techniques
10 upon students. The repeated use of restraint techniques for an
11 individual student, multiple uses within the same classroom or
12 multiple uses by the same individual shall result in an audit
13 and, if appropriate, revision of strategies currently in place
14 to address dangerous conduct.

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

20 ~~[F.]~~ J. Policies regarding restraint ~~[and~~
21 ~~seclusion]~~ shall consider school district support and
22 strategies for school employees to successfully reintegrate a
23 student who has been restrained ~~[or secluded]~~ back into the
24 school or classroom environment.

25 ~~[G.]~~ K. The provisions of this section shall not be

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1 interpreted as addressing the conduct of law enforcement or
2 first responders.

3 ~~[H.]~~ L. The provisions of this section do not apply
4 to any school located within a county juvenile detention center
5 or a state-operated juvenile facility.

6 M. The provisions of this section are not intended
7 to provide any individual using a restraint technique upon a
8 student with immunity from criminal or civil liability.

9 ~~[I.]~~ N. 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. "Mechanical
20 restraint" does not include devices implemented by trained
21 school personnel or used by a student that have been prescribed
22 by an appropriate medical or related services professional and
23 are used for the specific and approved purposes for which such
24 devices were designed;

25 (3) "medication restraint" means the

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1 administration of medication for the purpose of temporarily
2 controlling behavior;

3 [~~(3)~~] (4) "physical restraint" means the use
4 of physical force without the use of any device or material
5 that restricts the free movement of all or a portion of a
6 student's body, but "physical restraint" does not include
7 physical escort;

8 [~~(4)~~] (5) "prone restraint" means a physical
9 restraint in which a student is placed face down on the floor
10 or another surface and physical pressure is applied to the
11 student's body to keep the student in the face-down position;

12 (6) "restraint" when not otherwise modified
13 means mechanical or physical restraint. "Restraint" does not
14 include behavioral interventions used as a response to calm and
15 comfort an upset student, such as verbal soothing; and

16 [~~(5)~~] (7) "seclusion" means the involuntary
17 confinement of a student alone in a room from which egress is
18 prevented. "Seclusion" does not mean the use of a voluntary
19 behavior management technique, including a timeout location, as
20 part of a student's education plan, individual safety plan,
21 behavioral plan or individualized education program that
22 involves the student's separation from a larger group for
23 purposes of calming. "Seclusion" does not include the
24 aforementioned techniques so long as the student's freedom of
25 movement is not forcibly restricted and the student retains the

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1 ability to voluntarily enter and exit a given location."

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