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FISCAL IMPACT REPORT

SPONSOR Lopez LAST UPDATED 3/17/23
ORIGINAL DATE 3/16/23
SHORT TITLE School Restraint & Seclusion Techniques BILL NUMBER Senate Memorial 68/aSEC
ANALYST Helms

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	No fiscal impact					

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to Senate Bill 387

Sources of Information

LFC Files

Response Regarding the Original Bill Received From
Developmental Disabilities Council (DDC)

No Response Received From
Public Education Department (PED)
Higher Education Department (HED)

SUMMARY

Synopsis of SEC Amendment to Senate Memorial 68

The Senate Education Committee amendment to Senate Memorial 68 changes wording of one of the findings (the “whereas” statements) to state New Mexico not only has no uniform guidelines for the use of restraint and seclusion in disciplining students but also has no guidelines for reducing or eliminating those techniques

Synopsis of Senate Memorial 68

Senate Memorial 68 (SM68) requests the Developmental Disabilities Council (DDC) to convene a working group to address restraint and seclusion techniques in New Mexico public schools. The memorial says the state does not have uniform guidelines for any aspects of restraint and seclusion techniques.

This memorial does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law. Findings and recommendations from the DDC working group would be due by November 1, 2023.

FISCAL IMPLICATIONS

Senate Memorial 68 does not contain an appropriation. SM68 would convene a working group consisting of representatives from at least 16 different groups. LFC analysis finds the working group would likely require time and effort that is able to be absorbed into current operations.

SIGNIFICANT ISSUES

Per SM68, the working group convened by DDC would include representatives from

- The Public Education Department (PED),
- The Early Childhood Education and Care Department (ECECD),
- The Child, Youth and Families Department (CYFD),
- School boards from rural and urban school districts and school districts that serve Native American students,
- Superintendents from rural and urban school districts and school districts that serve Native American students,
- Teachers,
- Education advocacy agencies,
- Disability advocacy agencies,
- The Legislative Education Study Committee (LESC),
- Students,
- Parents,
- Legislators,
- Law enforcement,
- Special education service providers,
- Tribal law enforcement, and
- Charter schools.

The working group convened by DDC would be required to submit a report by November 1, 2023, to the legislative Health and Human Services Committee, LESL, and the interim committee dealing with courts, corrections, and justice issues.

SM68 does not specify, define, or mandate what the report and findings from the working group would need to include. However, the memorial notes New Mexico specifically lacks statewide guidelines for several aspects of restraint and seclusion policies in public schools. These aspects include a lack of statewide guidelines for

- The use of restraint and seclusion techniques,
- Consistent reporting and documentation of restraint and seclusion incidents,
- Adequate notice and information provided to parents or guardians when such incidents occur,
- Required reviews of each incident to prevent future incidents from occurring, and
- Comprehensive training to school staff on the use of positive behavior supports and de-escalation strategies.

Agency analysis for a related bill, Senate Bill 387 (see “Relationship” below) concurred with SM68 that schools lack statewide guidance for understanding specifics of restraint and seclusion policy. CYFD noted,

Despite legitimate concerns that involving law enforcement in a behavior management situation heightens the risk of an inappropriate or excessive response, the bill allows for summoning law enforcement instead of using restraint, seclusion, or other less restrictive interventions. If schools lack specific guidelines for when law enforcement assistance should be accessed, there is a risk of law enforcement being used for behavior management.

While the bill only allows restraint/seclusion in the event of imminent danger of serious physical harm, there are no definitions for “imminent danger” or “serious physical harm.” This can result in broad interpretations of these terms, resulting in restraints/seclusions being implemented unnecessarily.

Analysis from the Development Disabilities Council regarding SM68 agrees that these policies need revision, noting seclusion and restraint are far more likely to harm students with disabilities, which also has implications for improving services for students with disabilities as noted in the *Martinez-Yazzie* lawsuit. DDC analysis states

Students with disabilities are twice as likely to receive an out-of-school suspension (13 percent) as are students without disabilities (6 percent). Students with disabilities represent 12 percent of students in public schools but 58 percent of students placed in seclusion or involuntary confinement. They also represent 75 percent of students physically restrained at school and make up 25 percent of students arrested and referred to law enforcement.

Many advocates and school systems are moving away from restraint and seclusion techniques as evidence shows that students can experience physical injuries, long-lasting trauma from the aversive techniques, and in severe cases, students have died as a result of these methods. The U.S. Department of Education reports that there continues to be no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of such techniques and that less restrictive and de-escalation methods should always be prioritized.

Analysis from PED for SB387 also noted current policy intends to limit the use of restraint or seclusion techniques:

A 2018 report by the Education Commission of the States noted that, though practices of restraint and seclusion are “typically utilized as tools for addressing imminent safety concerns, the use of restraint or seclusion on students who are exhibiting problematic behaviors has been prone to misapplication and abuse — possibly placing students in even more unsafe situations.” New Mexico legislation, such as 2017 House Bill 75 (HB75), which was enacted and codified as Section 22-5-4.12 NMSA 1978, has followed national trends in the past decade to limit the use of these procedures except in cases of immediate danger, to mandate reporting when restraint and seclusion are used, and to ensure school personnel are properly trained.

ADMINISTRATIVE IMPLICATIONS

There would be administrative implications to DDC to convene an operational working group comprising a far-reaching selection of agencies and groups. DDC would have to develop methods to effectively reach out to and collaborate with these groups to then consolidate varied findings and recommendations into a report faithful to many various sources of input. The working group convened by DDC would be required to submit a report by November 1, 2023.

RELATIONSHIP

SM68 relates to Senate Bill 387 (SB387), which would amend the Public School Code to prohibit the use of restraint and seclusion except for specific cases. To enact restraint of seclusion with a student, SB387 would require a two-factor test where student behavior will imminently cause harm to self or others and other interventions are insufficient. Additionally, the bill prohibits mechanical, chemical, and prone restraints; requires that except for emergencies when staff are unavailable, only employees trained in less restrictive techniques be allowed to use restraint or seclusion; and finally, requires any restraint or seclusion-related incidents to be reviewed, for parents and administrators to be notified, and for additional follow-up with parents and school intervention teams in the days and weeks following.

TECHNICAL ISSUES

SM68 does not specify, define, or mandate what the report and findings from the working group would need to include, which could obscure or dilute the intention of SM68.

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