

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 01/26/10

SPONSOR Garcia, M.J. LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Study School Student Seclusion & Restraint SJM 13

ANALYST Haug

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	None		

(Parenthesis ( ) Indicate Expenditure Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	\$7.0*				Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

\*See Fiscal Implications below

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Children, Youth and Families Department (CYFD)

Public School Insurance Authority (PSIA)

New Mexico School for the Blind and Visually Impaired (NMSBVI)

Public Education Department (PED)

### SUMMARY

#### Synopsis of Bill

Senate Joint Memorial 13 requests that the Public Education Department create a work group to examine the issues and concerns related to restraint and seclusion of public school students to ensure that every student in every school under state jurisdiction is safe and protected from being unnecessarily or inappropriately restrained or secluded.

Senate Joint Memorial 13 further requests that the work group include representation from directors of special education and other appropriate school personnel, organizations that advocate for the rights of children on this issue, parents and other appropriate stakeholders and that the

## **Senate Joint Memorial 13 – Page 2**

work group identify positive behavioral interventions and support systems for improving important academic and behavioral outcomes for all students.

The work group should present its findings and recommendations to the Legislative Education Study Committee and other appropriate interim legislative committees during the 2010 interim.

### **FISCAL IMPLICATIONS**

According to the PED, the number of hours required to facilitate the meetings (56 hours) and finalizing the report (20 hours) would cost the following:

General Manager I  $\$37.35 \times 76 \text{ hours} + 30\% \text{ benefits} = \$3,690.18$

Lawyer A  $\$28.76 \times 76 \text{ hours} + 30\% \text{ benefits} = \$2,841.49$

Salaries total =  $\$6,531.67$  plus estimated travel costs  $\$500.00$

Grand total  $\$7,031.67$ .

### **SIGNIFICANT ISSUES**

Since 2006, attention to issues of physical restraint and seclusion of students has risen across the United States as a result of published accounts of alleged abuse.

A recent report issued by the United States government accountability office found that there are no federal laws restricting the use of seclusion and restraint of students in public or private schools.

A report issued by the New Mexico public school insurance authority indicated that a total of two hundred seventy-one restraint and seclusion instances occurred over a ten-year period in New Mexico schools, at a cost of over four million four hundred thousand dollars ( $\$4,400,000$ ) in liability.

New Mexico law addresses physical restraint and seclusion of children only in the Children's Mental Health and Developmental Disabilities Act, which applies only to children in hospitals or psychiatric residential treatment or habilitation facilities, not to students in public schools.

The public education department reports that two guidance documents have been issued to school districts related to restraint and seclusion.

Those documents state that although physical restraint may be justified in certain instances, that type of intervention may pose a serious risk to the student, as well as to persons applying the restraint.

### **ADMINISTRATIVE IMPLICATIONS**

The PED notes the study contemplated by SJM 13 would require administrative support by NMPED as well as participation by NMPED staff in meetings and in the crafting and writing of the findings and recommendations requested by SJM 13. The staff implicated in the fiscal impact section above would need to have their duties shifted to other NMPED employees to complete the memorial.

## OTHER SUBSTANTIVE ISSUES

The PED states:

Secretary Garcia created a work group to consider legislation and/or rulemaking on the subject of restraint and seclusion on children with disabilities in New Mexico public schools. By memorandum dated November 16, 2009, Secretary Garcia asked various stakeholder groups to appoint representatives from their organizations to serve on the work group. She requested that the work group (1) make recommendations regarding the scope and nature of the use of restraint and seclusion with respect to children with disabilities in public schools, (2) study the best ways to address the use of restraint and seclusion with respect to children with disabilities in public schools including surveying practices and methods used in other states where laws and/or rules have been adopted, (3) consider the issue of liability that might be placed upon school employees, school districts and the state when making any recommendations, and (4) make recommendations for legislation and/or rulemaking regarding the use of restraint and seclusion on children with disabilities in public schools. The Secretary asked the work group to report its findings and recommendations to the Governor and LESC on or before October 1, 2010.

SJM 13 goes beyond the scope of Secretary Garcia’s work group since it asks for the study of the use of restraint and seclusion on all students—not just students with disabilities. As a result, the study would be much broader in scope and would potentially impact other state statutes such as Section 22-5-4.3 NMSA, which allows each school district to establish rules of conduct governing areas of student and school activity; indicate specific prohibited acts and activities; and enumerate possible disciplinary sanctions, which sanctions may include corporal punishment. Corporal punishment necessarily involves the use of restraint. See also 6.11.2.10(E) NMAC regarding enforcing rules of conduct.

In March 2006, the NMPED issued guidance on the “Use of Physical Restraint as a Behavioral Intervention for Students with Disabilities” as well as the use of seclusion in “Addressing Student Behavior: A Guide for Educators”. That guidance makes it clear that in all cases, the use of physical restraint must be approved by the student’s individualized education program (IEP) team, documented in the student’s behavioral intervention plan (BIP) and have the expressed written agreement of the parent. It also says that a mental health professional should be a member of the IEP team if physical restraint is being considered as an intervention. It also advises that physical restraint may be performed by trained personnel only. The guidance also lists other restrictions on the use of restraints and lists recommended documentation and reporting. Otherwise, physical restraint may only be used in case of emergencies to protect the student and others from serious injury.

The PSIA comments:

The 271 restraint and seclusion incidents reported by NMPSIA over the past 10 years is comprised of several categories of claims. The first are claims specifically identified as restraint and seclusion incidents, such as “combative child restrained” or “student’s mouth taped shut”. Also included in this dollar amount are IDEA claims and “assault –

teacher versus student”. The IDEA claims files were not reviewed individually for aspects of restraint and or seclusion, but anecdotally, the majority of IDEA claims do include some aspect of restraint and or seclusion.

Improvement in the area of any physical contact (including but not limited to restraint and seclusion) with students will decrease the Risk Program’s liability. If effective work group recommendations were developed, implemented, and enforced, this would have a positive impact on claims, and therefore premiums. A representative from the loss control division of NMPSIA would volunteer to serve on the work group.

NMSBVI states:

At the New Mexico School for the Blind and Visually Impaired (NMSBVI), we take the issues of student restraint and seclusion very seriously. As such, two of our staff members are certified Mandt trainers. All of our teaching staff members (staff members who work directly with students) receive Mandt training on a yearly basis at the “technical” level in order to maintain their Mandt certificates.

Mandt (Mandtsystem.com) is a proactive relationship-based approach to crisis situations built upon the principle of treating people with dignity and respect. It uses a graded system of alternatives to help de-escalate students and keep people safe. The graded system starts with verbal intervention and, **only when required to keep the student or others safe from harm**, may result in a physical restraint. The maximum recommended time limit for a physical restraint is 3 minutes. Seclusion is not utilized at NMSBVI.

The students at NMSBVI vary widely with a mix of visual, physical, and/or cognitive impairments. We may have students who will attempt to physically harm either themselves or others. As such, staff are appropriately trained to intervene in a safe and respectful manner in order to keep students from harming themselves or others.

There are other systems in addition to the Mandt system that train staff members to deal with crisis situations. However, the Mandt system has proven to work well for NMSBVI for many years (15 or more).

CYFD notes that the memorial does not identify CYFD as an agency to be represented on the work group, but the memorial’s requirement that “every student in every school under state jurisdiction is safe and protected from being unnecessarily or inappropriately restrained or secluded” does include the students served through CYFD’s schools. A representative from CYFD should therefore be included in the group. CYFD states that it has policies and procedures addressing the issue of physical restraint and seclusion of children in custody who are served through the CYFD educational system.

GH/svb/mew