

1 HOUSE BILL 567

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Javier Martínez

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10 AN ACT

11 RELATING TO CHILDREN; ENACTING NEW SECTIONS OF THE PUBLIC
12 SCHOOL CODE AS "MICHAEL'S LAW"; PROVIDING FOR THE PROTECTION OF
13 STUDENTS IN NEED OF ACCOMMODATION WHO ARE ACCUSED OF SANCTIONED
14 OFFENSES TO PROVIDE SUPPORTIVE SERVICES AND DUE PROCESS;
15 LIMITING THE USE OF RESTRAINT AND SECLUSION; PROVIDING FOR
16 NOTICE TO PARENTS; PROVIDING FOR ANNUAL REPORTS; AMENDING A
17 SECTION OF THE CHILDREN'S MENTAL HEALTH AND DEVELOPMENTAL
18 DISABILITIES ACT TO PROVIDE PARENTS WITH TEMPORARY ACCESS TO
19 INFORMATION IN CERTAIN CIRCUMSTANCES.
20

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

22 SECTION 1. A new section of the Public School Code is
23 enacted to read:

24 "[NEW MATERIAL] SHORT TITLE.--Sections 1 through 5 of this
25 act may be cited as "Michael's Law"."

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1 SECTION 2. A new section of the Public School Code is
2 enacted to read:

3 "[NEW MATERIAL] DEFINITIONS.--As used in Michael's Law:

4 A. "adverse childhood experience" means any of the
5 following:

- 6 (1) emotional abuse or neglect;
- 7 (2) physical abuse or neglect;
- 8 (3) sexual abuse;
- 9 (4) substance abuse in the student's
10 household;
- 11 (5) mental illness of a household member of
12 the student;
- 13 (6) violence against the student's parent or
14 caregiver;
- 15 (7) incarceration of a household member of the
16 student;
- 17 (8) loss of contact with a parent of the
18 student;
- 19 (9) homelessness;
- 20 (10) persistent poverty; or
- 21 (11) the experience of being a child parent,
22 or being raised by a child parent, without adequate social
23 supports;

24 B. "aversive intervention" means any device or
25 intervention, consequences or procedure intended to cause pain

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1 or unpleasant sensations, including interventions causing
2 physical pain, tissue damage, physical illness or injury;
3 electric shock; isolation; forced exercise; withholding of
4 food, water or sleep; humiliation; water mist; noxious taste,
5 smell or skin agents; and overcorrection;

6 C. "crisis team" means any of the following groups
7 of persons who offer support in a crisis of a student and are
8 trained to implement research-based practices designed to
9 assist students and staff in identifying early warning signs
10 and developing prevention, intervention and crisis plans:

- 11 (1) a crisis intervention resource team;
- 12 (2) a mobile crisis team;
- 13 (3) an assertive community treatment team; or
- 14 (4) a team composed of a behavioral health
15 provider and any school employee;

16 D. "developmental disability" means a severe
17 chronic disability that:

- 18 (1) is attributable to a mental or physical
19 impairment or a combination of mental or physical impairments;
- 20 (2) is manifested before a person reaches
21 twenty-two years of age;
- 22 (3) is expected to continue indefinitely;
- 23 (4) results in substantial functional
24 limitations in three or more of the following areas of major
25 life activities:

- 1 (a) self-care;
- 2 (b) receptive and expressive language;
- 3 (c) learning;
- 4 (d) reading;
- 5 (e) communicating;
- 6 (f) concentrating;
- 7 (g) mobility;
- 8 (h) self-direction;
- 9 (i) capacity for independent living; or
- 10 (j) economic self-sufficiency; and
- 11 (5) reflects a person's need for a combination
- 12 and sequence of special, interdisciplinary or other supports
- 13 and services that are of lifelong or extended duration that are
- 14 individually planned or coordinated;
- 15 E. "evidence-based practice" means a practice that
- 16 integrates individual expertise with the best available
- 17 external evidence from systemic research;
- 18 F. "in-school suspension" means suspending or
- 19 removing a student from one or more regular classes while
- 20 requiring the student to spend the time in a designated area at
- 21 the same school or elsewhere while under adult supervision;
- 22 G. "present danger" means imminent bodily harm or
- 23 death to oneself or another;
- 24 H. "seclusion":
- 25 (1) means the confinement of a student alone

1 in a room from which the student is physically prevented from
2 leaving; and

3 (2) does not mean time out, in-school
4 suspension or any other alternative educational placement that
5 would remove the student from regular educational or special
6 educational placement;

7 I. "student in need of accommodation" means a
8 student who has:

9 (1) been diagnosed as having a serious mental
10 illness, serious emotional disturbance or other behavioral
11 health condition;

12 (2) received an adverse childhood experiences
13 screening and has been identified as having experienced at
14 least two adverse childhood experiences;

15 (3) been diagnosed as having an intellectual
16 or developmental disability;

17 (4) been referred multiple times for
18 disciplinary action;

19 (5) had formal or informal changes of
20 educational setting; or

21 (6) been exhibiting at-risk behaviors that
22 constitute a pattern;

23 J. "supports screenings" includes screenings to
24 determine whether a student is a student in need of
25 accommodation or to assess or diagnose a student as having one

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1 of the conditions that qualify the student as a student in need
2 of accommodation; and

3 K. "time out" means the brief removal, by choice of
4 a student or at the request of a teacher, of a student to a
5 quiet classroom area for students to self-regulate or become
6 calm and from which the student can freely and voluntarily
7 leave."

8 SECTION 3. A new section of the Public School Code is
9 enacted to read:

10 "[NEW MATERIAL] STUDENT SUPPORTS PLAN.--A school shall
11 adopt a "student supports plan" for protecting students in need
12 of accommodation from violations of the student's rights under
13 state and federal law, including the student's right to
14 accommodation of the student's disability, parental involvement
15 and due process. The student supports plan shall include a
16 plan for restorative, preventive and intervention services,
17 which plan shall be documented and agreed upon by the student
18 in need of accommodation, the student's parent and the school
19 principal; provided that the parent of the student may refuse
20 services and shall not be penalized for refusing services. A
21 student supports plan shall include provisions for:

22 A. training local law enforcement officers and
23 school employees in responding to situations involving the
24 student in need of accommodation so as to minimize aversive
25 intervention or the classification of the responses of the

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1 student as intentional infractions of school policy;

2 B. ensuring compliance with the provisions of
3 Section 5 of Michael's Law relating to restraint and seclusion;

4 C. recognizing the common characteristics and
5 behaviors associated with students in need of accommodation;

6 D. interaction with the student in need of
7 accommodation;

8 E. reasonable accommodation for the student in need
9 of accommodation and;

10 F. the experiential realities of the student in
11 need of accommodation and how they affect the student's
12 interactions with others;

13 G. communication with the student in need of
14 accommodation;

15 H. identification of local resources for providing
16 services and supports to the student in need of accommodation;

17 I. protocols for using crisis intervention teams,
18 mobile crisis teams, assertive community treatment teams and
19 behavioral health providers. These protocols shall incorporate
20 training in the following areas:

21 (1) health education;

22 (2) social-emotional learning;

23 (3) trauma-informed care;

24 (4) youth mental health first aid; and

25 (5) adult mental health first aid; and

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1 J. the rights of the student against unlawful
2 search and seizure."

3 SECTION 4. A new section of the Public School Code is
4 enacted to read:

5 "[NEW MATERIAL] STUDENTS IN NEED OF ACCOMMODATION--
6 IDENTIFICATION--PREVENTION PLANS OF ACTION.--

7 A. A local school board shall develop first-
8 response policies and procedures for a student who has
9 committed a first offense as defined by the school code of
10 conduct and discipline as determined by the local school board.
11 These policies and procedures shall include:

12 (1) a requirement that, before any arrest or
13 referral for services is made, the student, the student's
14 parent and school principal meet after the student's first
15 offense to discuss the events surrounding the first offense;
16 provided that:

17 (a) an advocate of the student's or
18 parent's choosing shall be allowed to attend the meeting; and

19 (b) unless the student is alleged to
20 have committed a violent crime or there is a present danger,
21 any referral to the juvenile justice division of the children,
22 youth and families department shall be delayed pending the
23 completion of supports screenings and a determination of
24 whether prevention services could deter escalation of the
25 offense;

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- 1 (2) protocols for seeking and the
2 administering of crisis intervention services;
- 3 (3) the provision to the student of:
4 (a) an adverse childhood experiences
5 screening;
- 6 (b) a needs assessment, in accordance
7 with the provisions of Subsection B of this section;
- 8 (c) a behavioral health screening; and
9 (d) any contractual agreement
10 established between school districts that shall: 1) stipulate
11 access to crisis intervention training, mobile crisis teams,
12 assertive community treatment teams and youth mental health
13 first aid training and certification; 2) establish policies,
14 procedures and protocols for ensuring that the training of
15 local law enforcement officers on responding to intentional
16 infractions of school policy and student supports plans and
17 provide that local law enforcement be notified that a student
18 has a student supports plan; and 3) training school employees
19 to respond to situations involving students in need of
20 accommodation to minimize adverse interactions or
21 classification of the responses of students in need of
22 accommodation as intentional infractions of school policy;
- 23 (4) provisions for the review of the student's
24 disciplinary records to examine formal and informal offenses as
25 defined by the student code of conduct and any measures taken

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1 to address the infractions by:

2 (a) the school principal;

3 (b) the appropriate instructional
4 support providers; or

5 (c) a licensed or certified behavioral
6 health professional employed by or under contract to the school
7 or school district; and

8 (5) a requirement that the student's teachers
9 and parents be consulted during records review and assessment
10 but shall not be solely responsible for administering the
11 assessment, making referrals or contacting providers,
12 completing reports or any other activity required pursuant to
13 this subsection; provided that the records are shared in strict
14 accordance with federal privacy laws.

15 B. A needs assessment shall be developmentally
16 specific, strengths-based, culturally sensitive and trauma-
17 informed. It shall integrate an assessment of the student's
18 family and home environment, the classroom context, sensory
19 integration needs, the family's spoken language, communication
20 needs or deficit and educational history.

21 C. Any record or document pertaining to the
22 student, the student's education, assessments, screenings and
23 interventions shall be provided to the student's parent no
24 later than thirty days after the first offense has occurred.

25 D. After a student's first offense as defined by

1 the school code of conduct and discipline as determined by the
2 school principal, or within thirty days of exiting juvenile
3 justice custody, the student, the student's parent, school
4 officials, teachers and service providers shall develop a
5 prevention plan of action that shall be documented in writing.

6 The prevention plan of action shall include:

7 (1) reports from any crisis intervention,
8 incident of restraint or seclusion, behavioral health screening
9 or needs assessment;

10 (2) the identification of goals for optimizing
11 the student's well-being; and

12 (3) recommendations and considerations related
13 to achieving the goals for the student, including:

14 (a) non-discriminatory, accessible and
15 high-quality modifications and evidence-based practices for
16 learning that coincide with any crisis intervention, behavioral
17 health screening or needs assessment;

18 (b) daily schedules, expectations and
19 monitoring of student activity and learning time;

20 (c) in-home and community-based models
21 that include viable options for: 1) assisting the student with
22 the acquisition of needed social and behavioral skills; or 2)
23 providing other necessary services to the student;

24 (d) positive reinforcement and behavior
25 support services;

1 (e) goal-setting and assistance for
2 reaching those goals, such as college preparatory or career
3 preparatory guidance;

4 (f) parent training, involvement and
5 support;

6 (g) individual, group or class services
7 that respect evidence-based student-to-teacher ratios;

8 (h) communication interventions and the
9 use of assistive technology;

10 (i) any needed physical therapy,
11 occupational therapy or speech therapy;

12 (j) social skills support, including
13 assistance in helping students participate in public school
14 activities whenever possible so as to diminish or remove any
15 stigma;

16 (k) creative outlets, including
17 movement, exercise, art, music or sensory integration;

18 (l) assistance and training for
19 appropriate school employees in implementing the prevention
20 plan of action; and

21 (m) a trauma-informed approach to
22 seclusion and restraint that: 1) identifies the impact of
23 trauma on a student that has experienced adverse childhood
24 experiences or other trauma; and 2) actively addresses the risk
25 of re-traumatizing the student.

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1 E. A student's prevention plan of action shall
2 include evidence from supporting documents, including
3 information relating to any child protective services
4 involvement, foster care placement, drug court involvement,
5 past individual education plans and any past assessment or
6 evaluation that was considered in determining the best
7 interests of the student.

8 F. A school shall not make a referral pursuant to a
9 student's prevention plan of action without the approval of the
10 student's parent. Services identified in the plan shall be
11 pragmatic and cannot unfairly burden the student's family. Any
12 referral shall take into account the schedules of the student's
13 parent and the student's family's access to transportation and
14 include any necessary arrangements for providing transportation
15 to needed services.

16 G. Services identified in the prevention plan of
17 action shall not detract from a student's education.

18 H. Services identified in the prevention plan of
19 action shall not be dependent on a diagnosis or an individual
20 education plan. The services shall be provided free of charge
21 to the student.

22 I. The student, the student's parent and providers
23 of services indicated on the student's prevention plan of
24 action shall evaluate the effectiveness and appropriateness of
25 services provided pursuant to the prevention plan of action

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1 every thirty days, and make modifications to the plan as
2 needed, until the goals identified in the plan are reached.
3 Services shall not terminate solely by reason of a school year
4 or a fiscal year ending. Services must follow students as
5 public schools, teachers, home environments and service
6 providers change. A student's prevention plan of action shall:

7 (1) be implemented regardless of whether the
8 student has been adjudicated; and

9 (2) not be used during the adjudication
10 process unless the student's parent requests it.

11 J. The student, the student's parent and providers
12 of services indicated on the student's prevention plan of
13 action shall reach consensus on whether the goals identified in
14 a student's prevention plan of action are reached and provide a
15 two-month step-down plan for transition from services. At the
16 time of discharge, a transition monitoring plan shall be
17 developed and provided to the student, the student's parent and
18 providers of services. The transition monitoring plan shall
19 provide, at minimum, for behavioral, educational and needs
20 assessments to be completed at least every three months.

21 K. A school shall consult with the juvenile justice
22 division of the children, youth and families department when
23 devising a student's prevention plan of action pursuant to
24 Subsection D of this section. The school is ultimately
25 responsible for the implementation of the prevention plan of

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1 action.

2 L. A school shall not refer a student thirteen
3 years of age or younger to the juvenile justice division of the
4 children, youth and families department.

5 M. On the same calendar day of the referral, a
6 school shall notify a student's parent verbally and in writing
7 if the school refers the student to the juvenile justice
8 division of the children, youth and families department.

9 N. A school shall consult with the children, youth
10 and families department when making a determination for
11 referral of a student to the juvenile justice division for
12 actions of the student that took place during the restraint or
13 during a crisis team intervention.

14 O. A school shall use state or local law
15 enforcement as a last resort and not as a first response.
16 School security or school resource officers shall defer to a
17 student's social worker, psychologist, psychiatrist, counselor
18 or therapist before taking action relating to a student.

19 P. A school shall not refer a student with a known
20 disability or an educational accommodation plan to the juvenile
21 justice division of the children, youth and families department
22 without first conducting a manifestation determination hearing.
23 If the hearing determines that the student's behavior is not
24 related to a disability, then a copy of the findings shall be
25 provided to the student's parent and the juvenile justice

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1 division."

2 SECTION 5. A new section of the Public School Code is
3 enacted to read:

4 "[NEW MATERIAL] ALTERNATIVES TO SECLUSION AND RESTRAINT.--

5 A local school board shall adopt and promulgate rules relating
6 to the use of restraint and seclusion on students in need of
7 accommodation. The rules shall:

8 A. fully integrate evidence-based practices or
9 promising practices relating to trauma;

10 B. provide for the recognition of the signs and
11 symptoms of trauma in families and students; and

12 C. provide for the restriction of interventions
13 that would have a reasonable possibility of re-traumatizing a
14 student."

15 SECTION 6. Section 32A-6A-24 NMSA 1978 (being Laws 2007,
16 Chapter 162, Section 24, as amended) is amended to read:

17 "32A-6A-24. DISCLOSURE OF INFORMATION.--

18 A. Except as otherwise provided in the Children's
19 Mental Health and Developmental Disabilities Act, a person
20 shall not, without the authorization of the child, disclose or
21 transmit any confidential information from which a person well-
22 acquainted with the child might recognize the child as the
23 described person or any code, number or other means that could
24 be used to match the child with confidential information
25 regarding the child.

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1 B. When the child is under fourteen years of age,
2 the child's legal custodian is authorized to consent to
3 disclosure on behalf of the child. Information shall also be
4 disclosed to a court-appointed guardian ad litem without
5 consent of the child or the child's legal custodian.

6 C. Except as provided pursuant to Subsection K of
7 this section, a child fourteen years of age or older with
8 capacity to consent to disclosure of confidential information
9 shall have the right to consent to disclosure of mental health
10 and habilitation records. A legal custodian who is authorized
11 to make health care decisions for a child has the same rights
12 as the child to request, receive, examine, copy and consent to
13 the disclosure of medical or other health care information when
14 evidence exists that such a child whose consent to disclosure
15 of confidential information is sought does not have capacity to
16 give or withhold valid consent and does not have a treatment
17 guardian appointed by a court. If the legal custodian is not
18 authorized to make decisions for a child under the Children's
19 Mental Health and Developmental Disabilities Act, the person
20 seeking authorization shall petition the court for the
21 appointment of a treatment guardian to make a decision for such
22 a child.

23 D. Authorization from the child or legal custodian
24 for a child less than fourteen years of age shall not be
25 required for the disclosure or transmission of confidential

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1 information when the disclosure or transmission:

2 (1) is necessary for treatment of the child
3 and is made in response to a request from a clinician;

4 (2) is necessary to protect against a clear
5 and substantial risk of imminent serious physical injury or
6 death inflicted by the child on self or another;

7 (3) is determined by a clinician not to cause
8 substantial harm to the child and a summary of the child's
9 assessment, treatment plan, progress, discharge plan and other
10 information essential to the child's treatment is made to a
11 child's legal custodian or guardian ad litem;

12 (4) is to the primary caregiver of the child
13 and the information disclosed was necessary for the continuity
14 of the child's treatment in the judgment of the treating
15 clinician who discloses the information;

16 (5) is to an insurer contractually obligated
17 to pay part or all of the expenses relating to the treatment of
18 the child at the residential facility. The information
19 disclosed shall be limited to data identifying the child,
20 facility and treating or supervising physician and the dates
21 and duration of the residential treatment. It shall not be a
22 defense to an insurer's obligation to pay that the information
23 relating to the residential treatment of the child, apart from
24 information disclosed pursuant to this section, has not been
25 disclosed to the insurer;

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1 (6) is to a protection and advocacy
2 representative pursuant to the federal Developmental
3 Disabilities Assistance and Bill of Rights Act and the federal
4 Protection and Advocacy for Individuals with Mental Illness
5 Act; or

6 (7) is pursuant to a court order issued for
7 good cause shown after notice to the child and the child's
8 legal custodian and opportunity to be heard is given. Before
9 issuing an order requiring disclosure, the court shall find
10 that:

11 (a) other ways of obtaining the
12 information are not available or would not be effective; and

13 (b) the need for the disclosure
14 outweighs the potential injury to the child, the clinician-
15 child relationship and treatment services.

16 E. A disclosure ordered by the court shall be
17 limited to the information that is essential to carry out the
18 purpose of the disclosure. Disclosure shall be limited to
19 those persons whose need for the information forms the basis
20 for the order. An order by the court shall include such other
21 measures as are necessary to limit disclosure for the
22 protection of the child, including sealing from public scrutiny
23 the record of a proceeding for which disclosure of a child's
24 record has been ordered.

25 F. An authorization given for the transmission or

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1 disclosure of confidential information shall not be effective
2 unless it:

- 3 (1) is in writing and signed; and
4 (2) contains a statement of the child's right
5 to examine and copy the information to be disclosed, the name
6 or title of the proposed recipient of the information and a
7 description of the use that may be made of the information.

8 G. The child has a right of access to confidential
9 information about the child and has the right to make copies of
10 information about the child and submit clarifying or correcting
11 statements and other documentation of reasonable length for
12 inclusion with the confidential information. The statements
13 and other documentation shall be kept with the relevant
14 confidential information, shall accompany it in the event of
15 disclosure and shall be governed by the provisions of this
16 section to the extent the statements or other documentation
17 contain confidential information. Nothing in this subsection
18 shall prohibit the denial of access to the records when a
19 physician or other mental health or developmental disabilities
20 professional believes and notes in the child's medical records
21 that the disclosure would not be in the best interests of the
22 child. In all cases, the child has the right to petition the
23 court for an order granting access.

24 H. Information concerning a child disclosed under
25 this section shall not be released to any other person, agency

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1 or governmental entity or placed in files or computerized data
2 banks accessible to any persons not otherwise authorized to
3 obtain information under this section. Notwithstanding the
4 confidentiality provisions of the Delinquency Act and the Abuse
5 and Neglect Act, information disclosed under this section shall
6 not be re-released without the express consent of the child or
7 legal custodian authorized under the Children's Mental Health
8 and Developmental Disabilities Act to give consent and any
9 other consent necessary for redisclosure in conformance with
10 state and federal law, including consent that may be required
11 from the professional or the facility that created the
12 document.

13 I. Nothing in the Children's Mental Health and
14 Developmental Disabilities Act shall limit the confidentiality
15 rights afforded by federal statute or regulation.

16 J. The department shall promulgate rules for
17 implementing disclosure of records pursuant to this section and
18 in compliance with state and federal law and the children's
19 court rules.

20 K. If a student who is fourteen years or older is
21 at risk for referral to the juvenile justice division of the
22 department, the student's parent shall be deemed to have
23 temporary consent for information relating to mental health
24 services provided to the student and shall be allowed to fully
25 participate in the process of developing or amending a student

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1 supports plan with the student and the student's school in
2 accordance with the provisions of Michael's Law. The temporary
3 consent shall be deemed to remain in place until the student is
4 discharged from the student supports plan in accordance with
5 Michael's Law."

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