

Disabilities Act.

Provisions of the law are outlined in the table under Significant Issues below.

FISCAL IMPLICATIONS

There is no appropriation.

As pointed out by HSD, “as the bill does not carry an appropriation, there could be significant fiscal impact on agencies that are responsible for the comprehensive training that would be involved. Unless these efforts are tied to federal grants, the fiscal impact may not be able to be absorbed by the affected agencies.”

CYFD makes the following points regarding the fiscal impact of the bill, which are difficult to predict:

Although the purpose of the bill is to reduce delinquency and referrals and also provide protection of student in need of accommodations, if it is determined that the behavior was a direct manifestation of the student’s adverse childhood, mental health, need for accommodations or the child is under the age of thirteen, there is no appropriation to cover the required screenings and assessments. There is also no appropriation to cover their concomitant licensing, training, and certification to make these determinations; and although the bill further states that if a child is 13 or under, they cannot be referred the Juvenile Justice Services, there is no indication within the bill of where the resources will come from once a student is determined to be “in need of accommodations” and falls into this latter age group.

On the one hand, the bill’s requirements that the school delay referral to CYFD/Juvenile Justice, or outright not refer a child, may decrease the number of referrals to CYFD/JJS; while conversely the requirement that schools engage with CYFD/JJS to develop a prevention plan of action for a student could increase the CYFD/JJS caseload.

SIGNIFICANT ISSUES

Section of HB 567	Provisions
1	Naming the law, “Michael’s Law”
2	Definitions. Important among them: <ul style="list-style-type: none">• Adverse childhood experiences (ACEs): such negative events as child abuse or neglect, loss of a parent to divorce, incarceration, drug abuse or mental illness, poverty, homelessness that result in short- and long-term ill effects.• Aversive interventions: acts or procedures carried out against a student breaking rules that cause pain or humiliation• Crisis team: groups of persons who intervene in positive ways with students needing help, needing methods to prevent further problems or interventions when there are problems.• Developmental disability: defined narrowly as a condition beginning in childhood and resulting in inability to normally perform three or more of such functions as reading, communication, learning, moving, and/or

	<p>being able to operate independently.</p> <ul style="list-style-type: none"> • Present danger: imminent bodily harm to the subject or another person • Seclusion: placing the person in a room away from the usual location in which he/she would be, and where he/she would be prevented from leaving. Does not include time out (where a child can leave when she/he feels ready). • Student in need of accommodation: a child exhibiting a pattern of at-risk behaviors, has had two or more adverse childhood experiences, has a disability, or has been referred multiple times for discipline. • Supports screening: an assessment of a student to determine if he/she is a student in need of accommodation as indicated above.
<p>3</p>	<p>Provides for a “school supports plan” for students in need of accommodation to be approved by a parent and the school principal, to include:</p> <ul style="list-style-type: none"> • Training of local law enforcement regarding the child’s needs; • Restricting use of seclusion and restraint to a minimum; • Interaction and communication with the student; • Recognition of the factors that have led the student to need accommodation; • Finding local resources to help deal with the child’s problems and how to involve those resources (including crisis intervention teams and behavioral health providers); • Prevention of re-traumatization (Defined elsewhere as “A relapse into a state of trauma, triggered by some subsequent event.”); and • Protecting students from unlawful searches and seizure.
<p>4</p>	<p>Regards providing preventive plans of action and establishing a plan to deal with future breaks in discipline. Requires that the student, a parent and the principal meet, along with an advocate for the child if a parent or student wants one present. Avoids juvenile justice referral unless the student may have committed a violent crime or put himself or another person in danger. Provides for use of a crisis intervention plan and a screening for ACEs, a strengths-based needs assessment, and a behavioral health screening, and trainings for school personnel and law enforcement in the use of resources and procedures to work with such students. Requires review of a child’s requirements for disciplinary action and discipline accorded him/her. Requires that teachers and parents have input into the plan and that confidentiality be maintained. Parents must be kept informed.</p> <p>Preventive plans of action are to include:</p> <ul style="list-style-type: none"> • Reports on the evaluations indicated above; • Goal identification for the student; • Means of reaching the goals, including’ <ul style="list-style-type: none"> ○ Evidence-based modifications in the school environment; ○ Daily schedule accommodations; ○ In-home or in-community teaching for students In needed self-management skills; ○ Positive reinforcement methods; ○ Parent training and support; ○ Establishing that student-to-teacher ratios are not contributing to

	<p>the problems;</p> <ul style="list-style-type: none"> ○ Use of communication modes or assistive technology that will enable the child to comply and to learn; ○ Physical, occupational or speech therapy; ○ Creative outlets; ○ Helping a child to participate in school activities to the extent possible, avoiding stigma; and ○ Training school personnel in implementing the plan and avoiding re-traumatization. <p>Referrals made must have parental approval, and should not “unfairly burden the student’s family.” All services must be free to the student. Progress must be assessed at least every 30 days and modifications made as necessary. If a child is deemed to have reached his/her goals, a two-month transition off the plan is prescribed.</p> <p>Schools are to consult with the Juvenile Justice Division of CYFD in making the preventive plan, but the school remains responsible for it. However, children under age 14 are not to be referred to CYFD, and children with disabilities or seen as “in need of accommodation” and are only to be referred after a “manifestation determination hearing.” A parent is to be notified on the same day as a juvenile justice referral. Recourse to law enforcement is to be used as a “last resort.” Behavioral health personnel support is to be invoked early.</p>
5	<p>School boards must adopt rules limiting use of restraint and seclusion, especially in order to avoid re-traumatization.</p>
6	<p>The Children’s Mental Health and Developmental Disabilities Act (Section 32A-6A-24 NMSA 1978, which deals with disclosure of information) would be amended to allow the parent of a child 14 years or older to have access to information to enable him/her to be part of the process of developing the prescribed plans and to be informed of progress toward meeting the goals until the child is discharged from the plan.</p>

DOH indicates that it “operates Sequoyah Adolescent Treatment Center (SATC), which is both a school district and a treatment setting governed by the Children’s Mental Health and Developmental Disabilities Act. SATC has policies and procedures in place that outline the type of assessments a resident receives both prior to admission and throughout the resident’s treatment stay and include a resident’s personal, family, medical and social history, resident and family abuse of substances, and a resident’s history as a victim of physical abuse, sexual abuse, or neglect. These assessments are incorporated into the resident’s treatment planning at SATC, and the resident and the resident’s parent/legal guardian are involved throughout the treatment planning process. SATC also has policies and procedures in place outlining the appropriate use of physical restraint and seclusion in accordance with the Children’s Mental Health and Developmental Disabilities Act.” The procedure used may be instructive as school districts work to develop plans to comply with Michael’s Law.

HSD points out the possibility of duplication of reporting requirements: “Pursuant to Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973 and under the Department of Education Act (20 U.S.C. 3413) reporting requirements already exist through the Office of Civil Rights, specifically pertaining to students who are subjected to mechanical/physical/restraints and/or seclusion. Thus, a duplication of reporting efforts may occur.”

CYFD’s analysis indicates the following significant problems and concerns:

There is some ambiguity in the bill surrounding whether the requirements apply only to those students who meet the standard of a “student in need of accommodation.” There is a disconnection between the students referred to in Section 3A, which more clearly applies to students in need of accommodation, and Section 4A, which generally refers to students who committed a “first offense.”

Next, the requirement for a needs assessment to match those used in juvenile facilities will be an onerous requirement and the assessments for clients in a facility could disserve the students referenced in this bill, as they are unlikely to address many of these students’ issues. Input from CYFD/Protective Services, which would have more impact on this population, is not sought as part of the assessment process, as the focus is on students needing accommodation who are in the disciplinary process. Additionally, there is no mention of parental consent, which could pose constitutional issues; and the school is required to assess the student’s family and home. Finally, the bill requires that all documents pertaining to the child’s assessment, screening, and intervention held by the parents be turned over to the school: for children aged 14 and older, if these records include mental and behavioral health records, this mandate is in direct conflict with §32A-6A. Similarly, the bill requires that any evidence of CYFD/Protective Services involvement be included in the prevention plan of action, which, depending on who has access to this plan, may conflict with the confidentiality requirements of §32A-4-33.

Additionally, while section 4 (A) requires a delay in referrals to juvenile justice, it does not specify how long that delay should be. It also requires a determination of whether intervention could deter escalation or repetition of the offense, but does not specify who would make the determination.

This bill requires a student support plan be developed and implemented in order to prevent a student’s rights from being violated. Students who are disabled qualify for Individual Education Plans. It is not clear if the intention of the bill is to replace the IEP, or if the student support plan will be a supplement to it.

The bill also requires a crisis team, defined as a crisis intervention resource team, a mobile crisis team, an assertive community treatment team, or a team including a behavioral health provider and any school employee. The bill does not identify or define “any school employee.” This could then include an office assistant, a custodian, etc.

It is important to note that there are currently no mobile crisis teams for kids in New Mexico.

Seclusion and restraint are last resort techniques, and although used to control behavior, are not treatment. Getting all school personnel trained in a trauma informed de-escalation protocol is a positive step in the right direction.

This bill will require that clinical intervention trauma informed licensed clinicians, such as social workers, psychologists, and psychiatrists be involved, as teachers typically do not have the clinical training, education, or expertise to appropriately implement this in the classroom.

The intergenerational connections of adverse childhood experiences are better dealt with in family therapy and individual therapy.

PED's analysis suggests that reference be made to the departmental policy on seclusion and restraint, (See attachment 1). PED also makes numerous comments on individual words and phrases, decreased below in "Technical Issues," some suggesting significant issues with the bill and some suggesting amendments that might be considered.

DUPLICATES Senate Bill 567

PERFORMANCE IMPLICATIONS

It is not clear from the bill which agency would be responsible for training law enforcement and school personnel in the procedures to be used, especially in the case of children in need of accommodation.

TECHNICAL ISSUES

Training each law enforcement officer in the individual needs of each child in need of accommodation might be an overwhelming task, especially in large communities.

Section 4 does not specify how serious a deviation of school rules would be needed to trigger the actions required, such as a meeting among student, parent, and principal.

In section 4, schools are required to consult with CYFD's juvenile justice system on the preventive plans, but are not permitted (under Subsection L) to refer children under age 14 to CYFD. This appears to be a conflict between provisions, and the provision does not account for the possibility of severe or violent infractions by younger children.

Provision in Section 6 for informing parents about preventive plans and parental involvement appear not to take into account a parent's or parents' acts of omission or commission that may have contributed to the problems at hand. In the case of parental child abuse or neglect, how would the school team proceed?

DOH makes the following points:

HB567 would prohibit schools from referring a child 13 years of age or younger to the Juvenile Justice Division of the CYFD (p. 15, lines 2-4). This prohibition may cause confusion for schools when contacting law enforcement if a serious and/or violent crime is committed on the premises by a child 13 years of age or younger. Intervention by law enforcement and/or detention of a child triggers a referral to the juvenile justice system and CYFD.

The Children's Mental Health and Developmental Disabilities Act governs the manner in which physical restraint and seclusion may be used in a treatment setting, including but not limited to when and how physical seclusion and restraint may be used, who may apply physical restraints and seclusion, specific requirements for seclusion rooms, and required documentation, parental notification, debriefing, and revision of a child's treatment plan after physical restraint or seclusion have been applied.

Training required under the protocols of the bill would include “the rights of the student against unlawful search and seizure.” *See* page 8, lines 1-2. The sweeping intention of HB 567 suggests that training regarding this specific constitutional right is inadequate.

There are a number of undefined terms within this proposed legislation, including “intellectual disability” (page 5, lines 15-16), “educational accommodation plan” (page 15, line 20), “manifestation determination hearing” (page 15, line 22), “promising practices” (page 16, line 9), and “at risk for referral” (page 21, line 21).

At page 14, paragraph J., lines 11-20, the bill states in part, “The student, the student’s parent and providers of services indicated on the student’s prevention plan of action **shall reach consensus** on whether the goals identified in a student’s prevention plan of action are reached . . .” (emphasis added) Requiring consensus and/or not defining what steps would be taken if consensus is not reached is problematic and would need to be addressed, at a minimum by administrative regulation.

DOH also points out that the bill uses “parent” instead of “parent or guardian,” and on one occasion (page 10, line 9) uses the term “parents” where it also should say “parent or guardian.” DOH also points out that the school principal, rather than the school board, should be responsible for determining when a child has committed an offense against rules.

PED’s extensive comments on the bill’s provisions, wording, phrasing and possible amendments are slightly edited for clarity and copied into attachment two. A brief summary of this document would include concerns about conflicts between Michael’s Law, the IEP process, and IDEA provisions; uncertainty as to payment for mandated procedures and services, assignment of tasks to schools that properly fall under other agencies such as CYFD or the courts, concern about prohibition on making referrals of children under age 14; perceived problems with definitions; and safety issues (as with time out procedures or violent, emergency situations). These concerns might well be taken into account if there is to be amendment or substitution of this bill.

LAC/al