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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**55th Legislature, 1st Session, 2021**

|                        |                                |                            |                  |
|------------------------|--------------------------------|----------------------------|------------------|
| <b>Bill Number</b>     | <u>SB319/aSEC</u>              | <b>Sponsor</b>             | <u>Lopez</u>     |
| <b>Tracking Number</b> | <u>.218925.3</u>               | <b>Committee Referrals</b> | <u>SEC/SJC</u>   |
| <b>Short Title</b>     | <u>School Use of Restraint</u> |                            |                  |
| <b>Analyst</b>         | <u>Juliani</u>                 | <b>Original Date</b>       | <u>2/10/2021</u> |
|                        |                                | <b>Last Updated</b>        | <u>3/4/2021</u>  |

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**BILL SUMMARY**

Synopsis of SEC Amendment

The Senate Education Committee amendment to SB319 (SB319/aSEC) adds language that bans the use of classroom door window coverings and requires school districts to install and maintain video cameras in every classroom where the school district has failed to enforce the ban on door window coverings. The bill provides an exemption for the use of such door window coverings during a school emergency pursuant to a school safety plan that calls for door coverings. The bill defines “classroom door.”

Synopsis of Original Bill

Senate Bill 319 (SB319) amends the Public School Code to restrict schools’ use of physical restraint of students to an emergency safety measure used only if a student’s behavior presents an imminent danger of serious physical harm to the student or others and when less restrictive interventions have been insufficient to mitigate the imminent danger of serious physical harm. SB319 prohibits the use of seclusion and three types of restraint, including mechanical, medical, and prone. The bill requires school personnel to receive annual training on appropriate use of effective alternatives to physical restraint, such as less restrictive, evidence-based, trauma-informed behavioral interventions and on the safe use of de-escalation and physical restraint techniques. The bill defines “mechanical restraint,” “medication restraint,” and “prone restraint.”

**FISCAL IMPACT**

SB319/aSEC does not contain an appropriation.

The bill requires school to submit data on reported use of restraint to the Public Education Department’s (PED) data collection and reporting system, which is existing and consequently should not involve expense to the department. Schools will likely need to provide training to their staff on the appropriate use of restraint and seclusion, which may result in additional costs to school districts and charter schools. PED indicated school districts may have to cover the cost of training school personnel annually on the appropriate use of effective alternatives to physical restraint, such

as less restrictive, evidence-based, trauma-informed behavioral interventions, and on the safe use of de-escalation and physical restraint techniques.

Legal claims for improper restraint and seclusion are likely to be filed, resulting in expenses for court and settlement costs. In past New Mexico Public School Insurance Authority (NMPSIA) analyses concerning related bills involving limiting the use of restraint or seclusion, including SB284 in the 2020 session, the insurance authority estimated at least six claims per fiscal year for improper restraint and seclusion, resulting in approximately \$1.8 million in court and settlement costs. NMPSIA's analysis for SB319/aSEC indicated schools have liability insurance covering the actions of a school employee, and contracts for school resource officers also typically include risk transfer language covering the actions of the appropriate actors.

SB319/aSEC's requirement for school districts to install and maintain video cameras, providing parents with a live audiovisual feed, in every classroom where the school district has failed to enforce the ban on door window coverings will entail a fiscal impact for these school districts to purchase, install, and maintain video cameras and to provide parents with live audiovisual feed from these classrooms. While it is unclear how much it would cost statewide to outfit each classroom in each school district required to install a videocamera, cameras with the capability to provide a live audiovisual feed for an entire classroom begin at approximately \$1 thousand per camera, potentially costing large districts tens of thousands of dollars just to purchase the devices and likely additional expenses related to installation, maintenance and eventual replacement.

Analyses from the Administrative Office of the Courts (AOC), Children, Youth and Families Department (CYFD), and the New Mexico Corrections Department (NMCD) indicated no fiscal impact from SB319/aSEC for either agency.

## **SUBSTANTIVE ISSUES**

**Seclusion and Restraint.** SB319/aSEC amends Section 22-5-4.12, NMSA 1978, of the Public School Code, by declaring as policy of the state that students enjoy an education experience free from trauma and fear of mental and physical abuse and by requiring schools to employ less restrictive interventions before resorting to the use of physical restraint. The bill requires physical restraint only be used where a student's actions pose an imminent danger of serious physical harm to self or others, and not used to address instructional problems or inappropriate conduct, as punishment or discipline, as a means of coercion or retaliation or as a convenience. The bill only allows a school to use physical restraint if that school has a method for documenting and reporting instances where physical restraint is used, and requires any physical restraint used be done by employees trained in less restrictive, evidence-based, trauma-informed behavioral interventions, restraint, and de-escalation techniques.

In addition, SB 319/aSEC would ban schools from using the following four techniques:

- Mechanical restraint (using a physical object that limits a student's movement other than properly-used medical equipment);
- Medication restraint (using medication to control student behavior);
- Seclusion (forcing a student to be alone in a room the student cannot leave); and
- Prone restraint (keeping a student in a face-down position).

*Federal Guidance.* Attention to issues of physical restraint and seclusion of students has risen across the United States after many published accounts from students and families of alleged abuse

prompted an investigation by the Government Accountability Office (GAO) at the request of the U.S. House Education and Labor Committee. The 2009 GAO report found no federal laws existed to restrict the use of seclusion and restraint in the nation's schools and found, at the state level, widely divergent laws. In the same year, the U.S. Department of Education sent a letter to all chief state school officers encouraging them to review their state's current policies and guidelines regarding the use of restraint and seclusion in schools, and if necessary, to revise existing or develop new ones.

The U.S. Department of Education, asserting the use of restraint and seclusion must be consistent with the child's right to be treated with dignity and be free from abuse, has issued the following guidelines:

- Restraint and seclusion should only be used as a safety measure of last resort and should never be used as punishment or discipline or for staff convenience;
- Restraint and seclusion may cause serious injury or long-lasting trauma and death, even when done safely and correctly; and
- No evidence exists showing restraint or seclusion is effective in reducing the problem behaviors that frequently precipitate the use of those techniques.

*State Response.* In 2010, a working group convened by PED to consider legislation or rulemaking on the subject of restraint and seclusion of children found, although law addressing seclusion and restraint exists in the Children's Code (Section 32A.6A.9-10, NMSA 1978), this statute is not applicable to school settings, and the Public School Code lacked any such provisions. The group also indicated, although no case law directly pertinent to the issue of restraint and seclusion existed in New Mexico, a State Supreme Court case held a school district's failure to follow through on safety policies for at-risk students was an act of negligence, suggesting the lack of clear policy governing such practices might pose a risk of liability to public schools.

PED's guidance on the topic noted the following:

- The use of physical restraint should be approved by the student's individualized education program (IEP) team, documented in the student's behavior intervention plan, and have the expressed written agreement of the parent or guardian;
- A mental health professional should be a member of the IEP team if physical restraint is being considered as an intervention; and
- Physical restraint may be performed by trained personnel only, and only in emergency situations.

According to Wrightslaw, an online resource for special education law and advocacy, 30 states, as of 2019, have laws providing meaningful protections against restraint and seclusion for all children; 39 have such laws only for children with disabilities. Protections vary across states, and important safeguards, such as parental notification and reporting requirements, do not exist in all states. Only 22 states require a threat to physical danger exist before restraint can be used for all children; 26, for children with disabilities. Other states impose few limits and allow the use of restraint and seclusion even when no safety risks exist.

**Requirements for School Districts and Charter Schools.** SB319/aSEC requires schools to establish or ratify restraint procedures annually, provide an opportunity for public comment before policies are approved, and distribute the policy to students' parents and guardians at the start of each school year. Policies must state physical restraint can only be used when imminent danger of

serious physical harm exists and less restrictive interventions have been insufficient. School personnel must be trained prior to the start of each school year on appropriate use of effective alternatives to physical restraint, such as positive behavioral interventions and supports, and on the safe use of de-escalation and physical restraint techniques for use only on cases involving imminent danger of serious harm.

**Changes to Reporting Procedures.** SB319/aSEC amends the procedures schools must follow when documenting and reporting the use of restraint techniques. While the bill explicitly bans the use of seclusion, Section 1, subsections G and H include references to seclusion as related to schools' requirement to report any use of this banned technique. When providing same-day, or within 24 hours, written parental notice of the use of restraint or seclusion, schools must also notify the school principal within the same timeframe. No later than two days after the incident, a school employee must provide the student's parent with written documentation containing specific information about antecedent events, less intrusive interventions attempted or determined inappropriate prior to the restraint or seclusion, including the names of any adults, regardless of their status as school employees, present for, or in any way involved with, the techniques. Schools must also submit all data in the written notice to PED's data collection and reporting system within five days.

SB319/aSEC requires schools, in the case of the use of restraint or seclusion, to review strategies used to address a student's dangerous behavior, including a student's behavior plan, antecedent events and context for the event, de-escalation strategy, and positive behavioral supports used. Meeting of the IEP team must occur within seven days of any use of restraint to provide recommendations to avoid future incidents. If a school district fails to comply, uses a banned technique, or has high numbers of incidents (or repeated incidents involving a single student), PED is required to audit and monitor that school district, provide support, and, if appropriate, issue a public "corrective action plan" requiring compliance. School resource officers must comply with the reporting, documentation, and review procedures. The bill does not provide immunity for any school employee using a restraint technique.

The analysis from CYFD recommended the bill provide details regarding the maximum length of time a child can be restrained and consideration be given to a student's experience with trauma in determining usage of restraints. CYFD also indicated if the restrained child or youth is involved with CYFD, the school will need to notify the child's caseworker right away to help with any possible trauma the restraint may bring about.

SB319/aSEC does not apply to any school located within a state-licensed residential treatment center. However, as CYFD's analysis noted, licensed residential treatment centers are required to adhere to regulations related to treatment, safety planning and use of restraint and requirements in the New Mexico Children's Code. CYFD recommended in the event that residential treatment center clients attend schools off-site, the bill address how schools will collaborate with the student's treatment team to address behavior management, safety planning, and use of restraints.

**Banning the Use of Window Door Coverings and Requiring Video Cameras in Classrooms.** SB319/aSEC enacts a new section of the Safe Schools for All Students Act, Sections 22-35-1 through 22-35-5 NMSA 1978, prohibiting school districts from covering classroom door windows with any material or substance that obscures full view into the classroom when students are present. The bill also requires school districts to install and maintain video cameras in every classroom where the school district has failed to enforce the ban on door window coverings. These cameras must provide parents with a live audiovisual feed from these classrooms. SB319/aSEC provides

an exemption for the use of such door window coverings during a schoolwide emergency pursuant to a school safety plan that calls for door coverings and requires such coverings to be removed at the conclusion of the emergency.

The intent of these provisions remains unclear and may not be enforceable. The requirement for classrooms to be equipped with videocameras providing a live audio and video feed presents a number of potential problems, in particular inviting questions about student rights and privacy and liability in an instance where such a system was hacked.

**Definitions.** SB319/aSEC amends Section 22-35-2 NMSA 1978 of the Safe Schools for All Students Act, providing definitions and offers additional clarity on another pair of critical terms. In the bill, medication restraint means “the administration of medication for the purpose of temporarily controlling behavior.” Prone restraint is defined as “a physical restraint in which a student is placed face down on the floor or another surface and physical pressure is applied to the student's body to keep the student in the face-down position.”

SB319/aSEC also clarifies the definitions of two terms already existing in statute, adding mechanical restraint “does not include devices implemented by trained school personnel or used by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were prescribed and designed.” The bill similarly clarifies seclusion does not include cases where a “student’s freedom of movement is not forcibly restricted and the student retains the ability to voluntarily enter and exit a given location.”

The bill defines classroom door as “any entry or exit door of a classroom where students receive instruction, therapy, counseling or any other education in a public school building or portable building.”

## **TECHNICAL ISSUES**

As noted earlier, Section 1, subsections G and H of SB319/aSEC include references to seclusion as related to schools’ reporting requirements. However, the bill explicitly prohibits use of seclusion, and in subsections I and J the use of the term seclusion is stricken, causing an incongruity to the reader. CYFD’s analysis noted the same and recommended the bill be reviewed for removal of remaining references to ‘seclusion’ in order to remain congruent with the bill’s prohibition of using seclusion.

## **ADMINISTRATIVE IMPLICATIONS**

If SB319/aSEC is enacted, school districts and charter schools will need to provide training to staff on the appropriate use of restraint and seclusion.

According to PED, the restraint reporting and documentation procedures would be subject to random audits completed at the direction of the department. The analysis indicated if a school district fails to comply with random audits and report requirements or its data shows use of prohibited techniques or high numbers of incidents of restraint or repeated incidents for particular students, PED would be required to audit and monitor that school district’s use of restraint or seclusion and provide technical assistance, training, and other supports to reinforce the requirement that restraint be limited to emergency interventions of last resort. In addition, where appropriate, PED would be required to issue and make public a corrective action plan requiring

the school district's compliance with this section, including revision of strategies currently in place to address dangerous behavior.

PED also indicated the department would be required to amend 6.11.2 NMAC, Rights and Responsibilities of the Public Schools and Public School Students to ensure it is aligned with the provisions of the bill.

Analysis from NMPSIA noted training will be essential for all employees to reduce the potential for liability and that the training should include addressing behavior modification for non-special education instructors.

CYFD's analysis noted the bill would entail administrative implications for CYFD in ensuring staff, supervisors and licensed and certified providers are informed of the new statute.

## **RELATED BILLS**

Relates to HB93, Limit Out-of-School Suspensions, which requires local school boards and governing bodies of charter schools to exhaust other interventions, including restorative justice practices, before resorting to suspending or expelling students from school.

Relates to SB233, Student Bill of Rights, which establishes a student bill of rights guaranteeing students have access to certain information, services, and programs and can attend schools within a safe and supportive learning environment.

## **SOURCES OF INFORMATION**

- LESC Files
- Administrative Office of the Courts (AOC)
- Office of the Attorney General (OAG)
- New Mexico Corrections Department (NMCD)
- Children, Youth and Families Department (CYFD)
- New Mexico Public Schools Insurance Authority (NMPSIA)
- Public Education Department (PED)

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