

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 75

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

James E. Smith

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC SCHOOLS; LIMITING THE USE OF RESTRAINT AND
SECLUSION; PROVIDING FOR NOTICE TO PARENTS; PROVIDING FOR
ANNUAL REPORTS.

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

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

"NEW MATERIAL] LIMITATION ON USE OF RESTRAINT AND
SECLUSION--INFORMATION TO BE PROVIDED TO PARENTS--PRIVATE RIGHT
OF ACTION--REPORTING REQUIREMENTS.--

A. As used in this section:

(1) "aversive intervention" means any device
or intervention, consequences or procedure intended to cause
pain or unpleasant sensations, including interventions causing
physical pain, tissue damage, physical illness or injury;

.204457.4

underscored material = new
[bracketed material] = delete

1 electric shock; isolation; forced exercise; withholding of
2 food, water or sleep; humiliation; water mist; noxious taste,
3 smell or skin agents; and overcorrection;

4 (2) "chemical restraint" means the
5 administration of a medication that is not standard treatment
6 for a student's medical or psychiatric condition that is used
7 to control behavior or to restrict a student's freedom of
8 movement and does not include medical restraint prescribed by a
9 physician as a health-related protective measure in a specific
10 circumstance as outlined by the physician and administered by
11 trained medical personnel;

12 (3) "in-school suspension" means suspending a
13 student from one or more regular classes while requiring the
14 student to spend the time in a designated area at the same
15 school or elsewhere while under adult supervision;

16 (4) "mechanical restraint" means the use of
17 any device or material attached or adjacent to the student's
18 body that restricts freedom of movement or normal access to any
19 portion of the student's body and that the student cannot
20 easily remove, but "mechanical restraint" does not include
21 mechanical supports or protective devices;

22 (5) "mechanical support" means a device used
23 to achieve proper body position, designed by a physical
24 therapist and approved by a physician or designed by an
25 occupational therapist, including braces, standers or gait

1 belts, but not including protective devices;

2 (6) "physical escort" means the brief, gentle
3 touching or holding of a hand, wrist, arm, shoulder, waist, hip
4 or back for the purpose of providing comfort or helping a
5 student to move to a safe location;

6 (7) "physical restraint" means the use of
7 physical force without the use of any device or material that
8 restricts the free movement of all or a portion of a student's
9 body, but "physical restraint" does not include physical
10 escort;

11 (8) "prone restraint" means restraint of a
12 student in a face-down position;

13 (9) "protective devices" means helmets, safety
14 goggles or glasses, guards, mitts, gloves, pads or other common
15 safety devices that are normally used or recommended for use by
16 persons without disabilities while engaged in a sport or
17 occupation or during transportation;

18 (10) "seclusion" means the confinement of a
19 student alone in a room from which the student is physically
20 prevented from leaving, but "seclusion" does not include time
21 out or in-school suspension; and

22 (11) "time out" means the brief removal of a
23 student to a quiet classroom area that is set up for students
24 to self-regulate or become calm and from which the student can
25 freely and voluntarily leave.

underscoring material = new
~~[bracketed material] = delete~~

1 B. All school districts and charter schools shall
2 adopt policies and procedures with respect to the use of
3 restraint and seclusion that provide, at a minimum, that:

4 (1) aversive interventions, chemical
5 restraint, mechanical restraint and prone restraint are
6 prohibited, even in emergency situations;

7 (2) physical restraint and seclusion are
8 prohibited, except in the event of emergency situations, and
9 shall not:

10 (a) be used as planned educational
11 interventions;

12 (b) be included in individual education
13 program documents for individual students;

14 (c) be used as disciplinary measures; or

15 (d) be included in emergency plan
16 documents for individual students except as necessary to: 1)
17 describe the methods, techniques or circumstances for the
18 allowable use of seclusion or physical restraint in the event
19 of an emergency involving the individual student; or 2)
20 describe the methods, techniques or circumstances when physical
21 restraint and seclusion are prohibited, even in emergency
22 situations involving the individual student;

23 (3) whenever a student's emergency plan
24 proposes or adopts provisions related to the use of physical
25 restraint or seclusion, the student's parents shall be provided

.204457.4

1 with a prior written notice detailing why the school believes
2 it is necessary to include physical restraint or seclusion in
3 the student's emergency plan, advising of the dangers
4 associated with use of physical restraint and seclusion,
5 identifying and explaining all physical holds that have been
6 approved by the school district and that may be included or
7 excluded in the student's plan documents and providing the
8 parents with information regarding available legal assistance;

9 (4) physical restraint and seclusion may be
10 used in an emergency situation only to the extent necessary to
11 protect a student or another person from imminent, serious
12 physical harm, using the least amount of force necessary to
13 protect the student or another person from harm, and only when
14 another less intrusive, nonphysical intervention has failed or
15 been determined ineffective;

16 (5) physical restraint and seclusion in
17 emergency situations shall be administered by staff trained in
18 evidence-based crisis intervention training that provides de-
19 escalation training and first aid, including ways to identify
20 signs of medical distress; provided that, if trained staff are
21 not available, physical restraint and seclusion shall be used
22 only to the least degree necessary to prevent the student from
23 harming the student's own self or others;

24 (6) when a student is placed in seclusion, the
25 student shall be visually monitored on a continual basis. Any

underscoring material = new
~~[bracketed material]~~ = delete

1 room or structure used for the purpose of seclusion shall meet
2 all applicable building, fire and safety codes and any
3 applicable rules promulgated by the department;

4 (7) an emergency situation no longer exists
5 when:

6 (a) a medical condition occurs that puts
7 the student at equal or greater risk of harm;

8 (b) the student's behavior no longer
9 poses immediate danger of serious physical harm to the student
10 or others; or

11 (c) less restrictive interventions would
12 be effective in preventing such immediate danger of serious
13 physical harm;

14 (8) if an atypical use of a protective device
15 is planned for a student with a disability, it shall be
16 recommended by a physician; and

17 (9) the parent of a student who has been
18 subject to seclusion or physical restraint shall be provided
19 notice within twenty-four hours in person or by phone, whenever
20 possible, of any use of physical restraint or seclusion and
21 provided written notice within five business days. The notice
22 shall include:

23 (a) an explanation of the reasons for
24 the use of physical restraint or seclusion;

25 (b) the location, manner and duration of

.204457.4

underscoring material = new
~~[bracketed material] = delete~~

1 the physical restraint or seclusion; and

2 (c) the names of school personnel or
3 other persons who were involved or were witnesses to the
4 physical restraint or seclusion.

5 C. School districts and charter schools shall
6 report annually to the department all uses of physical
7 restraint and seclusion on students in a uniform manner
8 determined by the department. The department may accept
9 reports required by other laws as long as the reports meet the
10 requirements of this section. School district reports shall
11 not identify a student who was restrained or secluded. The
12 reports shall be published on the department's website."