



STATE OF NEW MEXICO
PUBLIC EDUCATION DEPARTMENT
300 DON GASPAR
SANTA FE, NEW MEXICO 87501-2786
Telephone (505) 827-5800
www.ped.state.nm.us


HANNA SKANDERA
SECRETARY OF EDUCATION

SUSANA MARTINEZ
GOVERNOR

May 24, 2017

MEMORANDUM

TO: Superintendents
Charter School Administrators

FROM: Denise Koscielniak, Director of Federal Programs 

RE: Staff Use of Restraint and Seclusion Techniques with Students

History/Background

During the 2017 Legislative Session, House Bill 75 was passed by the legislature and signed by Governor Martinez. The new law provides parameters on the use of restraint and seclusion techniques with students in New Mexico's public schools. A school may permit the use of restraint or seclusion on a student only if both of the following two (2) conditions apply:

1. The student's behavior presents an imminent danger of serious physical harm to the student or others (students, staff, visitors, substitute teachers, contractors, etc.); and
2. Less(er) restrictive intervention(s) appear insufficient to mitigate the imminent danger of serious physical harm.

This memorandum provides only the highlights of the new section of the public school code and you are encouraged to read the entire section. This law will go into effect on June 16th, 2017 and the Public Education Department will be promulgating rules in the near future. When the law goes into effect, it supersedes any previous state policies and guidance memorandums on the use of restraint and seclusion.

Development of Policies and Procedures

Each school is required to establish policies and procedures for the use of restraint and seclusion techniques and include them in the school-level safe schools plan as required under New Mexico Administrative Code (NMAC) 6.12.6.8(D), *School District Wellness Policy*.

The school-level safe school plan shall:

- Not include restraint and seclusion techniques that are specific to any individual student; and

- Be drafted by a planning team that includes at least one special education expert.

The restraint and seclusion policies shall consider school district support and strategies for school employees to successfully reintegrate a student who has been restrained or secluded back into the school or classroom environment.

Staff Training

The restraint and seclusion techniques shall only be used and applied by school employees who are trained in the safe and effective use of restraint and seclusion unless an emergency situation does not allow sufficient time to summon those trained school employees.

Types of Restraints and Procedures Required During the Restraint and Seclusion Process

The restraint technique applied shall not impede the student's ability to breathe or speak. This includes the use of prone restraint in which a student's chest, abdomen or stomach is placed on the floor, wall or another surface and force is applied to the student's back, legs, or head. The restraint technique shall not be out of proportion to the student's age or physical condition.

School employees shall maintain continuous visual observation and monitoring of the student while restraint or seclusion is in use. The restraint or seclusion technique must end when the student's behavior no longer presents an imminent danger of serious physical harm to the student or others.

Reporting and Documentation

Schools are required to establish reporting and documentation procedures that must be followed when a restraint or seclusion technique has been used with a student. At a minimum, the procedures shall include the following:

- A school employee shall provide the student's parent or guardian with written or oral notice on the same day that the incident occurred, unless circumstances prevent same-day notification;
- If the school employee does not provide notice on the same day as the incident, notice must be provided within twenty four (24) hours of the restraint or seclusion; and
- A school employee shall provide the student's parent or guardian with written documentation that includes information about any persons, locations, or activities that may have triggered the behavior, if known. Written documentation must also include specific information about the behaviors and its precursors or antecedents, the type of restraint and seclusion used, and the duration of its use. This information must be provided to the student's parent or guardian within a reasonable time following the incident of restraint and seclusion.

All of these reporting and documentation provisions apply even if non-trained personnel use restraint and seclusion techniques. If law enforcement personnel are summoned in lieu of restraint and seclusion, the schools must comply with the reporting, documentation, and review procedures.

Review of Procedures After Use of Restraint and Seclusion

Schools shall review strategies used to address a student's behavior if restraint or seclusion are used with individual students two (2) or more times during any thirty-calendar-day period. The review shall include:

- A review and analysis of the circumstances in which restraint or seclusion techniques were used. This should include the antecedents to the dangerous behavior, setting in which the behavior occurred, and people involved in the incident. The consequences of the behavior should be

reviewed. The purpose of this analysis is to determine how future incidents of restraint and seclusion may be avoided. In addition, a determination can be made if the student requires a Functional Behavioral Assessment (FBA). For additional technical assistance on FBAs see <http://ped.state.nm.us/RtI/dl10/Addressing%20Student%20Behavior%20Guide%202010.pdf>.

- A meeting of student's Individualized Education Program (IEP) team, Behavioral Intervention Plan (BIP) team, or Student Assistance Team (SAT) within two weeks of each use of restraint or seclusion after the second use within a thirty-calendar-day period to provide recommendations for avoiding future incidents requiring the use of restraint and seclusion.

For IEP technical assistance see

<http://ped.state.nm.us/ped/SEBdocuments/technical/IEP%20Manual%20October%202011.pdf>.

For SAT technical assistance see

[http://ped.state.nm.us/ped/RtIdocs/RtI%20Manual%20most%20updated%20\(2.15\).pdf](http://ped.state.nm.us/ped/RtIdocs/RtI%20Manual%20most%20updated%20(2.15).pdf).

Nothing in the Public School Code or this guidance memorandum precludes school staff from conducting reviews of student behaviors or convening the student's SAT, BIP team, or IEP team more frequently, if necessary.

The provisions of this section of the Public School Code do not apply to any school located within a county juvenile detention center or a state-operated juvenile facility. For definitions included in HB 75, see Section I of the bill.

If you have any questions about this memorandum or your school-level safe schools plan, please do not hesitate to call the Coordinated School Health and Wellness Bureau at (505) 827-1821 or visit <http://ped.state.nm.us/sfsb/index.html>. For technical assistance regarding students with disabilities, contact the Special Education Bureau at (505) 827-1457 or visit http://ped.state.nm.us/ped/SEB_index.html.

cc: Paul "Hipolito" Aguilar, Deputy Secretary, Finance and Operations
Matthew Pahl, Director, Policy Division
Dean Hopper, Director, Coordinated School Health and Wellness Bureau
Deborah Dominguez-Clark, Director, Special Education Bureau
Regional Education Cooperative Directors
Guidance Counselors
Special Education Directors and Coordinators