

<b>LFC Requester:</b>	<b>Sunny Liu</b>
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**AGENCY BILL ANALYSIS  
2019 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

**[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

**Original**     **Amendment**      
**Correction**     **Substitute**   

**Date** 2/12/19  
**Bill No:** SB467

**Sponsor:** Sen. Linda Lopez  
**Short Title:** SCHOOL TREATMENT OF STUDENTS WITH DISABILITY

**Agency Name and Code Number:** 924 PED  
**Person Writing** Daniel Manzano  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY19</b>	<b>FY20</b>	<b>FY21</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: “Michael’s Law” is an Act that will limit the school districts use of restraint and seclusion. It will also override what law enforcement will do when working with students with disabilities.

**FISCAL IMPLICATIONS**

Training for all law enforcement and all teachers and all school personnel.

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

**SIGNIFICANT ISSUES**

[https://webnew.ped.state.nm.us/wp-content/uploads/2018/01/SHSB\\_PED-My\\_Staff-Use-of-RestraintSeclusion-Techniques-20june17.pdf](https://webnew.ped.state.nm.us/wp-content/uploads/2018/01/SHSB_PED-My_Staff-Use-of-RestraintSeclusion-Techniques-20june17.pdf)

Section 4 pg 2 Adverse childhood experience cannot be defined in this manner.

Section 24 p. 2 p. 3 1-5 Aversive intervention These are abusive situations that are not allowed in schools.

Section 6-15 p g All districts are required to have a crisis team. This is beyond the requirement and would not include an assertive community treatment team. There is no definition and schools do not oversee the community in that fashion.

Section 16-25 pg 3 and pg 4 1-14 Developmental Disability definition does not align with the IDEA definition of Developmental Delay. IDEA definition is up to age 9 and the bill would categorize Developmental disability as long as it was manifested up until age 22. Development disability definition conflicts with the 13 categories of IDEA. The bill implies that receptive and expressive, learning, reading, communicating, and concentrating would fall under development disability. These currently fall under SLP and SLD in the IDEA. Developmental disability is not appropriate. There is no definition reference with developmental disability and it cannot be validated with her description. We have identified student who are developmentally delayed. Developmental delay means a child who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, needs special education and related services. The eligibility category may be applicable for children

aged three through nine (or any subset of that age range). (34 CFR Sec. 300.8(b))

In New Mexico, developmental delay (DD) is called developmentally delayed and means a child aged 3 through 9 (or who will turn 3 at any time during the school year) with documented delays in development which are at least two standard deviations below the mean on a standardized test instrument or 30 percent below chronological age; and who, in the professional judgment of the IEP team and one or more qualified evaluators, needs special education and related services in at least one of the following areas: communication development, cognitive development, physical development, social or emotional development, or adaptive development. A child with a disability who only needs a related service, as defined under 34 CFR Sec. 300.34, and not special education as defined under 34 CFR Sec. 300.39(a)(2)(i), is not eligible under IDEA, and is not eligible to receive related services.

Section 11 pg 4 This is an IEP decision

Section 24 pg 4 Seclusion definition is not consistent with section 5

Section 7-22 pg This is an IEP decision, there are many more given or could be proposed.

Section 23-25 page 5 The support screenings to determine the need for accommodations could conflict with the assessments given to students with an IEP to determine the accommodations needed to succeed in the general education and special education classrooms.

Screenings are not used to diagnose. Supports screening are not assessments or evaluations there is a conflict within the definition.

Section 3 page 6 Time out

Time out allows a child to voluntarily leave the room which could be a safety concern.

Page 6 section 8-21 A student support plan conflicts with the IDEA definition of an IEP which is given to a student with a disability. The student support plan does not take into consideration a student's FBA and BIP.

Section 12 page 6 IDEA is the protection for the students. We have a provision of procedural safeguards for our state.

Section 22 page 6 The state doesn't have jurisdiction over law enforcement. Who would pay for that training? This is not define, local would it be city, sheriff, etc.

Page 7 section 2 and 3 Please see memo clarification for restrain and seclusion

Page 7 section 4-5 Do not take into account current FBA or BIP in place. Local law enforcement doesn't have this access. There are FERPA and HIPPA laws and the write assumes all students look the same in terms of disability.

Section 6-16 are all IEP team decisions

Section 17-25 This list is not all inclusive. That is why the IEP team is critical to the student program

Page 8 section 1-2 Search and seize is already in place

Page 8 section 12- 18 This is not appropriate. A crisis situation requires immediate action.

Weapon, drugs, serious bodily injury

Page 8 section 19-25 There is an obligation for mandated reporting

Page 8 section 23 screening are not used to diagnose. The support screenings to determine the need for accommodations could conflict with the assessments given to students with an IEP to determine the accommodations needed to succeed in the general education and special education classrooms.

Section 1-22 Schools already have a safety plan. Schools do not interfere with law enforcement and assessments are not evaluations and diagnosis. Intentional infractions need to be measurable. Intentional infractions need to be defined and measurable.

Section 23-25 page 9 all records need to meet FERPA and HIPAA laws

Page 10 section 3-7 needs defining

Page 10 section 8-14 wording if convoluted and not defined.

Page 10 section 18 Home environment is not a formal assessment completed by schools

Page 10 section 21-25 The writer uses screenings and evaluations as interchangeable and is confusing. The initial evaluations for eligibility is 60 days. Additional needs are part of the IEP team decision.

Page 11 section 2 Thirty days are not defined. The team would decide the timeframe needed.

Page 11 section 6 -25 Section 18 the use of the daily schedule could conflict with IEP team driven decision for daily schedules. Section 20 In home is outside the school obligation and the program is for the student in the school. This is not measurable in all areas. Well-being cannot be defined. Support services are not defined.

Page 12 section 4 parent training needs to be defined. This assume parents will participate on school schedules. Is it evidence based?

Page 12 Section 8-11 This is not IEP student only. This implies any student would receive supports.

Page 12 Section 16- 20 creative outlets not defined, too vague

Page 12 Section 21-25 This is a specific training and expertise, possibly a licensee for this section. Adverse childhood experience needs to be defined.

Page 13 section 8-15 Referrals are made based on the situation that is occurring. There is not time to contact families while dialing 911. The family should be contacted immediately following a referral. Transportation is a discussion for the IEP. This must be defined as needed services and location of where it takes place. This is confusing and over rides the ability to manage a school and programs.

Page 13 section 16-21 This is a conflict with IDEA

Page 13 Section 22-25 page 14 1-6 This section is not measurable. This conflicts with the IEP.

Page 14 section 1 Every 30 days. This is an IEP team decision

Page 14 Section 7-10 This crosses over boundaries of agencies. Parents do not have that authority.

Page 14 Section 11-20 Conflicts with students IEP in regards to services and transition planning. IEP team determines frequency.

Page 14 Section 21-25 Each agency has their own policies. Juvenile justice is already a state supported school and adheres with rules and regulations.

Page 15-section 2-25

It is a school officials obligation to report a student to CYFD at any age if they suspect abuse or neglect, the following implies that only 13 year olds and above can be reported:

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

Page 15 section 19 There is a current process for the manifestation determination and this leave out not only critical steps. It depends on the offence and length of time. A manifestation doesn't determine the need of support from CYFD.

Page 16 section 4-14 Alternative to seclusion are already part of the IEP. Please see NMPED memo regarding restraint and seclusion. Promising practices are not recognized. Evidence based are recognized.

Page 16 section 18-25 The bill conflicts with the age of majority and transfer of rights.

Page 17 section 1-5 This is not just under 14. The definition parent should be more comprehensive defined by IDEA. This limits the guardian ad litem or custody of and agency.

Page 17 section 17-22 This is not part of IDEA.

Section 23-25 This discussed disclosure without addressing HIPPA and FERPA.

Page 18 section 2-3 this limits treatment providers

Page 18 section 7-15 The criteria is based on guardianship, FERPA and HIPPA.

Page 18 section 16-25 We do not manage insurance. Through the IEP if a student is in need of a services, the school will provide that service or pay for it to be provided as part of the IEP team decision.

Page 19 section 1-25 We adhere to court order, we don't drive court orders.

Page 20 section 1-25 There are currently Federal laws that regulate this confidential information (HIPPA and FERPA).

Page 21 section 1-12 is not regulated by schools.

Page 21 Section 16 Department is not defined

Page 21 section 20-25 Conflicts with IDEA and conflicts with transfer of rights and age of majority. You cannot give away your rights due to a mental health illness.

Page 22 section 1-5 Districts do not have this authority.

## **PERFORMANCE IMPLICATIONS**

**None**

## **ADMINISTRATIVE IMPLICATIONS**

**Financial, time, and training for all staff and law enforcement other state agencies and community resources.**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

[https://webnew.ped.state.nm.us/wp-content/uploads/2018/01/SHSB\\_PED-My\\_Staff-Use-of-RestraintSeclusion-Techniques-20june17.pdf](https://webnew.ped.state.nm.us/wp-content/uploads/2018/01/SHSB_PED-My_Staff-Use-of-RestraintSeclusion-Techniques-20june17.pdf)

## **TECHNICAL ISSUES**

The legal would need to reorganize the process with agencies including the state court system and insurance companies.

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

**IEPs would be implemented as is with parent and commit input.**

## **AMENDMENTS**

JJS their current systems are in place for referring students.