

LFC Requester:	Becerra
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**AGENCY BILL ANALYSIS
2021 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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 2/25/2021
Bill No: SB319

Sponsor: Sen. Linda M. Lopez
Short SCHOOL USE OF
Title: RESTRAINT

Agency Name and Code PED - 924
Number: _____
Person Writing: John Sena
Phone: 505-570-7816 **Email** John.Sena@state.nm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
NFI	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: SB233, Student Bill of Rights.
Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Senate Bill 319 (SB319) would amend [Section 22-5-4.12 NMSA 1978](#) to prohibit the use of seclusion on a student and make additional requirements regarding the use of restraint on a student. SB319 would allow the restrain technique to be used only by school employees trained in less restrictive, evidence-based, trauma-informed behavioral interventions, restraint and de-escalation techniques. The bill would put the onus on school districts to annually establish or ratify policies and procedures for the use of restraint techniques in a school safety plan, as part of current statutory requirements.

FISCAL IMPLICATIONS

SB319 does not contain an appropriation.

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, only for cases involving imminent danger of serious physical harm, on the safe use of de-escalation and physical restraint techniques.

SIGNIFICANT ISSUES

In 2019, the Public Education Department (PED) amended [6.11.2 NMAC, Rights and Responsibilities of the Public Schools and Public School Students](#), to make changes regarding the use of restraint and seclusion techniques, including reporting requirements. The PED requires schools to report all instances in which a restraint or seclusion technique is used, all instances in which law enforcement is summoned instead of using a restraint or seclusion technique, identification numbers of students and school personnel involved in an incident in which restraint or seclusion was used, and, if a student was restrained, the type of restraint, including mechanical restraint or physical restraint, that was used. Since the beginning of the 2020-2021 school year, schools have not reported any incidents of restraint or seclusion. However, this may be due to school closures in response to COVID-19.

Use of Restraint or Seclusion. SB319 would permit a school the use of restraint only if the following apply:

- the student’s behavior presents an imminent danger of serious physical harm to the student or others;
- less restrictive interventions have been insufficient to mitigate the imminent danger of serious physical harm; and

- the school has and maintains an organized and functional method of documenting and timely reporting incidents of restraint to interested parties, including parents and government agencies.

Current statute requires the restraint technique to be used only by school employees trained in the use of restraint and seclusion techniques, unless an emergency situation does not allow sufficient time to summon such trained school employees. In contrast, SB319 would require the restraint technique to be used only by school employees trained in less restrictive, evidence-based, trauma-informed behavioral interventions, restraint and de-escalation techniques, and does not make exceptions for emergencies.

In addition to prohibiting seclusion, the bill would prohibit mechanical restraint, medication restraint, and prone restraint.

Restraint Policies and Procedures Requirements for School Districts. SB319 would require school districts to annually establish or ratify policies and procedures for the use of restraint techniques in a school safety plan. Before such policies and procedures are ratified in an approved school safety plan, the bill would require community members be afforded an opportunity to comment publicly on the policies and procedures. Each school district's annual plan would be required to govern the policies and procedures for the use of restraint techniques for schools within that school district.

The school district's safety plan would be required to state explicitly that restraint is an emergency safety measure that may be 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 would require policies restricting the use of restraint to apply to all students, not just students with disabilities. However, the rights of students with disabilities to individualized determination of appropriate special education and related services, as well as accommodation, modification, and positive behavioral intervention planning by the student's individualized educational program team, would not be limited.

While statute requires any school safety plan to be drafted by a planning team that includes at least one special education expert, SB319 would require any school district's safety plan to also include at least one licensed behavior specialist and at least one speech-language pathologist, and for all members of the team to be trained in evidence-based trauma-informed alternatives to physical restraint.

School Personnel Training Requirements. SB319 would require school personnel to be trained prior to the start of each school year on the appropriate use of effective alternatives to physical restraint, such as less restrictive, evidence-based, trauma-informed behavioral interventions, and only for cases involving imminent danger of serious physical harm, on the safe use of de-escalation and physical restraint techniques.

Reporting and Documentation. The bill would require a school employee to provide the student's parent or guardian with written notice on the same day the incident of restraint or seclusion occurred, and strikes language that would allow an employee to give oral notice. If a notice could not be given on the same day of the incident due to "extenuating" circumstances, a school employee would be required to provide the notice within 24 hours after the incident. The bill would require a copy of the written notice to be provided to the school principal or

administrator within the same time.

Statute requires a school employee to provide the student's parent or guardian with written documentation that includes information about any persons, locations, activities, or other antecedent events that may have preceded the behavior, if known, within a reasonable time following the incident. SB319 would require the written documentation to be provided no later than two school days after the incident. The bill would require documentation to be submitted to the PED's data collection and reporting system within five school days of the documented incident.

Prior to the start of each school year, schools would be required to submit a report to the PED with information about each incident in which a technique of restraint or seclusion was used during the prior school year, including the date, location, and a description of each incident. Additionally, SB319 would require schools to provide a description of methods employed to reintegrate the student into the classroom. The restraint reporting and documentation procedures would be subject to random audits completed at the direction of the PED.

Review of Student Behavior. Statute requires schools to review strategies used to address a student's dangerous behavior if use of restraint or seclusion techniques for an individual student has occurred two or more times during any thirty calendar-day period. SB319 would require a review regardless of how many times a restraint or seclusion technique has been used for an individual student. The bill would require additional information regarding the student and the incident be reviewed within seven calendar days of each use of restraint or seclusion.

Criminal or Civil Liability. SB319 would include language noting the provisions of the bill are not intended to provide any individual using a restraint technique upon a student with immunity from criminal or civil liability.

Law Enforcement. Statute requires schools to comply with the reporting, documentation, and review procedures if a school summons law enforcement instead of using a restraint technique on a student. SB319 would include a school security employee or sworn law enforcement officer serving in the capacity as a school resource officer, as law enforcement.

Definitions

- *Mechanical restraint.* Statute defines mechanical restraint as the use of any device or material attached or adjacent to the student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove, but "mechanical restraint" does not include mechanical supports or protective devices. SB319 would add 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.
- *Medication restraint.* SB319 defines medication restraint as the administration of medication for the purpose of temporarily controlling behavior.
- *Prone restraint.* SB319 defines prone restraint 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.
- *Restraint.* Statute defines restraint as, when not otherwise modified, meaning mechanical or physical restraint. SB319 would include medication restraint to this definition. SB319 also adds restraint does not include behavioral interventions used as a response to calm

and comfort an upset student, such as verbal soothing.

- *Seclusion.* Statute defines seclusion as the involuntary confinement of a student alone in a room from which egress is prevented. "Seclusion" does not mean the use of a voluntary behavior management technique, including a timeout location, as part of a student's education plan, individual safety plan, behavioral plan or individualized education program that involves the student's separation from a larger group for purposes of calming. SB319 would add seclusion does not include the aforementioned techniques so long as the student's freedom of movement is not forcibly restricted and the student retains the ability to voluntarily enter and exit a given location.

PERFORMANCE IMPLICATIONS

Prior to the start of each school year, SB319 would require each school to distribute the restraint policies and procedures to each student's parent or guardian.

ADMINISTRATIVE IMPLICATIONS

The restraint reporting and documentation procedures would be subject to random audits completed at the direction of the PED. 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, the 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. Where appropriate, the 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.

The PED 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.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB319 relates to SB233, Student Bill of Rights.

TECHNICAL ISSUES

On page 2, line 22, the sponsor may wish to consider including "or guardians" after parents.

While the bill would prohibit the use of seclusion, the bill would require schools and school employees to report incidents of the use of seclusion. It may be the sponsor of the bill would like to ensure such incidents are reported for monitoring and compliance purposes. However, paragraph H on page 8, only refers to restraint reporting and documentation. The sponsor of the bill may consider including seclusion in the aforementioned paragraph.

On page 7, lines 19-20, the bill repeats how often a school would be required to submit an annual report. The sponsor of the bill may consider removing "annually" from line 19.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

N/A

AMENDMENTS

N/A