



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](http://www.ped.state.nm.us)

RYAN STEWART, Ed.L.D.  
SECRETARY OF EDUCATION

MICHELLE LUJAN GRISHAM  
GOVERNOR

MEMORANDUM

**DATE:** July 30, 2021

**TO:** Superintendents  
Charter School Administrators  
Special Education Directors  
REC Directors

**FROM:** Deborah Dominguez-Clark, Director of Special Education  
Greg Frosted, Director of Safe and Healthy Schools

**RE:** **Staff Use of Restraint and Seclusion Techniques with Students**

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This memorandum provides updates on the changes to state law on restraint and seclusion techniques and serves as a reminder that is important to the return of students to in-person learning during the 2021-2022 school year. Please review this memorandum and requirements with staff.

When the school year begins, it is reasonable to expect that students may display new behaviors. Remember to view those behaviors as a symptom of decreases in students' regulatory skills after a prolonged period away from school. Many students and educators, especially those who did not return to school in the Spring of 2021, will also likely be re-entering school and may have experienced some degree of trauma.

As such, schools should plan for a period of adjustment in which both new and old expectations are re-introduced, taught, modeled, practiced and acknowledged. A focus on building resilience through trauma-informed practices will go far in helping students adjust. It will be more important than ever to approach school disciplinary plans as an opportunity to support learning. Schools must be prepared to teach, model and practice new routines, procedures and expectations and, as with all teaching, will need to modify and accommodate to suit the needs of individual learners.

At the same time, students' health and safety are paramount. School teams must determine the extent to which intentional, sustained or prolonged violations of health and safety requirements must be addressed strictly by discipline procedures, the school's behavior support team, or the student's Individualized Educational Program (IEP) team.

With this in mind, the New Mexico Public Education Department (PED) recommends that schools review their plans for responding to student misbehavior and their tiered systems of behavioral support to integrate COVID-19-related health and safety expectations to determine what changes, if any, are required to address student noncompliance with those requirements. As part of this review, schools should determine criteria for when student noncompliance will result in an intervention, identify which existing interventions may need to be modified given COVID-19-related

health and safety concerns, and develop interventions to address behaviors specific to promoting a safe and healthy reopening.

### **Scope of New Mexico law**

The New Mexico law concerning restraint and seclusion of students in public schools is set forth in NMSA 22-5-4.12 NMSA 1978. The PED rules related to this law are found in 6.11.2.10(E) NMAC. The law and rules apply to all students, including but not limited to students with disabilities. Adherence to these rules is an important part of the protections and rights for all public school students.

### **Use of Restraint and Seclusion**

Under New Mexico law, the use of restraint and seclusion is limited. A school is **not** allowed to use restraint or seclusion **unless** the following two conditions exist:

1. The student's behavior presents an imminent danger of serious physical harm to the student or others; **and**
2. Less restrictive interventions appear insufficient to mitigate the imminent danger of serious physical harm.

Before resorting to use of restraint or seclusion, a school must use de-escalation strategies and positive behavioral intervention supports to take steps to actively avoid the use of restraint or seclusion.

### **Restraint or Seclusion Techniques**

If a school has used de-escalation strategies and positive behavior intervention supports but those less restrictive interventions have not eliminated the imminent danger of physical harm to the student or others, a school may use restraint or seclusion. However, a school must follow these rules in any restraint or seclusion technique used:

1. The restraint or seclusion technique shall not impede the student's ability to breathe or speak. Prone restraint, in which a student is held face down on the floor, wall, or another surface, in a restraint technique which impeded the ability to breathe or speak and is not allowed.
2. The restraint or seclusion shall be in proportion to a student's age and physical condition, including the impact of any disability.
3. The restraint or seclusion shall end when the student's behavior no longer presents an imminent danger of serious physical harm to the student or others.
4. Restraint and seclusion techniques shall be used only by school personnel who are trained in the safe and effective use of restraint and seclusion.
5. Trained and designated school personnel shall maintain continuous visual observation and monitoring of the student while the restraint or seclusion technique is in use.

### **Development of Policies and Procedures**

Each school is required to establish policies and procedures, as approved by the local school board or governing body of a charter school, for the use of restraint and seclusion techniques and documentation and reporting of restraint and seclusion incidents. These policies and procedures must be included in the school safety plan. Schools are required to review such policies and procedures on a triennial basis before submitting the school safety plan.

The school safety plan shall be developed by a team that includes at least one administrator, one educator, one special education expert, and may include a counselor or social worker, nurse, and school resource officer or security staff. (For more information on the school safety plan, please see [6.12.6.8\(D\) NMAC, School District Wellness Policy](#).)

The policies must 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.

### **Designated, Trained School Personnel**

School districts and charter schools are required to develop and implement an annual training for designated school personnel regarding de-escalation strategies, positive behavioral intervention supports, or other comparable behavior management techniques and the use of restraint or seclusion techniques.

Designated school personnel shall attend training at least every two years or complete a certification course, exam, or other comparable demonstration of competency that provides evidence that the individual has up-to-date knowledge of proper restraint and seclusion techniques.

In the event that new designated school personnel are identified within the school after the provision of the training, certification course, exam, or other comparable demonstration of competency, the school district or charter school shall ensure that a training or other competency demonstration is provided to new designated school personnel within 60 days of being designated.

If an emergency exists that does not allow sufficient time to summon those trained, designated school personnel to respond to an imminent threat of serious bodily harm to a student or others, a school is allowed to respond to the emergency with other personnel. However, a school must ensure training for all school personnel as to this limited exception and have in place policies and procedures to ensure that school personnel have the supports necessary to respond or not respond to the emergency as required by law.

### **Review of Incidents of Restraint or Seclusion**

If a student has been restrained or secluded two or more times within 30 calendar days, the school shall review strategies used to address the student's behavior and determine whether the student needs a functional behavior assessment or referral to a student assistance team, behavioral intervention plan team, or – if a student has an IEP – a referral to the student's IEP team.

If a student has been restrained or secluded two or more times within 30 calendar days, the student's IEP team, behavioral intervention plan team, or student assistance team shall meet within two weeks of each subsequent use of restraint or seclusion to provide recommendations for avoiding future incidents requiring the use of restraint or seclusion.

The review shall include whether school personnel involved in the incidents were trained in the use of de-escalation strategies, positive behavioral intervention supports, or restraint and seclusion techniques. Additionally, the review shall consider whether the individual who restrained or secluded a student needs additional training.

Nothing in the Public School Code or rules precludes school staff from conducting reviews of student behaviors or convening the student's IEP team, behavioral intervention plan team, or student assistance team more frequently than required by the restraint and seclusion law and rules, if necessary.

### **Annual Review**

Schools shall conduct an annual review and analysis of all incidents in which restraint or seclusion techniques were used, including the number of incidents, the type of incident, personnel involved, the need for additional training, and student demographics.

### **Documentation and Reporting**

Schools are required to report incidents of restraint and seclusion to a student's parent.

- A school employee shall provide the student's parent or legal guardian with written or oral notice on the same day the incident occurred, unless circumstances prevent same-day notification. If notice is not provided on the same day of the incident, notice shall be given within 24 hours after the incident.
- Within a reasonable time following the incident, a school employee shall provide the student's parent or legal guardian with written documentation that includes information about any persons, locations, or

activities that may have triggered the behavior, if known, and specific information about the behavior and its precursors, the type of restraint or seclusion technique used, and the duration of its use.

Schools are required to report to the department, through the department's data collection and reporting system, the following information at the end of each reporting period (40, 80, 120, and End of Year):

- 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;
- the names of the 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.
- The names, professional license numbers, and positions of school personnel trained in de-escalation strategies, positive behavioral intervention supports, or other comparable behavior management techniques, the date of the training, and the source of training.

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 still are required to comply with the reporting, documentation, and review procedures.

If you have any questions about the memorandum or your school-level safe schools plan, please call the Safe and Healthy Schools Bureau at (505) 470-4092. For technical assistance regarding students with disabilities, contact the Special Education Division at (505) 372-8239 or visit:

[http://ped.state.nm.us/ped/SEB\\_index.html](http://ped.state.nm.us/ped/SEB_index.html).

Cc: School Counselors