

<b>LFC Requester:</b>	<i>Has not been requested.</i>
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**AGENCY BILL ANALYSIS  
2023 REGULAR SESSION**

**SECTION I: GENERAL INFORMATION**

*Check all that apply:*

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

**Date Prepared:** 02/17/23

**Bill No:** SB387

**Sponsor:** Lopez

**Agency Name  
and Code**

**Number:** PED - 924

**Short Title:** SCHOOL STUDENT

**Person Writing** Gregory Frostad

**Title:** RESTRAINT OR ISOLATION

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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
None	None	N/A	NFA

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
None	None	None	N/A	NFA

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	None	None	None	None	N/A	NFA

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Relates to Appropriation in the General Appropriation Act : N/A

**SECTION III: NARRATIVE**

**BILL SUMMARY**

**Synopsis:** Senate Bill 387 (SB387) would amend [Section 22-5-4.12 NMSA 1978](#) to permit restraint or seclusion techniques to be used only by school employees trained in less restrictive interventions and de-escalation techniques, except in emergencies. The bill would specifically prohibit mechanical, chemical, or prone restraint. Further, it would prohibit the use of any

restraint for any purpose other than to prevent harm to a student or others after less restrictive interventions have proven insufficient to secure the safety of the student or others. The bill proposes new definitions for “chemical restraint” and “prone restraint”.

### **FISCAL IMPLICATIONS**

The bill does not contain an appropriation but does require that school policies include required training for school personnel on restraint and seclusion. It is unclear if all employees may be trained, or if only those who may be involved in restraint and seclusion. The frequency of the training is not indicated and thus the cost of the training is difficult to calculate.

### **SIGNIFICANT ISSUES**

SB387 adds a requirement that a school board or charter school governing body approve of school safety plans in accordance with requirements of the bill. The bill would require school safety plans to include:

- (1) Policies and procedures stating 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 are insufficient to mitigate the imminent danger of serious physical harm;
- (2) Policies for restraint and seclusion that require and describe appropriate training for school personnel on the appropriate use of less restrictive interventions and the use of restraint or seclusion; and
- (3) Policies regarding restraint and seclusion that 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.

### **PERFORMANCE IMPLICATIONS**

N/A

### **ADMINISTRATIVE IMPLICATIONS**

The Public Education Department (PED) would be required to amend [6.11.2 NMAC—Rights and Responsibilities of the Public Schools and Public School Students](#), to align it with the provisions of the bill.

SB387 would require local school boards and charter school governing bodies to approve updated school safety plans.

School employees would be required to notify a student’s parent the same day that a restraint or seclusion is used without exception. SB387 also specifies that within two school days a school employee would be required to provide parents further details of the incident, antecedents to the student behavior, and less restrictive interventions used prior to the incident. The bill also requires the school review the incident and provide the summary of the review to the parent of the student. The review must include: (a) the student's behavior plan, if any, (b) details of the incident in which restraint or seclusion techniques were used, including whether the student requires a functional behavioral assessment to guide a proactive behavior plan; and (c) an analysis of how future incidents may be avoided, including whether the student requires a functional behavioral assessment.

The bill would add a requirement that an appropriate team from the school (i.e., individual education program team, student assistance team, or behavior intervention plan team) meet within two weeks of the incident to consider any changes to educational programs that could reduce the likelihood of recurrence of such incidents.

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

None.

#### **TECHNICAL ISSUES**

None.

#### **OTHER SUBSTANTIVE ISSUES**

A 2018 report by the [Education Commission of the States](#) noted that, though practices of restraint and seclusion are “typically utilized as tools for addressing imminent safety concerns, the use of restraint or seclusion on students who are exhibiting problematic behaviors has been prone to misapplication and abuse — possibly placing students in even more unsafe situations.” New Mexico legislation, such as [2017 House Bill 75](#) (HB75), which was enacted and codified as Section 22-5-4.12 NMSA 1978, has followed national trends in the past decade to limit the use of these procedures except in cases of immediate danger, to mandate reporting when restraint and seclusion are used, and to ensure school personnel are properly trained.

Provisions of SB387 would better align statute to the 15 principles outlined by the [United States Department of Education \(DOE\) in 2012](#) guiding the use of restraint and seclusion in schools. According to DOE:

“These principles stress that every effort should be made to prevent the need for the use of restraint and seclusion and that any behavioral intervention must be consistent with the child’s rights to be treated with dignity and to be free from abuse. The principles make clear that restraint or seclusion should never be used except in situations where a child’s behavior poses imminent danger of serious physical harm to self or others, and restraint and seclusion should be avoided to the greatest extent possible without endangering the safety of students and staff.”

#### **ALTERNATIVES**

None.

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

None.

#### **AMENDMENTS**

None.