

LFC Requester:	
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**AGENCY BILL ANALYSIS
2017 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 3/5/17
Bill No: HB75/HJCS/fla#1

Sponsor: House Judiciary Committee **Agency Code:** 924
Short Title: LIMIT SCHOOL USE OF RESTRAINT & SECLUSION **Person Writing:** Aguilar/Koscielniak
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SECTION II: FISCAL IMPACT

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See fiscal implications	See fiscal implications	See fiscal implications	Recurring	School District budgets

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with: Section 4 of SB 397, limitation on restraint and seclusion.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 75 House Judiciary Committee Substitute HB75/HJCS creates a new section of the Public School Code, §22-1-11, NMSA 1978, limiting the use of restraint and seclusion in schools. HB75/HJCS sets criteria and standards for the use of restraint and seclusion, requires schools to establish policies and procedures for use of restraint and seclusion and requires the updating of school safety plans. HB75/HJCS requires schools to document the use of restraint and seclusion and to provide notification to parents or guardians when an incident requiring the use of restraint or seclusion of their child occurred

House Bill 75 House Judiciary Committee Substitute House Floor Amendment number one (HB75/HJCS/fla#1) exempts schools located within a county juvenile detention center or a state-operated juvenile facility from the new section of the public school code.

FISCAL IMPLICATIONS

HB75/HJCS requires school districts and charter schools to adopt policies and procedures with respect to the use of physical restraints and seclusion and requires the updating of the school safety plan. It is unclear if there are costs associated with this effort and how policies and procedures would be reviewed and monitored. In addition, school districts must establish documentation and notification procedures. School districts would be responsible for having staff members trained in evidence-based crisis intervention training, including de-escalation techniques and first aid and the cost of this training is unknown.

SIGNIFICANT ISSUES

HB75/HJCS permits schools to use restraint and seclusion when the student's behavior is harmful to themselves or others and when less restrictive interventions appear to be insufficient. Restraint and seclusion shall only be used by employees who are trained in its safe and effective use unless an emergency situation does not allow time to call trained school personnel to address the dangerous situation.

If restraint and seclusion is used, school staff must continuously visually monitor the student and discontinue its use when the student's behavior no longer requires it and the imminent danger, to themselves or others, no longer exists. The restraint technique shall not prevent the student from breathing or speaking and the technique shall not be out of proportion to the student's age or physical condition.

HB75/HJCS requires schools to develop policies and procedures for the use of restraint and seclusion as part of the school safety plan. The school safety plan planning team must include at least one special education expert. The policies and procedures must consider school district support and strategies for school employees on how to successfully reintegrate the student back into the classroom or school.

HB75/HJCS requires various reporting and documentation procedures to be developed by schools. These include notification of the parent on the same day of the incident, unless circumstances prevent this; however notification must occur within twenty-four (24) hours, details about the incident (locations or activities) that may have instigated the behavior, and the type of restraint or seclusion technique used and the duration of its use.

Schools must review the strategies used with a student to address a student's dangerous behaviors if restraint and seclusion has occurred two or more times during any thirty (30) calendar days. This includes an analysis of how future incidents may be avoided and whether or not a student requires a functional behavioral assessment. Within two weeks of a restraint or seclusion incident that has occurred two or more times during any thirty (30) calendar days, the student's Individualized Education Program, behavioral intervention, or student assistance plan team must meet to provide recommendations to prevent future incidents of restraint or seclusion.

If a school calls law enforcement to address the student's behavior instead of using a restraint or seclusion technique, the schools is still responsible for the reporting of the incident,

documentation and procedure review.

On December 28, 2016, A Dear Colleague letter regarding the use of restraints and seclusion with students with disabilities was issued by the U.S. Department of Education Office for Civil Rights. The letter defines restraint and seclusion and the threshold for what determines that the use of restraint or seclusion violates Section 504 of the Rehabilitation Act of 1973 also known as Section 504 when students are denied a Free Appropriate Public Education (FAPE), see <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf>

The PED has published a comprehensive technical assistance manual focused on Positive Behavioral Intervention Supports (PBIS) and strategies and Behavioral Intervention Plans for individual students. The report, *Response to Intervention Framework 2014*, consists of a three-tier, problem-solving model that uses a set of increasingly intensive academic and/or behavioral supports/intervention and may be accessed at http://ped.state.nm.us/ped/RtI_index.html. Utilizing the Response to Intervention (RtI) model is a state requirement (NMAC 6.29.1.9.D.).

In March 2006, the PED issued comprehensive guidance on the use of physical restraints as a behavioral intervention for students with disabilities. The guidance indicates that it does not condone the use of mechanical restraints for students, requires the application of physical restraint to be performed by trained personnel only, and provides recommendations for documentation and reporting of restraint and the development of local policies. HB75 would require physical restraints and seclusion to only be administered by staff trained in evidence-based crisis intervention, de-escalation training, first aid, and identifying signs of medical distress. The full guidance can be viewed at <http://ped.state.nm.us/SEB/law/Restraint.Policy.pdf>.

PERFORMANCE IMPLICATIONS

HB75/HJCS supports PED's strategic plan Ready for Success lever by ensuring that schools are a safe and healthy environment conducive to learning.

ADMINISTRATIVE IMPLICATIONS

The Public Education Department (PED) would have to notify school districts and charters schools about the new section of the public school code. The PED would need to update its guidance documents on the use of restraint and seclusion and would have to update its Safe Schools Plan Guidance Document to be inclusive of requiring policies and processes regarding the use of restraint and seclusion.

CONFLICTS

HB75/HJCS conflicts with Section 4 of SB 397, limitation on restraint and seclusion

OTHER SUBSTANTIVE ISSUES

Neither the Office of Special Education and Rehabilitative Services (OSERS) or the Office of Special Education Programs (OSEP) within the USDE expressly prohibits the use of physical restraints on students with disabilities. This is evidenced by two policy letters from the USDE

OSEP and OSERS, Letter to Anonymous, 50 IDELR 228, and Letter to Trader, 48 IDELR 47. However, it is important to note that both require IEP Teams to consider the use of PBIS in relation to student discipline

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If HB75/HJCS/fla#1 is not enacted, New Mexico school districts and state charters would continue to utilize existing behavioral strategies, such as PBIS as well as IEP strategies for students receiving special education services in addressing behavioral and emergency situations, and local policies would remain in effect. The PED's current guidance on the use of physical restraint will remain in place.