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EDUCATION AND CULTURAL AFFAIRS

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " " to H.P. 997, L.D. 1376, Bill, "An Act To Direct the Department of Education To Amend Its Rules To Ensure That Physical Restraint and Seclusion Policies Are Followed for Special Education Students and Make Biennial Reports on the Use of Physical Restraint and Seclusion"

Amend the bill by striking out the title and substituting the following:

'An Act To Direct the Department of Education To Amend Its Rules To Ensure That Physical Restraint and Seclusion Policies Are Followed and Make Biennial Reports on the Use of Physical Restraint and Seclusion'

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 20-A MRSA §2902, sub-§9, as amended by PL 2001, c. 452, §6, is further amended to read:

9. Medication. Meet the requirements for administering medication under section 254, subsection 5; and

Sec. 2. 20-A MRSA §2902, sub-§10, as enacted by PL 2001, c. 452, §7, is amended to read:

10. Reintegration planning. Meet the requirements for administering reintegration planning under section 254, subsection 12; and

Sec. 3. 20-A MRSA §2902, sub-§11 is enacted to read:

11. Physical restraint and seclusion. Meet the requirements for use of physical restraint and seclusion under section 6555.

Sec. 4. 20-A MRSA §4502, sub-§5, ¶M, as amended by PL 2009, c. 313, §2, is repealed.

Sec. 5. 20-A MRSA §4502, sub-§5, ¶M-1 is enacted to read:

COMMITTEE AMENDMENT

1 M-1. The use of physical restraint and seclusion in accordance with the requirements
2 of section 6555;

3 **Sec. 6. 20-A MRSA §6555** is enacted to read:

4 **§6555. Physical restraint and seclusion**

5 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
6 following terms have the following meanings.

7 A. "Covered entity" means a public school, public regional program, public charter
8 school, public magnet school, private school approved for tuition purposes, special
9 purpose private school, career and technical education program, public
10 prekindergarten program, the Child Development Services System and regional
11 education cooperative.

12 B. "Physical restraint" means a personal restriction that immobilizes or reduces the
13 ability of a student to move the student's torso, arms, legs or head freely. "Physical
14 restraint" does not include a physical escort.

15 C. "Plan" means an individualized education plan, a plan pursuant to Section 504 of
16 the federal Rehabilitation Act of 1973, an individualized health care plan or any other
17 individualized plan.

18 D. "Seclusion" means involuntary confinement of a student alone in a room or area
19 from which the student is physically prevented from leaving.

20 E. "Student personally identifiable information" has the same meaning as in section
21 952, subsection 7.

22 **2. Adoption of policy.** A covered entity shall adopt a policy and procedures
23 regarding the use of physical restraint and seclusion. Each covered entity shall provide
24 overview and awareness information to all staff regarding the use of physical restraint
25 and seclusion.

26 **3. Performance review system.** The department shall by rule develop and
27 implement a performance review system to define and monitor all covered entities' use of
28 physical restraint and seclusion. The performance review system must include:

29 A. A system to monitor compliance with the department's rules, including, but not
30 limited to, required data submission to the department;

31 B. Accountability standards; and

32 C. A compliance plan program that provides a multitiered system of support to
33 covered entities and requires covered entities to reduce the use of physical restraint
34 and seclusion with specific targets and time frames, when appropriate.

35 **4. Technical assistance.** The department shall provide technical assistance with
36 respect to the use of physical restraint and seclusion to covered entities.

37 **5. Report.** The commissioner shall submit a report on data regarding the use of
38 physical restraint and seclusion collected pursuant to the department's rules governing
39 physical restraint and seclusion and special education. Each covered entity shall submit

1 to the department an annual report on incidents of physical restraint and seclusion that
2 includes:

3 A. The aggregate number of uses of physical restraint broken down by grade level or
4 age group, gender, race and type of plan;

5 B. The aggregate number of students placed in physical restraint broken down by
6 grade level or age group, gender, race and type of plan;

7 C. The aggregate number of uses of seclusion broken down by grade level or age
8 group, gender, race and type of plan;

9 D. The aggregate number of students placed in seclusion broken down by grade level
10 or age group, gender, race and type of plan;

11 E. The aggregate number of serious bodily injuries to students related to physical
12 restraint and seclusion broken down by grade level or age group, gender, race and
13 type of plan; and

14 F. The aggregate number of serious bodily injuries to staff related to physical
15 restraint and seclusion.

16 Student personally identifiable information contained in a report submitted by a covered
17 entity pursuant to this subsection is confidential. The department shall by rule establish
18 procedures regarding the confidentiality of student personally identifiable information
19 and the release of data submitted by covered entities pursuant to this section, including
20 but not limited to rules providing for any necessary data suppression by the department to
21 ensure that student personally identifiable information is not released.

22 The commissioner's report must also include aggregate data gathered through the
23 performance review system developed pursuant to subsection 3 and subsequent
24 compliance plans. The report must be submitted to the Governor and the joint standing
25 committee of the Legislature having jurisdiction over educational and cultural affairs no
26 later than January 15th of every odd-numbered year.

27 **6. Rules.** The department shall adopt rules regarding physical restraint and seclusion
28 and to implement this section. Rules adopted pursuant to this section are major
29 substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

30 **Sec. 7. Rulemaking.** The Department of Education shall submit rules adopted
31 pursuant to the Maine Revised Statutes, Title 20-A, section 6555 for legislative review no
32 later than December 5, 2019.

33 **Sec. 8. Guide for information regarding rules; forms.** The Commissioner of
34 Education shall develop and provide information about rules adopted under this Act
35 including a guide that includes a template for a school administrative unit or special
36 purpose program to use to explain any additional local policies or local complaint
37 processes. In developing the guide and template, the commissioner shall review any
38 forms currently used for reporting on physical restraint and seclusion, request feedback
39 from school administrative units and stakeholders and update any form used for reporting
40 on physical restraint and seclusion based on the feedback.

41 **Sec. 9. Professional development opportunities.** No later than January 15,
42 2020, the Department of Education shall submit a plan to the Joint Standing Committee

1 on Education and Cultural Affairs on the provision of a variety of professional
 2 development opportunities to promote preventive practice models that will reduce
 3 dependence on physical restraint and seclusion. Professional development opportunities
 4 must include, but are not limited to, conflict resolution education, peer mediation and
 5 early identification and response to signs of violence. The Joint Standing Committee on
 6 Education and Cultural Affairs may submit a bill to the Second Regular Session of the
 7 129th Legislature related to the subject matter of the plan.

8 **Sec. 10. Appropriations and allocations.** The following appropriations and
 9 allocations are made.

10 **EDUCATION, DEPARTMENT OF**

11 **Learning Systems Team Z081**

12 Initiative: Provides ongoing funds for one Education Specialist II position and related All
 13 Other costs to manage the data submitted by each covered entity regarding incidents of
 14 physical restraint and seclusion and to monitor and investigate the use of physical
 15 restraint and seclusion.

| | | | |
|----|-------------------------------|-----------------|-----------------|
| 16 | GENERAL FUND | 2019-20 | 2020-21 |
| 17 | POSITIONS - LEGISLATIVE COUNT | 1.000 | 1.000 |
| 18 | Personal Services | \$65,886 | \$91,863 |
| 19 | All Other | \$5,200 | \$6,383 |
| 20 | | | |
| 21 | GENERAL FUND TOTAL | <u>\$71,086</u> | <u>\$98,246</u> |

22 **Learning Systems Team Z081**

23 Initiative: Provides one-time funds to modify the current restraint and seclusion form in
 24 the department's educational information system to accept the data on physical restraint
 25 and seclusion by grade level or age group, gender, race and type of plan.

| | | | |
|----|---------------------|-----------------|----------------|
| 26 | GENERAL FUND | 2019-20 | 2020-21 |
| 27 | All Other | \$50,000 | \$0 |
| 28 | | | |
| 29 | GENERAL FUND TOTAL | <u>\$50,000</u> | <u>\$0</u> |

30 **EDUCATION, DEPARTMENT OF**
 31 **DEPARTMENT TOTALS**

| | | | |
|----|-------------------------------------|-------------------------|------------------------|
| 32 | | 2019-20 | 2020-21 |
| 33 | GENERAL FUND | \$121,086 | \$98,246 |
| 34 | | | |
| 35 | DEPARTMENT TOTAL - ALL FUNDS | <u>\$121,086</u> | <u>\$98,246</u> |

36
 37 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
 38 section number to read consecutively.

SUMMARY

1
2 This amendment, which is the majority report of the committee, strikes and replaces
3 the bill. The amendment directs schools to submit annual reports to the Department of
4 Education regarding incidents of physical restraint and seclusion including the number of
5 uses and number of students, broken down by grade level or age group, gender, race and
6 type of education plan, and the number of injuries to students and to staff and directs the
7 Commissioner of Education to report biennially to the Governor and the Legislature on
8 data regarding the use of physical restraint and seclusion.

9 The amendment also directs the Department of Education to, by rule, develop and
10 implement a performance review system to define and monitor all schools' use of
11 physical restraint and seclusion.

12 The amendment also requires the Department of Education to submit major
13 substantive rules by December 5, 2019, provide guidance to schools regarding these rules
14 and submit a plan by January 15, 2020 to the Joint Standing Committee on Education and
15 Cultural Affairs on professional development opportunities to promote preventive
16 practice models that will reduce dependence on physical restraint and seclusion.

17 The amendment also adds an appropriations and allocations section.

18 This amendment also incorporates a fiscal note. The fiscal note identifies the
19 requirement that school administrative units break down the aggregate data by grade level
20 or age group, gender, race and type of plan as a potential unfunded state mandate.
21 Because schools are already required to collect this data pursuant to department rule
22 Chapter 33: Rule Governing Physical Restraint and Seclusion, the committee finds this
23 additional requirement does not require an expansion or modification of activities so as to
24 necessitate additional expenditures.

25 **FISCAL NOTE REQUIRED**

26 **(See attached)**