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Date: (Filing No. S-)

EDUCATION AND CULTURAL AFFAIRS

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**STATE OF MAINE
SENATE
126TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 79, L.D. 243, “Resolve, To Direct the Department of Education To Amend Its Rules Regarding Restraint of Students”

Amend the resolve by striking out everything after the emergency preamble and before the emergency clause and inserting the following:

Sec. 1. Amendment of rule. Resolved: That the Department of Education shall amend portions of Chapter 33: Rule Governing Physical Restraint and Seclusion as follows.

1. The rule must be amended in Section 2 to replace the definition of physical escort with language that provides that physical escort is temporary touching or holding for the purpose of inducing a student to walk to another location, including assisting the student to the student's feet in order to be escorted.

2. The rule must be amended to modify the threshold for the use of physical restraint as follows:

A. In the summary of the rule to provide that physical restraint and seclusion may be used only as an emergency intervention when the behavior of a student presents a risk of injury or harm to the student or others;

B. In Section 1 of the rule to provide that physical restraint and seclusion may be used only as an emergency intervention when the behavior of a student presents a risk of injury or harm to the student or others;

C. In Section 2, subsection 6 of the rule to provide that dangerous behavior is behavior that presents a risk of injury or harm to a student or others;

D. In Section 2, subsection 9 of the rule to provide that risk of injury or harm describes a situation in which a student has the means to cause physical harm or injury to self or others and such injury or harm is likely to occur such that a reasonable and prudent person would take steps to protect the student and others against the risk of such injury or harm;

E. In Section 5, subsection 1, paragraph A to provide that seclusion may be used only as an emergency intervention when the behavior of a student presents a risk of

COMMITTEE AMENDMENT

- 1 injury or harm to the student or others and only after other less intrusive interventions
2 have failed or been determined inappropriate;
- 3 F. In Section 5, subsection 2, paragraph B to provide that seclusion may not be used
4 to prevent property destruction or disruption of the environment in the absence of a
5 risk of injury or harm;
- 6 G. In Section 5, subsection 3, paragraph A to provide that a student in seclusion must
7 be continuously monitored until the student no longer presents a risk of injury or
8 harm to self or others;
- 9 H. In Section 5, subsection 4, paragraph A to provide that the staff involved in the
10 use of seclusion shall continually assess the student for signs that the student is no
11 longer presenting a risk of injury or harm to self or others and to provide that the
12 seclusion must be discontinued as soon as possible;
- 13 I. In Section 6, subsection 1, paragraph A to provide that physical restraint may be
14 used only as an emergency intervention when the behavior of a student presents a risk
15 of injury or harm to the student or others and only after other less intrusive
16 interventions have failed or been determined inappropriate;
- 17 J. In Section 6, subsection 2, paragraph B to provide that physical restraint may not
18 be used to prevent property destruction or disruption of the environment in the
19 absence of a risk of injury or harm;
- 20 K. In Section 6, subsection 3, paragraph B to provide that a student in physical
21 restraint must be continuously monitored until the student no longer presents a risk of
22 injury or harm to self or others;
- 23 L. In Section 6, subsection 4, paragraph A to provide that the staff involved in the
24 use of physical restraint must continually assess the student for signs that the student
25 in physical restraint is no longer presenting a risk of injury or harm to self or others
26 and to provide that the physical restraint must be discontinued as soon as possible;
27 and
- 28 M. In Section 6, subsection 4, paragraph D to provide that if attempts to release the
29 student from physical restraint have been unsuccessful and the student is still
30 presenting behaviors that create a risk of injury or harm to self or others, the covered
31 entity may request assistance from outside sources such as caregivers, case managers,
32 crisis intervention teams, local emergency management services or other community
33 resources.
- 34 3. The rule must be amended in Section 2, subsection 16 to provide that physical
35 restraint does not include a brief period of physical contact necessary to break up a fight.
- 36 4. The rule must be amended to require the Department of Education to ensure
37 annually that teachers and administrators throughout the State are provided with
38 consistent and accurate information regarding the requirements of Rule Chapter 33; and
39 be it further
- 40 **Sec. 2. Expedited amendment process. Resolved:** That, notwithstanding the
41 Maine Revised Statutes, Title 5, chapter 375, subchapters 2 and 2-A or any other law, the
42 Department of Education shall amend its Rule Chapter 33: Rule Governing Physical
43 Restraint and Seclusion as provided in this resolve and shall file the amended rule with

1 the Secretary of State as a final amended rule within 7 business days of the effective date
2 of this resolve. Rules adopted pursuant to this resolve are routine technical rules as
3 defined in Title 5, chapter 375, subchapter 2-A. Beginning July 1, 2013, any changes to
4 Rule Chapter 33 are major substantive rules as defined in Title 5, chapter 375, subchapter
5 2-A; and be it further

6 **Sec. 3. Report. Resolved:** That the Department of Education, not later than
7 January 10, 2014, shall submit a report to the Joint Standing Committee on Education and
8 Cultural Affairs describing the effect of the changes required by this resolve. The
9 Department of Education shall consult with relevant stakeholders and include feedback
10 from these stakeholders in its report. The committee may submit a bill related to the
11 report to the Second Regular Session of the 126th Legislature if the committee
12 determines it is necessary to amend or adjust any language contained in this resolve; and
13 be it further

14 **Sec. 4. Nonregulatory guidance. Resolved:** That the Department of Education
15 shall, within 45 days of the effective date of the changes to Rule Chapter 33: Rule
16 Governing Physical Restraint and Seclusion filed with the Secretary of State, develop
17 non-regulatory guidance designed to provide accurate information to teachers and
18 administrators regarding the requirements of the revised rule. The Department of
19 Education shall submit a report detailing these training efforts to the Joint Standing
20 Committee on Education and Cultural Affairs before the end of the Second Regular
21 Session of the 126th Legislature.'

22 SUMMARY

23 This amendment strikes and replaces the resolve to direct the Department of
24 Education to amend its Rule Chapter 33: Rule Governing Physical Restraint and
25 Seclusion, which limits the use of restraint and seclusion. The current rule allows the use
26 of those interventions only to prevent an imminent risk of injury or harm to a student or
27 others. This resolve requires the rule to be changed as follows.

28 1. It provides that the threshold for the use of physical restraint or seclusion is to
29 prevent the risk of injury or harm to the child.

30 2. It clarifies the definition of physical escort.

31 3. It clarifies that physical restraint does not include a brief period of physical
32 contact necessary to break up a fight.

33 4. It provides that the department is required to provide consistent and accurate
34 information regarding the requirements of the rule annually to teachers and administrators
35 throughout the State.

36 5. It retains the provision in the resolve that requires the department to file the
37 specific changes to the rule required by this resolve with the Secretary of State within 7
38 business days of the effective date of the resolve, but it clarifies that these rule changes
39 are routine technical rules, but that any changes to the rule on or after July 1, 2013 are
40 major substantive rules.

41 The amendment also requires the department to present a report describing the
42 implementation of the changes to the rule, including the effect of these changes on

1 relevant stakeholders, to the Joint Standing Committee on Education and Cultural Affairs
2 not later than January 10, 2014.

3 Finally, the amendment requires the department to develop nonregulatory guidance
4 regarding the amendments to the rule so that teachers and administrators have accurate
5 information regarding these revised requirements. The department is required to submit a
6 report detailing its guidance and related training efforts to the Joint Standing Committee
7 on Education and Cultural Affairs before the end of the Second Regular Session of the
8 126th Legislature.

9

FISCAL NOTE REQUIRED

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(See attached)