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Date: (Filing No. H- )

**JUDICIARY**

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
125TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 722, L.D. 978, Bill, “An Act To Amend the Probate Code Regarding Powers of Attorney, Education of Children and Guardianship”

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

**'An Act To Provide for School Enrollment and an Appeal Process in Specific Cases in Which Students Do Not Reside with Parents'**

Amend the bill by inserting after the title and before the enacting clause the following:

**'Mandate preamble.** This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.'

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

**'Sec. 1. 20-A MRSA §5205, sub-§2,** as amended by PL 1991, c. 365, §1, is further amended to read:

**2. Other students not living at home.** A student other than a state ward, a state agency client or a homeless child, residing with another person who is not the student's parent, is considered a resident of the school administrative unit where the student resides if the superintendent of the unit determines that it is in the best interest of the student because ~~of the following~~ that person is residing in the school administrative unit for other than just education purposes and:

A. It is undesirable and impractical for that student to reside with the student's parent, ~~or that other extenuating circumstances exist which justify residence in the unit; and~~

**COMMITTEE AMENDMENT**

1 ~~B. That person is residing in the school administrative unit for other than just~~  
2 ~~education purposes.~~

3 C. There is a safety reason for the student not to reside with the student's parent; or

4 D. Other extenuating circumstances exist that justify residence in the unit.

5 If a person who is not the student's parent or legal guardian requests that a student be  
6 considered a resident under this subsection, the school administrative unit shall take  
7 reasonable steps to attempt to notify a parent or legal guardian of the request.

8 In determining whether it is in the best interest of the student to enroll in the school  
9 administrative unit, the superintendent shall consult with knowledgeable employees of  
10 relevant school administrative units that the superintendent considers appropriate.

11 The superintendent shall send written notice of the enrollment determination to the person  
12 making a request within 10 calendar days of receiving the request to enroll a student  
13 pursuant to this subsection. If the determination is to deny enrollment because the  
14 superintendent determines that enrollment in the school administrative unit is not in the  
15 best interest of the student as provided in this subsection, the superintendent shall send to  
16 the person who made the request written notice of the denial of enrollment, the reason for  
17 the denial and the right to appeal to the commissioner.

18 The commissioner shall review the superintendent's determination on ~~the request of~~  
19 appeal by the student's parent or legal guardian or the person with whom the student is  
20 residing and shall make a decision within 7 calendar days of receiving the appeal. The  
21 commissioner's decision is final and binding. Upon request of the superintendent of  
22 schools in the unit in which a student is placed in accordance with this subsection, the  
23 state share percentage for subsidized educational costs for that student is equivalent to the  
24 state share percentage of the unit in which the student's parent or legal guardian resides or  
25 the average state share percentage, whichever is greater. If the parent or legal guardian  
26 does not reside in the State or can not be located, the subsidy is the state average subsidy.

27 **Sec. 2. Model explanation.** The Commissioner of Education shall prepare and  
28 distribute a model for superintendents of schools to use to explain the appeal process  
29 when a superintendent determines attendance by a student in the superintendent's school  
30 administrative unit is not in the student's best interest under the Maine Revised Statutes,  
31 Title 20-A, section 5205, subsection 2.'

## 32 SUMMARY

33 This amendment adds a mandate preamble to and changes the title of the bill.

34 It replaces the bill, which addresses the duration of powers of attorney concerning  
35 minors, Probate Court orders that provide transition arrangements that are in the best  
36 interest of minors and the application for enrollment in a school administrative unit for  
37 students living with kinship families rather than their parents. Public Law 2011, chapter  
38 43 addresses the first 2 issues.

39 It amends the current law to provide that a student's safety in a parent's home is a  
40 basis for a superintendent to determine that it is in the best interest of the student to enroll  
41 in that school administrative unit when the student is residing in that unit with someone

1 other than a parent or guardian. Current law provides that, for a superintendent to  
2 determine that a student's enrolling in that school administrative unit is in the student's  
3 best interest when the student is not living with a parent, 2 requirements must be met:  
4 first, that it is undesirable and impractical for that student to reside with the student's  
5 parent or that other extenuating circumstances exist that justify residence in the unit; and,  
6 second, that the person with whom the child is living is residing in the school  
7 administrative unit for other than just education purposes. This amendment restructures  
8 the language to still require that the person with whom the child is living must be residing  
9 in the unit for other than education purposes, and then provides that one of 3 conditions,  
10 one of them the new safety requirement, must also be met. The other, existing conditions  
11 are that it is undesirable and impractical for that student to reside with the student's parent  
12 and that other extenuating circumstances exist which justify residence in the unit.

13 It requires the school administrative unit to take reasonable steps to notify the  
14 student's parents or legal guardian if a request for enrollment is made by a person other  
15 than the parent or legal guardian.

16 It provides that a superintendent is required to consult with knowledgeable employees  
17 of relevant school administrative units that the superintendent considers appropriate in  
18 order to determine if enrollment is in the student's best interest. The superintendent must  
19 notify the person requesting enrollment within 10 calendar days of the request whether  
20 the student may enroll in that unit. If the determination is to deny enrollment because the  
21 superintendent determines that enrollment in the school administrative unit is not in the  
22 best interest of the student, the superintendent must send written notice to the person with  
23 whom the student is residing of the denial of enrollment, the reason for the denial and the  
24 right to appeal to the Commissioner of Education.

25 It provides that, if the person appeals the superintendent's denial of enrollment, the  
26 Commissioner of Education must decide within 7 calendar days whether to overturn the  
27 superintendent's decision.

28 It provides that the Commissioner of Education must develop a model written  
29 explanation of the appeal process when the superintendent determines that attendance in  
30 that school administrative unit is not in the best interest of the student and distribute it to  
31 superintendents.

32 **FISCAL NOTE REQUIRED**

33 **(See attached)**