

MAINE STATE LEGISLATURE

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L.D. 1376

Date: 6/17/19 Majority

(Filing No. H-617)

EDUCATION AND CULTURAL AFFAIRS

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

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Sec. 4. 20-A MRSA §4502, sub-§5, ¶M, as amended by PL 2009, c. 313, §2, is repealed.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

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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

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

- A. The aggregate number of uses of physical restraint broken down by grade level or age group, gender, race and type of plan;
- B. The aggregate number of students placed in physical restraint broken down by grade level or age group, gender, race and type of plan;
- C. The aggregate number of uses of seclusion broken down by grade level or age group, gender, race and type of plan;
- D. The aggregate number of students placed in seclusion broken down by grade level or age group, gender, race and type of plan;
- E. The aggregate number of serious bodily injuries to students related to physical restraint and seclusion broken down by grade level or age group, gender, race and type of plan; and
- F. The aggregate number of serious bodily injuries to staff related to physical restraint and seclusion.

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

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

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

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

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

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

COMMITTEE AMENDMENT

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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.

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SUMMARY

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

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

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

The amendment also adds an appropriations and allocations section.

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

FISCAL NOTE REQUIRED

(See attached)



129th MAINE LEGISLATURE

LD 1376

LR 994(02)

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

Fiscal Note for Bill as Amended by Committee Amendment

A(H-617)

Committee: Education and Cultural Affairs

Fiscal Note Required: Yes

Fiscal Note

Potential State Mandate - Unfunded

	FY 2019-20	FY 2020-21	Projections FY 2021-22	Projections FY 2022-23
Net Cost (Savings)				
General Fund	\$121,086	\$98,246	\$101,461	\$104,789
Appropriations/Allocations				
General Fund	\$121,086	\$98,246	\$101,461	\$104,789

State Mandates

Required Activity

Requires local school administrative units to report to the Department of Education on the following incidents of physical restraint and seclusion by grade level or age group, gender, race and type of plan: 1) the aggregate number of uses of physical restraint; 2) the aggregate number of students placed in physical restraint; 3) the aggregate number of uses of seclusion; 4) the aggregate number of students placed in seclusion; 5) the aggregate number of serious bodily injuries to students related to physical restraint and seclusion; and 6) the aggregate number of serious bodily injuries to staff related to physical restraint and seclusion.

Unit Affected

School

Local Cost

Insignificant statewide

The required local activities in this bill may represent a state mandate pursuant to the Constitution of Maine. If the bill does require a local unit of government to expand or modify its activities so as to necessitate additional expenditures from local revenue, the state mandate provisions of the Constitution of Maine require either: (1) General Fund appropriations be provided to fund at least 90% of any additional necessitated local costs of the mandate; or (2) a Mandate Preamble be added to the bill and two-thirds of the members of each House vote to exempt the mandate from the funding requirement. If the bill does represent a state mandate and neither one of these actions occurs, the local units of government will not be required to implement the mandated activities.

Fiscal Detail and Notes

This bill includes General Fund appropriations totaling \$121,086 in fiscal year 2019-20 and \$98,246 in fiscal year 2020-21 to the Learning Systems Team program within the Department of Education. Of this amount, \$50,000 is appropriated on a one-time basis for the programming costs to modify the current physical restraint and seclusion form in the department's educational information system to accept the data on physical restraint and seclusion by grade level or age level, gender, race and type of plan. Ongoing appropriations of \$71,086 in fiscal year 2019-20 and \$98,246 in fiscal year 2020-21 are provided to the Learning Systems Team program for one Education Specialist II position and related All Other costs to manage the required data submitted by each covered entity and to monitor incidents of physical restraint and seclusion and investigate incidents as necessary.

School administrative units (SAU's) are required by department rule (Chapter 33: Rule Governing Physical Restraint and Seclusion) to report the aggregate data listed above each year. This legislation places the requirement in statute and requires that the information be reported by grade level or age level, gender, race and type of plan. To the extent that SAU's already collect and report the required data, the additional cost of the required municipal activities may be minimal.