

MAINE STATE LEGISLATURE

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SALCY
R. of B.

Date: 3/23/12

(Filing No. H-820)

EDUCATION AND CULTURAL AFFAIRS

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

COMMITTEE AMENDMENT "A" to H.P. 1360, L.D. 1838, "Resolve, Regarding Legislative Review of Chapter 33: Regulations Governing Timeout Rooms, Therapeutic Restraints and Aversives in Public Schools and Approved Private Schools, a Major Substantive Rule of the Department of Education"

Amend the resolve by inserting after the title and before the emergency preamble 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 resolve by striking out all of section 1 and inserting the following:

'Sec. 1. Adoption. Resolved: That final adoption of Chapter 33: Regulations Governing Timeout Rooms, Therapeutic Restraints and Aversives in Public Schools and Approved Private Schools, a provisionally adopted major substantive rule of the Department of Education that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized only if the following changes are made:

1. The rule must be amended in section 2 to provide that public charter schools are covered entities;

2. The rule must be amended in section 2 to clarify that physical restraint does not include:

A. Physical contact when the purpose of the contact is to comfort a student and the student voluntarily accepts the contact; or

B. Momentarily deflecting the movement of a child when the child's movements would be destructive, harmful or dangerous to the child or to others;

COMMITTEE AMENDMENT

17. of 3.

1 3. The rule must be amended in section 6 to clarify that when a staff person who is
2 not certified in a state-approved training program initiates physical restraint, trained
3 personnel must be summoned to the scene only if the emergency situation continues;

4 4. The rule must be amended in section 7 to clarify that a staff person who initiates
5 physical restraint or seclusion that involves a student who has been placed in an out-of-
6 district placement must report the incident to the entity responsible for the student's
7 education within 24 hours or by the next business day;

8 5. The rule must be amended in section 8 to clarify that the incident report
9 documenting the use of physical restraint or seclusion must indicate if any of the
10 personnel involved in the incident were certified in a state-approved training program;
11 and

12 6. The rule must be amended in section 12 to clarify that the state-approved training
13 programs may include regional training programs and regional "train the trainer" program
14 models to provide the required training for personnel in the covered entities; and be it
15 further

16 **Sec. 2. Department of Education; nonregulatory guidance. Resolved:**
17 That, no later than September 1, 2012, the Department of Education shall provide
18 nonregulatory guidance to school administrative units, public charter schools, private
19 schools and other covered entities that are subject to the requirements of Chapter 33:
20 Regulations Governing Timeout Rooms, Therapeutic Restraints and Aversives in Public
21 Schools and Approved Private Schools. The guidance provided by the department to the
22 covered entities must include, but is not limited to, examples of what is and is not
23 considered to be physical restraint or seclusion. The guidance must be disseminated to all
24 covered entities in writing, and the department shall post the guidance on the department's
25 publicly accessible website.'

26 **SUMMARY**

27 This amendment provides that final adoption of Chapter 33: Regulations Governing
28 Timeout Rooms, Therapeutic Restraints and Aversives in Public Schools and Approved
29 Private Schools, a major substantive rule of the Department of Education, is authorized
30 contingent upon the department's making 6 specified changes to the proposed rule. The
31 amendment also adds a new section to the resolve to direct the Department of Education
32 to provide, no later than September 1, 2012, nonregulatory guidance to school
33 administrative units, public charter schools, private schools and other covered entities that
34 are subject to the requirements of Chapter 33.

FISCAL NOTE REQUIRED
(See attached)



125th MAINE LEGISLATURE

LD 1838

LR 2820(02)

Resolve, Regarding Legislative Review of Chapter 33: Regulations Governing Timeout Rooms, Therapeutic Restraints and Aversives in Public Schools and Approved Private Schools, a Major Substantive Rule of the Department of Education

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-820)
Committee: Education and Cultural Affairs
Fiscal Note Required: Yes

Fiscal Note

State Mandate - Exempted

State Mandates

Required Activity

Requires local school administrative units to:

Unit Affected

School

Local Cost

Moderate statewide

~ prepare quarterly and annual reports documenting incidents of restraint and seclusion to be submitted to superintendents and the Department of Education;

~ debrief staff and students involved in each incident of physical restraint or seclusion within 2 days of incident;

~ after debriefing, requires staff to develop and implement a written plan (or review and revise plan if it already exists) for response and de-escalation for the student;

~ develop a local complaint process to address parent complaints about the use of restraint or seclusion.

Pursuant to the Mandate Preamble, the two-thirds vote of all members elected to each House exempts the state from the constitutional requirement to fund 90% of the additional costs.

Fiscal Detail and Notes

Additional costs to the Department of Education associated with implementing this rule change and providing the required guidance can be absorbed within existing budgeted resources.