

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1376

H.P. 997

House of Representatives, March 26, 2019

**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**

Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.

Robert B. Hunt

ROBERT B. HUNT
Clerk

Presented by Representative FARNSWORTH of Portland.
Cosponsored by Representatives: CRAVEN of Lewiston, CROCKETT of Portland, HANDY of Lewiston, MADIGAN of Waterville, McCREIGHT of Harpswell, PERRY of Calais, WARREN of Hallowell.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **PART A**

3 **Sec. A-1. 20-A MRSA §7008** is enacted to read:

4 **§7008. Report on data regarding the use of physical restraint and seclusion**

5 The commissioner shall submit a report on data regarding the use of physical restraint
6 and seclusion collected pursuant to the department's rules governing physical restraint
7 and seclusion and special education. Each covered entity shall submit to the department
8 an annual report on incidents of physical restraint and seclusion that includes:

9 **1. Number of uses; physical restraint.** The aggregate number of uses of physical
10 restraint;

11 **2. Number of students; physical restraint.** The aggregate number of students
12 placed in physical restraint;

13 **3. Number of uses; seclusion.** The aggregate number of uses of seclusion;

14 **4. Number of students; seclusion.** The aggregate number of students placed in
15 seclusion;

16 **5. Number of injuries to students.** The aggregate number of serious bodily injuries
17 to students related to physical restraint and seclusion; and

18 **6. Number of injuries to staff.** The aggregate number of serious bodily injuries to
19 staff related to physical restraint and seclusion.

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

25 As used in this section, "covered entity" means an entity that owns, operates or
26 controls a school or educational program that receives public funds from the department,
27 including, but not limited to, public schools, public regional programs, public charter
28 schools, private schools, private schools approved for tuition purposes, special purpose
29 private schools, career and technical education programs, public prekindergarten
30 programs and the Child Development Services System.

31 **PART B**

32 **Sec. B-1. Physical restraint and seclusion policies for special education**
33 **students.** The Department of Education shall amend its rule Chapter 101: Maine
34 Unified Special Education Regulation Birth to Age Twenty to:

1 1. In Chapter 101, Section II, Definitions: include from its rule Chapter 33: Rule
2 Governing Physical Restraint and Seclusion definitions regarding behavior intervention
3 plans, physical escort, physical prompt, physical restraint and seclusion;

4 2. In Chapter 101, Section VI, Individualized Plan Team Membership, subsection 2,
5 Individualized Family Service Plan (IFSP) Team or Individualized Education Program
6 (IEP) Team for Children Three to Twenty, paragraph C, IEP Team Meetings - Transition
7 Services, subparagraph (2), Transition from Regional CDS site to Public School, in that
8 portion regarding Child Development Services System staff's preparing information to
9 share with a school administrative unit: add instructions to share documentation related
10 to Chapter 33, Section 8 with school administrative units;

11 3. In Chapter 101, Section VI, Individualized Plan Team Membership, subsection 2,
12 Individualized Family Service Plan (IFSP) Team or Individualized Education Program
13 (IEP) Team for Children Three to Twenty, paragraph J, Major IEP Team Responsibilities:
14 add language setting out the responsibility to meet and review pursuant to Chapter 33,
15 Section 9.2;

16 4. In Chapter 101, Section XVI, Dispute Resolution Procedures: (Mediations,
17 Complaints and Hearings), subsection 1, Right to Dispute Resolution, Generally,
18 paragraph A, regarding children from birth to 2 years of age, and paragraph B, regarding
19 children from 3 to 20 years of age, in the provisions regarding complaints, requests for
20 mediation and requests for due process hearings: add references to Chapter 33 to allow
21 parents or school administrative units to make complaints and submit requests for
22 mediation and due process hearings with regard to the rule when physical restraint or
23 seclusion has been used on a student eligible for special education; and

24 5. In Chapter 101, Appendix 1, Notice of Procedural Safeguards, in the provision
25 regarding communication of procedural safeguards, 34 Code of Federal Regulations,
26 Section 300.504, division (a): add a requirement that a copy of procedural safeguards
27 available to the parents of a child with a disability or an adult student with a disability
28 must be accompanied with the incident report provided under Chapter 33, Section 8.2 and
29 a requirement that the school administrative unit provide the parent with a guide that
30 explains Chapter 33.

31 **PART C**

32 **Sec. C-1. Performance review system.** The Department of Education shall
33 adopt major substantive rules that develop a performance review system to define and
34 monitor school administrative units' and special purpose programs' use of physical
35 restraint and seclusion. The performance review system must monitor compliance with
36 the department's rule Chapter 33, including the requirement of submitting data to the
37 department. The performance review system must identify accountability standards and
38 identify when a school administrative unit's or special purpose program's level of
39 incidents of physical restraint and seclusion exceeds average levels. The performance
40 review system must include a compliance plan program to require the school
41 administrative unit or special purpose program to reduce use of physical restraint and
42 seclusion with specific targets and time frames. Rules adopted pursuant to this section
43 must be submitted for legislative review no later than December 5, 2019.

1 **Sec. C-2. Guide for information regarding rule.** The Commissioner of
2 Education shall develop and provide information about rules adopted under section 1,
3 including a guide that includes a template for a school administrative unit or special
4 purpose program to use to explain any additional local policies or local complaint
5 processes.

6 **SUMMARY**

7 This bill directs the Department of Education to amend its rule Chapter 101: Maine
8 Unified Special Education Regulation Birth to Age Twenty to include concepts from and
9 references to the department's rule Chapter 33: Rule Governing Physical Restraint and
10 Seclusion.

11 It directs schools to make annual reports to the department regarding incidents of
12 physical restraint and seclusion and directs the Commissioner of Education to report
13 biennially to the Governor and the Legislature on data regarding the use of physical
14 restraint and seclusion.