

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-THIRD LEGISLATURE**

**SECOND REGULAR SESSION**  
**January 2, 2008 to March 31, 2008**

**FIRST SPECIAL SESSION**  
**April 1, 2008 to April 18, 2008**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 30, 2008**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 18, 2008**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2008**

A. For a gubernatorial candidate, at least 3,250 verified registered voters of this State must support the candidacy by providing a qualifying contribution to that candidate;

B. For a candidate for the State Senate, at least 150 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate; or

C. For a candidate for the State House of Representatives, at least 50 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate.

A payment, gift or anything of value may not be given in exchange for a qualifying contribution. A candidate may pay the fee for a money order that is a qualifying contribution in the amount of \$5 as long as the donor making the qualifying contribution pays the \$5 amount reflected on the money order. Any money order fees paid by a participating candidate must be paid for with seed money and reported in accordance with commission rules. A money order must be signed by the contributor to be a valid qualifying contribution. The commission may establish by routine technical rule, adopted in accordance with Title 5, chapter 375, subchapter 2-A, a procedure for a qualifying contribution to be made by a credit or debit transaction and by electronic funds transfer over the Internet. Records containing information provided by individuals who have made qualifying contributions over the Internet are confidential, except for the name of the individual making the contribution, the date of the contribution, the individual's residential address and the name and office sought of the candidate in whose support the contribution was made.

It is a violation of this chapter for a participating candidate or an agent of the participating candidate to misrepresent the purpose of soliciting qualifying contributions and obtaining the contributor's signed acknowledgement.

**Sec. 12. 21-A MRSA §1125, sub-§12**, as enacted by IB 1995, c. 1, §17, is amended to read:

**12. Reporting; unspent revenue.** Notwithstanding any other provision of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission. If a certified candidate pays fund revenues to a member of the candidate's immediate family or a business or nonprofit entity affiliated with a member of the candidate's immediate family, the candidate must disclose the family relationship in a manner prescribed by the commission. Upon the filing of a final report for any primary election in which the candidate was defeated and for all general elections

that candidate shall return all unspent fund revenues to the commission. In developing these procedures, the commission shall utilize existing campaign reporting procedures whenever practicable. The commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective April 7, 2008.

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## CHAPTER 572

### H.P. 1446 - L.D. 2062

#### An Act Regarding Education Laws

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

#### PART A

**Sec. A-1. 20-A MRSA §401-A**, as enacted by PL 1987, c. 395, Pt. A, §47, is amended to read:

#### **§401-A. Responsibilities of the State Board of Education**

The State Board of Education is intended to act as a body with certain policy-making, administrative and advisory functions. In those capacities, the board has the primary responsibility for the following:

- 1. Formulating policy.** Formulating policy by which the commissioner shall administer certain regulatory tasks;
- 2. Advising commissioner.** Advising the commissioner in the administration of all the mandated responsibilities of that position; and
- 3. Enforcing regulatory requirements.** Enforcing regulatory requirements for school administrative units.

The state board may advise the commissioner and the Legislature on matters concerning state laws relating to public preschool to grade 12 and postsecondary education.

**Sec. A-2. 20-A MRSA §5401, sub-§1**, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

- 1. Municipal school units.** The superintendent of schools in a municipal school unit shall, with the approval of the school board, provide transportation for elementary school students and public preschool students a part of or the whole distance to and from the nearest suitable elementary school. The municipality

may provide transportation for secondary level students.

**Sec. A-3. 20-A MRSA §5401, sub-§2, ¶A,** as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

A. Elementary school students and public preschool students a part of or the whole distance to and from the nearest suitable school; and

**Sec. A-4. 20-A MRSA §5401, sub-§3, ¶A,** as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

A. Instruct the superintendent of schools to provide transportation for elementary and secondary school students and public preschool students all or a part of the way to and from the nearest suitable school; or

**Sec. A-5. 20-A MRSA §5401, sub-§17** is enacted to read:

**17. Rules.** The department may adopt rules to implement the provisions of this section. A rule authorized or provisionally adopted by the department pursuant to this subsection or Title 29-A, section 2311 after January 1, 2008 that concerns the transportation of public preschool students is a major substantive rule and subject to legislative review in accordance with Title 5, chapter 375, subchapter 2-A. An amendment to a rule adopted pursuant to this subsection or Title 29-A, section 2311 prior to January 1, 2008 is considered a major substantive rule when the amendment concerns the transportation of public preschool students, and it is subject to legislative review in accordance with Title 5, chapter 375, subchapter 2-A.

**Sec. A-6. 20-A MRSA c. 407,** as amended, is repealed.

**Sec. A-7. 20-A MRSA §10701, sub-§2,** as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

**2. Degree.** "Degree" means a document of achievement at the associate level or higher conferred by a ~~post-secondary~~ postsecondary educational institution authorized to confer that degree in its home state. It includes educational, academic, literary ~~or~~ and professional degrees. It also includes associate, baccalaureate, ~~masters or~~ master's and doctoral degrees and certificates of advanced graduate studies.

**Sec. A-8. 20-A MRSA §10701, sub-§3,** as amended by PL 1991, c. 563, §3 and PL 2003, c. 20, Pt. OO, §2 and affected by §4, is further amended to read:

**3. Educational institution.** "Educational institution" means any person, partnership, board, association, institution or corporation other than the University of Maine System and the Maine Community College System and the Maine Maritime Academy that

offers academic, educational, literary or professional courses or programs.

**Sec. A-9. 20-A MRSA §10702,** as amended by PL 1987, c. 395, Pt. A, §81, is further amended to read:

**§10702. Use of name "community college," "college" or "university"**

An educational institution may use the term "~~junior~~ community college," "college" or "university" in connection with its operation or use any other name, title or descriptive matter ~~which that~~ that might tend to indicate that it is an institution of higher learning with the authority to confer degrees, only if it:

**1. Temporary approval.** Is operating under a license or certificate of temporary approval from the state board in accordance with section 10703; or

**2. Authorization.** Has authorization to confer degrees in accordance with sections 10704 and 10704-A.

**Sec. A-10. 20-A MRSA §10703,** as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

**§10703. Temporary approval to use the name "community college," "college" or "university"**

**1. Power.** The state board may grant an applicant a certificate of temporary approval, permitting use of the term "~~junior~~ community college," "college" or "university" in its name until the earlier of:

A. The expiration of the academic year; or

B. The applicant is authorized by the Legislature to grant degrees in accordance with section 10704.

**2. Extensions and renewals.** The state board may extend or renew a certificate of temporary approval for not more than 2 years.

**Sec. A-11. 20-A MRSA §10705,** as amended by PL 1987, c. 395, Pt. A, §84, is further amended to read:

**§10705. Courses for credit**

An educational institution may offer courses or programs for academic credit leading to degree-completion requirements only if:

**1. Authority.** It has been authorized under sections 10704 and 10704-A to grant degrees;

**2. State board authority.** It has been given temporary authority by the state board to use the name "~~junior~~ community college," "college" or "~~university,~~" "university"; or

**3. Out-of-state institution.** It is:

A. Located ~~in another state~~ outside the State; and

B. Authorized by the state board to offer courses for academic credit leading to degree-completion requirements.

~~An educational institution may offer courses or programs for academic credit if it offers coordinated courses or programs in conformity with section 10706.~~

**Sec. A-12. 20-A MRSA §10706**, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

**§10706. Coordinated programs**

An educational institution may offer ~~courses or~~ programs for academic credit ~~which that~~ are coordinated with a Maine degree-granting educational institution and ~~which that~~ have been approved by the state board.

**Sec. A-13. 20-A MRSA §10707, sub-§2**, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

**2. Temporary use of name.** Applications for temporary state board authority to use the name "~~junior~~ community college," "college" or "university" ~~shall~~ must be made to the state board on forms provided by the commissioner.

**Sec. A-14. 20-A MRSA §10712, last ¶**, as enacted by PL 1991, c. 563, §4, is amended to read:

Upon termination of its degree-granting authority pursuant to this section, an educational institution may apply to the state board pursuant to section 10703 for a certificate of temporary approval to use the term "~~junior~~ community college," "college" or "university" in its name.

**Sec. A-15. 20-A MRSA §10713, sub-§1**, as enacted by PL 1991, c. 563, §4, is amended to read:

**1. Investigations.** Whenever the state board believes that an event, transaction or condition within the scope of section 10712 may have occurred or may exist, it may conduct an investigation, which may include, but is not limited to, an examination of the educational institution by a visiting committee convened by the state board for that purpose. As part of an investigation conducted under this subsection, the state board has the power to subpoena and examine under oath educational institutions, their trustees, directors, officers and employees, lenders, creditors and investors, together with their records, books and accounts. ~~Any member of the state board may sign investigative subpoenas and administer oaths to witnesses.~~ The state board may also require the educational institution to provide other written information relevant to the subject matter of the investigation in the format prescribed by the state board. The Superior Court has jurisdiction upon complaint filed by the state board to

enforce any subpoena or request for other written information issued under this subsection.

**Sec. A-16. 22 MRSA §1971, sub-§1**, as amended by PL 2007, c. 1, Pt. D, §3, is further amended to read:

**1. Establishment.** The position of school nurse consultant is established jointly within the department and the Department of Education. The Director of the ~~Bureau of Health~~ Maine Center for Disease Control and Prevention and the Policy Director of Special Services within the Department of Education shall jointly supervise the school nurse consultant.

**Sec. A-17. 29-A MRSA §2311**, as affected by PL 1993, c. 683, Pt. B, §5 and amended by PL 1995, c. 82, §1, is further amended to read:

**§2311. Rules**

The Commissioner of Education may adopt or amend rules consistent with this Title and in accordance with the Maine Administrative Procedure Act, concerning school bus construction, equipment, operation and identification. Rules adopted pursuant to this section that concern the transportation of public preschool students are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

**PART B**

**Sec. B-1. 20-A MRSA §7209, sub-§1, ¶B**, as amended by PL 2007, c. 307, §1, is further amended to read:

B. ~~During the period from July 1, 2006 to June 30, 2008, the~~ The department, in a manner consistent with the authority of the board of directors of an intermediate educational unit, shall approve the annual entitlement plan and the budget for an intermediate educational unit pursuant to subsection 6 only in accordance with the following.

(1) The department shall approve the entitlement plan and the budget if the provisions of the entitlement plan and the budget are in compliance with the statewide standards established by the state intermediate educational unit pursuant to subsection 3 for the purpose of ensuring coordinated service delivery in each region of the State.

(2) In the event that the department determines that the provisions of the annual entitlement plan and the budget presented by a board of directors of an intermediate educational unit are not in compliance with the statewide standards established pursuant to subsection 3, the department shall require the board of directors of the intermediate educational unit to revise and resubmit the annual entitlement plan and the budget in a reason-

able amount of time as determined by the commissioner.

(3) In the event the provisions of the resubmitted annual entitlement plan and the budget are not in compliance with the statewide standards established pursuant to subsection 3, the department is authorized to determine and approve an appropriate, final annual entitlement plan and a budget for the intermediate educational unit that is in compliance with the statewide standards established pursuant to subsection 3.

~~This paragraph is repealed June 30, 2008.~~

**Sec. B-2. 20-A MRSA §7209, sub-§2**, as amended by PL 2007, c. 307, §2, is further amended to read:

**2. State-level advisory committee.** The state-level advisory committee is established ~~for the period from July 1, 2006 to June 30, 2008~~ to advise on the provisions of this section. Members of the state-level advisory committee are appointed by the commissioner and must include representatives from each board of directors of a regional site described in subsection 5, the early childhood education consultant and the director of early childhood special education within the department. ~~This subsection is repealed June 30, 2008.~~

**Sec. B-3. 20-A MRSA §7209, sub-§3**, as corrected by RR 2007, c. 1, §9, is further amended to read:

**3. State intermediate educational unit.** The commissioner shall establish and supervise the state intermediate educational unit. The state intermediate educational unit is established as a body corporate and politic and as a public instrumentality of the State for the purpose of conducting child find activities as provided in 20 United States Code, Section 1412 (a) (3) for children from birth to under 6 years of age, ensuring the provision of early intervention services for eligible children from birth to under 3 years of age and ensuring a free, appropriate public education for eligible children at least 3 years of age and under 6 years of age. ~~For the period from July 1, 2006 to June 30, 2008, the~~ The state intermediate educational unit shall perform the following statewide coordination and administration functions:

A. Establish standard policies and procedures for a statewide salary and benefits administration system, including personnel classifications, position descriptions and salary ranges, and a standard package of health, retirement and other fringe benefits for Child Development Services System personnel, which must be included in the annual entitlement plan described in subsection 1 beginning in fiscal year 2006-07;

B. Develop a statewide salary and benefits administration system and perform the payroll functions for Child Development Services System personnel;

B-1. Bargain collectively under Title 26, chapter 9-A if the employees of the regional sites choose to be represented by an agent for purposes of collective bargaining. In such circumstances, the state intermediate educational unit must be considered the public employer for purposes of collective bargaining;

C. Establish a centralized system for statewide fiscal administration to be implemented by September 1, 2006. The state intermediate educational unit shall establish internal controls and implement accounting policies and procedures in accordance with standards set forth by the State Controller;

D. Develop and implement a centralized data management system to be fully operational beginning July 1, 2007;

E. Establish a standard, statewide template for regional site contracts with therapeutic service providers, including policies and procedures for the review of contracts, that must be included in the annual entitlement plan described in subsection 1, beginning in fiscal year 2006-07;

F. Refine program accountability standards for compliance with federal mandates that must be included in the annual entitlement plan described in subsection 1, including the development of a performance review system to monitor and improve regional site performance through the use of efficiency ratings aligned with the accountability standards and through a compliance plan that requires the regional site to address the unmet needs of eligible children in accordance with specific targets and time frames;

G. Design and implement a statewide plan to provide professional development and training to Child Development Services System personnel;

H. Employ professional and other personnel, including those necessary to ensure the implementation of the centralized fiscal and data management systems. All state intermediate educational unit employees are employees for the purposes of the Maine Tort Claims Act; and

I. Enter into contracts, leases and agreements and any other instruments and arrangements that are necessary, incidental or convenient to the performance of its duties and the execution of its powers under this chapter.

**Sec. B-4. 20-A MRSA §7209, sub-§7, ¶C**, as amended by PL 2007, c. 307, §6, is further amended to read:

C. Ensure data entry and reporting through June 30, 2008; and

See title page for effective date.

## CHAPTER 573

### H.P. 1518 - L.D. 2138

#### An Act To Amend the Requirements for Approval of the Use of Physical Restraints

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

**Sec. 1. 34-B MRSA §5605, sub-§14**, as amended by PL 2003, c. 564, §3, is repealed.

**Sec. 2. 34-B MRSA §5605, sub-§14-A** is enacted to read:

**14-A. Physical restraints.** A person with mental retardation or autism is entitled to be free from a physical restraint unless:

A. The physical restraint is a short-term step to protect the person from imminent injury to that person or others; or

B. The physical restraint has been approved as a behavioral treatment program in accordance with this section.

A physical restraint may not be used as punishment, for the convenience of the staff or as a substitute for habilitative services. A physical restraint may impose only the least possible restriction consistent with its purpose and must be removed as soon as the threat of imminent injury ends. A physical restraint may not cause physical injury to the person receiving services and must be designed to allow the greatest possible comfort and safety. The use of totally enclosed cribs and barred enclosures is prohibited in all circumstances.

Daily records of the use of physical restraints identified in paragraph A must be kept, which may be accomplished by meeting reportable event requirements.

Daily records of the use of physical restraints identified in paragraph B must be kept, and a summary of the daily records pertaining to the person must be made available for review by the person's planning team, as defined in section 5461, subsection 8-C, on a schedule determined by the team. The review by the personal planning team may occur no less frequently than quarterly. The summary of the daily records must state the type of physical restraint used, the duration of the use and the reasons for the use. A monthly summary of all daily records pertaining to all persons must be relayed to the Office of Advocacy.

**Sec. 3. 34-B MRSA §5605, sub-§14-B** is enacted to read:

**14-B. Mechanical supports.** Mechanical supports used in normative situations to achieve proper body position and balance are not considered physical restraints, but mechanical supports must be prescriptively designed and applied under the supervision of a qualified professional with concern for principles of good body alignment and circulation and allowance for change of position.

**Sec. 4. 34-B MRSA §5605, sub-§14-C** is enacted to read:

**14-C. Safety devices.** A safety device whose effect is to reduce or inhibit a person's movement in any way but whose purpose is to maintain or ensure the safety of the person is not considered behavioral treatment or a physical restraint. Safety devices include, but are not limited to, implements, garments, gates, barriers, locks or locking apparatus, alarms, helmets, masks, gloves, straps, belts or protective gloves whose purpose is to maintain the safety of the person. The department may adopt rules concerning the use and approval of safety devices. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

See title page for effective date.

## CHAPTER 574

### S.P. 752 - L.D. 1958

#### An Act To Make Marine Resources Management More Responsive

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

**Sec. 1. 12 MRSA §6171, sub-§5**, as amended by PL 2007, c. 157, §1, is repealed and the following enacted in its place:

**5. Rules to limit taking of marine organisms.** The commissioner may adopt rules that limit the taking of a marine organism for the purpose of protecting another marine organism.

A. Rules adopted pursuant to this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

B. If the commissioner determines that for biological reasons a rule adopted under this section must take effect prior to final adoption under paragraph A, the commissioner may adopt the rule as a routine technical rule pursuant to Title 5, chapter 375, subchapter 2-A. A rule adopted under this paragraph is effective until 90 days after the adjournment of the next regular session of the