

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND TWELVE

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**

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.

Emergency preamble. **Whereas,** acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

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;

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

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

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

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

Sec. 2. Department of Education; nonregulatory guidance. Resolved:

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

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

In House of Representatives, 2012

Read and passed finally.

..... Speaker

In Senate, 2012

Read and passed finally.

..... President

Approved 2012

..... Governor