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Date: (Filing No. H-)

JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
132ND LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 797, L.D. 1222, “An Act to Limit Sovereign Immunity for Schools and School Superintendents”

Amend the bill by striking out the title and substituting the following:

'An Act to Limit Sovereign Immunity for School Administrative Units and School Superintendents'

Amend the bill by inserting after the title and before the enacting clause 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 bill in section 3 in subsection 5 in the last line (page 1, line 10 in L.D.) by striking out the following: "subsection 1" and inserting the following: 'subsection 2'

Amend the bill in section 4 in subsection 3 in the last line (page 1, line 21 in L.D.) by striking out the following: "subsection 1" and inserting the following: 'subsection 2'

Amend the bill by striking out all of section 5 and inserting the following:

'Sec. 5. 14 MRSA §8104-E is enacted to read:

§8104-E. School administrative units and school superintendents

1. Definitions. For the purposes of this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Failure to report" includes any act of suppressing, delaying or discouraging a staff member, student or parent from reporting abuse or misconduct or ignoring abuse or misconduct.

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1 B. "Grooming behavior" means any deliberate conduct intended to establish an
2 emotional connection or trust with a minor for the purpose of sexual abuse, exploitation
3 or manipulation.

4 C. "Gross negligence" includes reckless disregard or conscious indifference to a known
5 or obvious risk to student safety.

6 **2. Limited immunity for school administrative units and school superintendents.**
7 Notwithstanding the provisions of section 8103, this chapter does not grant immunity to a
8 school administrative unit or school superintendent for tort claims seeking recovery of
9 damages based on the following conduct:

10 A. A discretionary policy decision involving gross negligence or willful misconduct;

11 B. A failure to act on known or reported sexual misconduct, grooming behavior, abuse
12 or exploitation involving any student or staff member under the school administrative
13 unit’s or school superintendent’s authority;

14 C. A failure to report suspected abuse or neglect to a law enforcement agency or the
15 Department of Health and Human Services as required under subsection 4 and Title
16 22, section 4011-A;

17 D. Knowingly reassigning, rehiring or concealing an individual who is the target of a
18 credible investigation for misconduct that could endanger students;

19 E. Willful misconduct; or

20 F. Criminal activity.

21 **3. Notice required.** A complaint for conduct under subsection 2, paragraphs A to F
22 may not be filed unless the plaintiff has provided written notice to the school administrative
23 unit or school superintendent at least 60 days prior to filing the complaint. The school
24 administrative unit or school superintendent may investigate or resolve the matter through
25 mediation or administrative review during the notice period under this subsection.

26 **4. School employees and staff members.** This section does not apply to school
27 employees or staff members, including teachers, acting within the course and scope of
28 employment for the school administrative unit, except in cases of gross negligence, willful
29 misconduct or criminal activity. A school administrative unit shall indemnify all staff
30 members and employees for a claim arising out of an act by a school administrative unit
31 staff member or employee performing an official duty.

32 **5. Mandatory reporting.** Each school administrative unit shall establish, publish and
33 enforce a mandatory reporting policy consistent with the Child and Family Services and
34 Child Protection Act, including requirements to:

35 A. Investigate credible complaints of educator misconduct;

36 B. Promptly report known or suspected abuse or grooming behavior to an appropriate
37 law enforcement agency not within the school administrative unit and to the
38 Department of Health and Human Services;

39 C. Maintain documentation regarding outcomes of educators’ misconduct complaints
40 or disciplinary action taken against educators based on those complaints; and

41 D. Prevent the reassignment of any school employee or staff member under
42 investigation for misconduct.

1 Failure to comply with this subsection may be considered grounds for civil liability under
2 subsection 2.

3 **6. Liability insurance.** A school administrative unit shall maintain liability insurance
4 coverage sufficient to cover a potential claim involving conduct under subsection 2,
5 paragraphs A to F. The Department of Education may establish a fund or provide other
6 financial support to a school administrative unit to carry out the purposes of this subsection.

7 **7. Report.** Beginning October 1, 2027 and annually thereafter, the Department of
8 Education shall submit a report to the joint standing committee of the Legislature having
9 jurisdiction over education matters on the impact and effectiveness of this section.'

10 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
11 number to read consecutively.

12 **SUMMARY**

13 This amendment changes the title of the bill and clarifies the bill's provisions that
14 immunity under the Maine Tort Claims Act does not apply to school administrative units
15 and school superintendents for certain conduct involving a discretionary policy involving
16 failure to report gross negligence, willful misconduct or criminal activity. The amendment
17 also requires the establishment of a mandatory reporting policy for any credible complaint
18 of educator misconduct, including suspected abuse or grooming behavior.

19 The amendment also adds a mandate preamble.

20 **FISCAL NOTE REQUIRED**

21 **(See attached)**