

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name: Department of Education
Umbrella-Unit: 05-071
Statutory authority: 20-A §4104 (5)
Chapter number/title: Ch. 33, Rules Governing Physical Restraint and Seclusion
Filing number: 2023-105
Effective date: 8/6/2023
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

The Department is submitting a final adoption of the legislatively reviewed Chapter 33: Rules Governing Physical Restraint and Seclusion. The Department opened two comment periods and worked the rule through the major substantive rulemaking process which included full legislative review. This rule revision was promoted by statutory changes that were made regarding restraint and seclusion. The revised rule includes new definitions, prohibitions on unlawful restraint and seclusions, reporting requirements and expectations for the provisions of technical assistance. These changes required targeted revisions to ensure that the rule for restraint and seclusion procedures is in line with the statute. The provisional rule was filed with the Secretary of State on December 8, 2022 and delivered to the Legislative Council on the same day. The rule received a public hearing in the Education and Cultural Affairs Committee and was heard and debated in both the House and the Senate. The language was signed by the Governor on June 12, 2023.

Basis statement:

As a result of Public Law 2021, Chapter 453, statutory changes were made regarding restraint and seclusion, which necessitating revisions to the Chapter 33 rules. There are new definitions, prohibitions on unlawful restraint and seclusions, reporting requirements and expectations for the provisions of technical assistance. These statutory changes will require targeted revisions to ensure that the rule for restraint and seclusion procedures is aligned with the statute.

Fiscal impact of rule:

None.

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Agency name: Department of Education
Umbrella-Unit: 05-071
Statutory authority: 20-A §7005(1); §8054
Chapter number/title: Ch. 101, Maine Unified Special Education Regulation Birth to Age 20
Filing number: 2023-104
Effective date: 7/7/2023
Type of rule: Major Substantive
Emergency rule: Yes

Principal reason or purpose for rule:

The Department of Education has identified a barrier to its obligation pursuant to the Individuals with Disabilities Education Act (IDEA) and the Maine Unified Special Education Regulation (MUSER) to ensure the provision of a free, appropriate public education (FAPE) to all eligible students including the availability of a continuum of educational placements. The current funding structure outlined in Section XVIII.C(C) of MUSER for private schools that serve exclusively students with disabilities (referred to throughout as “special purpose private schools”) is causing those schools to limit or cease operations, leaving some of Maine’s most significantly impacted children without the educational placements they are entitled to by law. Further breakdown of this critical component of the continuum of educational placements will leave the State unable to maintain compliance with IDEA and MUSER.

Basis statement:

In March 2023, The Department of Education (DOE) implemented emergency measures to address the financial shortage facing Maine's special purpose private schools. At that time, the DOE deployed available resources to provide a financial stop-gap. In the immediate sense, these resources provided temporary relief, however, on May 31, the Department of Education determined that fiscal year 2024 is a critical timeline for the financial stability of special purpose private schools and the availability of a continuum of educational placements for students with disabilities. In order to ensure compliance with Individuals with Disabilities Education Act (IDEA) and the Maine Unified Special Education Regulation (MUSER) and to ensure the provision of a free, appropriate public education (FAPE) to all eligible students, the Department has chosen to move forward with an emergency rule change. The current funding structure outlined in Section XVIII.3.C(2) of MUSER for private schools that serve exclusively students with disabilities (referred to throughout as "special purpose private schools") is causing those schools to limit or cease operations, leaving some of Maine's most significantly impacted children without the educational placements they are entitled to by law. Further breakdown of this critical component of the continuum of educational placements will leave the State unable to maintain compliance with IDEA and MUSER at the start of the 2024 fiscal year.

Based on the detailed findings below in the "findings of emergency," Department has determined that a rule change is necessary on an emergency basis in order to protect the public health, safety and general welfare by ensuring that there is a continuum of placements available for all students with individualized education programs (IEPs) in accordance with federal and state law as follows:

- Change #1: Section XVIII.3.C(2) is amended to change the required number of instructional days to the "days on which instruction was provided in accordance with the school's calendar" rather than the *actual days of student attendance for the year*.

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Rationale: The current funding formula penalizes the private school when a student is unable to attend, even if the lack of attendance is due to a disability-related reason, despite the obligation of the private school to have staff and supports available for the student every day of the school year.

•Change #2: adds a section (3-A) to ensure "Each SAU shall pay the daily tuition rate calculated above for the total number of student days, regardless of whether the student is in attendance each day, with the following exception: the IEP Team determines whether a student attends during ESY/full-year programming: if the IEP Team decides a student doesn't need ESY full-year programming, the SAU is not required to pay the daily tuition rate for any day that falls outside the student's program year (e.g. during the summer months.)" Rationale: Some students attend special purpose private schools only during the regular school year, while others attend extended school year, or year-round programming. Because the revised rule moves away from linking payment to attendance, an exception was warranted to provide that the sending SAU is only obligated to pay for the days in each student's program, instead of having every SAU pay for the full year, despite sending a student for the regular school year only. A Note has been added following this language to clarify specifically what changes when a student attends only during the regular school year.

•Change #3: adds a section 4(D) which provides that "nothing in subparagraph (4) shall limit any increase in the tuition rate resulting from the change in calculating the number of student days in subparagraph 2) from the actual days of student attendance to the days on which instruction was provided in accordance with the school's calendar." Rationale: This change ensures that any increase in tuition resulting from the change in 2023 does not get reduced by the cap on the percentage of increase from year to year.

Fiscal impact of rule:

None.

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Agency name: Department of Education
Umbrella-Unit: 05-071
Statutory authority: Title 20-A MRSA §4008-A(3)
Chapter number/title: Ch. 117, Rule Regarding the Duties of School Counselors and School Social Workers
Filing number: 2023-229
Effective date: 12/9/2023
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

Chapter 117 outlines standards for the professional qualifications and duties of school counselors and school social workers; including appropriate roles, and use of time. This rule was developed over two years of conceptual discussions with various stakeholder groups including school-based counselors, social workers, and the Maine chapter of the National Association of Social Workers and in response to Public Law 2019, chapter 45, an Act to Increase the Amount of Time School Counselors and Social Workers Spend Providing Students Direct and Indirect Counseling. The new rule establishes that each school counselor and each school social worker shall spend at least 80% of their time providing indirect and direct services on behalf of students in accordance with 20-A MRSA §4008-A(2). A public hearing was scheduled October 24 2022 which was followed by a comment period that concluded on November 14, 2022. The provisional rule was filed with the Secretary of State on December 8, 2022 and delivered to the Legislative Council on the same day. The rule received a public hearing in the Education and Cultural Affairs Committee and was heard and debated in both the House and the Senate. The language was signed by the Governor on June 8, 2023.

Basis statement:

As a result of Public Law 2019, Chapter 45, statutory changes were made regarding school counselors and social workers. which necessitated the development of a rule regarding the duties of school counselors, including that a school counselor delivers a comprehensive school counseling program, and guidelines regarding the duties of school social workers. There are new definitions, scope of work by practice, and use of time identified in the new rule. The statutory changes require a rule to ensure that the professional qualifications and duties of school counselors and social workers including appropriate roles and use of time are aligned with statute.

Fiscal impact of rule:

None