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Resolve, To Direct the Department of Education To Amend Its Rules Regarding Restraint of Students

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

Whereas, significant revisions to Department of Education Rule Chapter 33 governing the restraint and seclusion of students took effect July 1, 2012; and

Whereas, educators, administrators and parents have expressed concern with the limitations on the use of restraint and seclusion; and

Whereas, because Rule Chapter 33 is a major substantive rule, changes to the rule require legislative review before the changes may be made; and

Whereas, the Legislature has authority to direct the Department of Education to amend its rule to reflect legislative policy determinations; and

Whereas, educators and administrators need tools immediately to restore order to classrooms through limited additional uses of restraint or seclusion; 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 Amendment of rule. Resolved: That the Department of Education shall amend portions of Chapter 33: Rule Governing Physical Restraint and Seclusion as follows.

1. The rule must be amended in Section 2 to replace the definition of physical escort with language that provides that physical escort is the temporary touching or holding of a student who is acting out, for the purpose of inducing that student to walk to a safe location and that if the student is under 8 years of age, physical escort includes picking up the student, with the use of minimal force, in order to move the student to a safe location.

2. The rule must be amended in Section 2 to provide that physical restraint may include a brief period of physical restriction by person-to-person contact accomplished with minimal force and designed to prevent a student from causing injury or harm, property destruction or disruption of the educational environment.

3. The rule must be amended wherever necessary to indicate that the use of seclusion or restraint is allowed to prevent significant property damage and to prevent disruption of the educational environment.

4. The rule must be amended to allow restraint or seclusion of a student under the circumstances described in a written document signed by that student's parent.

Sec. 2 Expedited amendment process. Resolved: That, notwithstanding the Maine Revised Statutes, Title 5, chapter 375, subchapters 2 and 2-A or any other law, the Department of Education shall amend its Rule Chapter 33: Rule Governing Physical Restraint and Seclusion as provided in this resolve and shall file the amended rule with the Secretary of State as a final amended rule within 7 business days of the effective date of this resolve. Rules adopted pursuant to this resolve are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

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

SUMMARY

This resolve directs the Department of Education to amend its Rule Chapter 33: Rule Governing Physical Restraint and Seclusion, which limits the use of restraint and seclusion. The current rule allows the use of those interventions only to prevent an imminent risk of injury or harm to a student or others. This resolve requires the rule to be changed to allow the use of restraint or seclusion to prevent significant property damage, to prevent disruption of the educational environment and when authorized in writing by a student's parent. The resolve also requires the rule to exclude some specific, limited techniques from the definition of "physical restraint," and to amend the definition of "physical escort" to include picking up younger students. The resolve requires the department to make the required changes in the rule within 7 business days of the effective date of the resolve.