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EDUCATION AND CULTURAL AFFAIRS

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1007, L.D. 1373, “An Act To Keep All Maine Students Safe by Restricting the Use of Seclusion and Restraint in Schools”

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 20-A MRSA §4014 is enacted to read:

§4014. Use of seclusion and physical restraint

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Chemical restraint" means a drug or medication that is not prescribed as the standard treatment of a student's medical or psychiatric condition by a licensed physician or other qualified health professional acting under the scope of the professional's authority under state law that is used on a student to control behavior or restrict freedom of movement.

B. "Covered entity" means an entity that owns, operates or controls a school or educational program that receives public funds from the department, including, but not limited to, public schools, public regional programs, public charter schools, private schools, private schools approved for tuition purposes, special purpose private schools, career and technical education programs, public prekindergarten programs and providers of services pursuant to the provisions of the federal Individuals with Disabilities Education Act, Parts B and C, 20 United States Code, Section 1401 et seq. (2015).

C. "Mechanical restraint" means the use of a device to restrict a student's freedom of movement.

D. "Physical escort" means the temporary, voluntary touching or holding of the hand, wrist, arm, shoulder or back to induce a student to walk to a safe location.

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1 E. "Physical prompt" means a teaching technique that involves voluntary physical
2 contact with a student that enables the student to learn or model the physical movement
3 necessary for the development of a desired competency.

4 F. "Physical restraint" means a personal restriction that immobilizes or reduces the
5 ability of a student to move the arms, legs or head freely. "Physical restraint" does not
6 include a physical escort, mechanical restraint, physical prompt or chemical restraint.

7 G. "Seclusion" means the involuntary isolation or confinement of a student alone in a
8 room or clearly defined area from which the student does not feel free to go or is
9 physically denied exit. "Seclusion" does not include a timeout.

10 H. "Unlawful restraint" means:

11 (1) Mechanical restraint;

12 (2) Chemical restraint;

13 (3) Physical restraint or physical escort that is life-threatening, restricts breathing
14 or restricts blood flow to the brain, including prone restraint; or

15 (4) Physical restraint that is contraindicated based on Title 34-B, section 3003 or
16 section 15002 or the student's disability or health care needs or medical or
17 psychiatric condition as documented in:

18 (a) A health care directive or medical management plan;

19 (b) A behavior intervention plan;

20 (c) An individual education plan or an individual family service plan as
21 defined in the federal Individuals with Disabilities Education Act, 20 United
22 States Code, Section 1401 et seq. (2015); or

23 (d) A plan developed pursuant to the federal Rehabilitation Act of 1973, 29
24 United States Code, Section 794 (2015) or the federal Americans with
25 Disabilities Act of 1990, Title II, 42 United States Code, Section 12131 et seq.
26 (2009).

27 "Unlawful restraint" does not include a physical escort except as provided in
28 subparagraph (3), a physical prompt, the use of adaptive devices or mechanical
29 supports to achieve proper body position, balance or alignment to allow greater
30 freedom of movement than would be possible without the use of such devices or
31 supports or the use of vehicle safety restraints when used as intended during the
32 transport of a student in a moving vehicle.

33 **2. Prohibition on seclusion.** Beginning September 1, 2023, a covered entity that
34 receives state or federal assistance may not subject a student to seclusion.

35 **3. Prohibition on unlawful restraint; restriction on use of physical restraint.** A
36 covered entity that receives state or federal assistance may not subject a student to unlawful
37 restraint. A covered entity may use physical restraint only if:

38 A. The student's behavior poses an imminent danger of serious physical injury to the
39 student or another person;

40 B. Less restrictive interventions would be ineffective in stopping imminent danger of
41 serious physical injury to the student or another person;

1 C. The physical restraint ends immediately upon the cessation of imminent danger of
2 serious physical injury to the student or another person; and

3 D. The least amount of force necessary is used to protect the student or another person
4 from imminent danger of serious physical injury.

5 **4. Report on data regarding the use of physical restraint.** Each covered entity shall
6 submit to the department an annual report on incidents of physical restraint of students of
7 that covered entity that includes:

8 A. The aggregate number of uses of physical restraint;

9 B. The aggregate number of students placed in physical restraint;

10 C. The aggregate number of students with disabilities and an individualized education
11 program under the federal Individuals with Disabilities Education Act, 20 United States
12 Code, Section 1401 et seq. (2015) or a plan pursuant to the federal Rehabilitation Act
13 of 1973, 29 United States Code, Section 701 et seq. placed in physical restraint;

14 D. The aggregate number of serious physical injuries to students related to physical
15 restraint; and

16 E. The aggregate number of serious physical injuries to staff related to physical
17 restraint.

18 **5. Technical assistance.** The department shall, using existing resources, provide
19 technical assistance to covered entities by developing, implementing and providing
20 technical assistance to support evidence-based programs that reduce the likelihood of
21 physical restraint, and support students in reducing behavior that can result in physical
22 restraint, such as developmentally appropriate, positive behavior interventions, functional
23 behavioral interventions, mental health supports, restorative justice programs, trauma-
24 informed care and crisis and de-escalation interventions.

25 **6. Rules.** The department shall adopt or amend rules to carry out the purposes of this
26 section. Rules adopted pursuant to this subsection are major substantive rules as defined
27 in Title 5, chapter 375, subchapter 2-A.'

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

30 SUMMARY

31 This amendment, which is the majority report of the committee, does the following:

32 1. Delays the prohibition on seclusion until September 1, 2023 and provides that
33 seclusion does not include a timeout;

34 2. Provides that unlawful restraint does not include a physical escort unless the
35 physical escort is life-threatening, restricts breathing or restricts blood flow to the brain, a
36 physical prompt, the use of adaptive devices or mechanical supports to achieve proper body
37 position, balance or alignment to allow greater freedom of movement than would be
38 possible without the use of such devices or supports or the use of vehicle safety restraints
39 when used as intended during the transport of a student in a moving vehicle;

40 3. Provides that a covered entity may use physical restraint only if the student's
41 behavior poses an imminent danger of serious physical injury to the student or another

1 person; less restrictive interventions would be ineffective in stopping such imminent
2 danger; the physical restraint ends immediately upon the cessation of the imminent danger;
3 and the least amount of force necessary is used to protect the student or other person from
4 the imminent danger;

5 4. Removes the requirement that the Commissioner of Education submit a report on
6 data regarding the use of physical restraint;

7 5. Removes the development and implementation of a performance review system and
8 guide for information regarding the rule;

9 6. Requires the Department of Education to provide technical assistance using existing
10 resources; and

11 7. Designates the Department of Education's rule on restraint and seclusion as a major
12 substantive rule.