

STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND THIRTEEN

S.P. 79 - L.D. 243

**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 temporary touching or holding for the purpose of inducing a student to walk to another location, including assisting the student to the student's feet in order to be escorted.

2. The rule must be amended to modify the threshold for the use of physical restraint as follows:

A. In the summary of the rule to provide that physical restraint and seclusion may be used only as an emergency intervention when the behavior of a student presents a risk of injury or harm to the student or others;

B. In Section 1 of the rule to provide that physical restraint and seclusion may be used only as an emergency intervention when the behavior of a student presents a risk of injury or harm to the student or others;

C. In Section 2, subsection 6 of the rule to provide that dangerous behavior is behavior that presents a risk of injury or harm to a student or others;

D. In Section 2, subsection 9 of the rule to provide that risk of injury or harm describes a situation in which a student has the means to cause physical harm or injury to self or others and such injury or harm is likely to occur such that a reasonable and prudent person would take steps to protect the student and others against the risk of such injury or harm;

E. In Section 5, subsection 1, paragraph A to provide that seclusion may be used only as an emergency intervention when the behavior of a student presents a risk of injury or harm to the student or others and only after other less intrusive interventions have failed or been determined inappropriate;

F. In Section 5, subsection 2, paragraph B to provide that seclusion may not be used to prevent property destruction or disruption of the environment in the absence of a risk of injury or harm;

G. In Section 5, subsection 3, paragraph A to provide that a student in seclusion must be continuously monitored until the student no longer presents a risk of injury or harm to self or others;

H. In Section 5, subsection 4, paragraph A to provide that the staff involved in the use of seclusion shall continually assess the student for signs that the student is no longer presenting a risk of injury or harm to self or others and to provide that the seclusion must be discontinued as soon as possible;

I. In Section 6, subsection 1, paragraph A to provide that physical restraint may be used only as an emergency intervention when the behavior of a student presents a risk of injury or harm to the student or others and only after other less intrusive interventions have failed or been determined inappropriate;

J. In Section 6, subsection 2, paragraph B to provide that physical restraint may not be used to prevent property destruction or disruption of the environment in the absence of a risk of injury or harm;

K. In Section 6, subsection 3, paragraph B to provide that a student in physical restraint must be continuously monitored until the student no longer presents a risk of injury or harm to self or others;

L. In Section 6, subsection 4, paragraph A to provide that the staff involved in the use of physical restraint must continually assess the student for signs that the student in physical restraint is no longer presenting a risk of injury or harm to self or others

and to provide that the physical restraint must be discontinued as soon as possible; and

M. In Section 6, subsection 4, paragraph D to provide that if attempts to release the student from physical restraint have been unsuccessful and the student is still presenting behaviors that create a risk of injury or harm to self or others, the covered entity may request assistance from outside sources such as caregivers, case managers, crisis intervention teams, local emergency management services or other community resources.

3. The rule must be amended in Section 2, subsection 16 to provide that physical restraint does not include a brief period of physical contact necessary to break up a fight.

4. The rule must be amended to require the Department of Education to ensure annually that teachers and administrators throughout the State are provided with consistent and accurate information regarding the requirements of Rule Chapter 33; and be it further

**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 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Beginning July 1, 2013, any changes to Rule Chapter 33 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A; and be it further

**Sec. 3. Report. Resolved:** That the Department of Education, not later than January 10, 2014, shall submit a report to the Joint Standing Committee on Education and Cultural Affairs describing the effect of the changes required by this resolve. The Department of Education shall consult with relevant stakeholders and include feedback from these stakeholders in its report. The committee may submit a bill related to the report to the Second Regular Session of the 126th Legislature if the committee determines it is necessary to amend or adjust any language contained in this resolve; and be it further

**Sec. 4. Nonregulatory guidance. Resolved:** That the Department of Education shall, within 45 days of the effective date of the changes to Rule Chapter 33: Rule Governing Physical Restraint and Seclusion filed with the Secretary of State, develop non-regulatory guidance designed to provide accurate information to teachers and administrators regarding the requirements of the revised rule. The Department of Education shall submit a report detailing these training efforts to the Joint Standing Committee on Education and Cultural Affairs before the end of the Second Regular Session of the 126th Legislature.

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