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Legislative Document

No. 243

S.P. 79

In Senate, February 5, 2013

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

(EMERGENCY)

Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.

A handwritten signature in dark ink, appearing to read "D M Grant".

DAREK M. GRANT
Secretary of the Senate

Presented by Senator SAVIELLO of Franklin.
Cosponsored by Representative BLACK of Wilton and
Senators: BURNS of Washington, CUSHING of Penobscot, HAMPER of Oxford, KATZ of
Kennebec, LANGLEY of Hancock, MASON of Androscoggin, SHERMAN of Aroostook,
WHITTEMORE of Somerset.

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

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

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

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

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

11 **Whereas,** educators and administrators need tools immediately to restore order to
12 classrooms through limited additional uses of restraint or seclusion; and

13 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
14 the meaning of the Constitution of Maine and require the following legislation as
15 immediately necessary for the preservation of the public peace, health and safety; now,
16 therefore, be it

17 **Sec. 1. Amendment of rule. Resolved:** That the Department of Education shall
18 amend portions of Chapter 33: Rule Governing Physical Restraint and Seclusion as
19 follows.

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

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

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

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

34 **Sec. 2. Expedited amendment process. Resolved:** That, notwithstanding the
35 Maine Revised Statutes, Title 5, chapter 375, subchapters 2 and 2-A or any other law, the
36 Department of Education shall amend its Rule Chapter 33: Rule Governing Physical
37 Restraint and Seclusion as provided in this resolve and shall file the amended rule with

1 the Secretary of State as a final amended rule within 7 business days of the effective date
2 of this resolve. Rules adopted pursuant to this resolve are major substantive rules as
3 defined in Title 5, chapter 375, subchapter 2-A.

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

6 SUMMARY

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