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House of Representatives, April 7, 2021

An Act To Keep All Maine Students Safe by Restricting the Use of Seclusion and Restraint in Schools

Received by the Clerk of the House on April 5, 2021. Referred to the Committee on Education and Cultural Affairs pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in black ink, reading "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative MILLETT of Cape Elizabeth.
Cosponsored by Representatives: CRAVEN of Lewiston, MADIGAN of Waterville,
McCREIGHT of Harpswell, Senator: RAFFERTY of York.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 20-A MRSA §7008** is enacted to read:

3 **§7008. Use of seclusion and physical restraint**

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

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

11 B. "Covered entity" means an entity that owns, operates or controls a school or
12 educational program that receives public funds from the department, including, but not
13 limited to, public schools, public regional programs, public charter schools, private
14 schools, private schools approved for tuition purposes, special purpose private schools,
15 career and technical education programs, public prekindergarten programs and
16 providers of services pursuant to the provisions of the federal Individuals with
17 Disabilities Education Act, Parts B and C, 20 United States Code, Section 1401 et seq.
18 (2015).

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

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

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

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

29 G. "Seclusion" means the involuntary isolation or confinement of a student alone in a
30 room or clearly defined area from which the student does not feel free to go or is
31 physically denied exit.

32 H. "Unlawful seclusion or restraint" means:

33 (1) Seclusion;

34 (2) Mechanical restraint;

35 (3) Chemical restraint;

36 (4) Physical restraint or physical escort that is life-threatening, restricts breathing
37 or restricts blood flow to the brain, including prone and supine restraint; or

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

- 1 (a) A health care directive or medical management plan;
- 2 (b) A behavior intervention plan;
- 3 (c) An individual education plan or an individual family service plan as
- 4 defined in the federal Individuals with Disabilities Education Act, 20 United
- 5 States Code, Section 1401 et seq. (2015); or
- 6 (d) A plan developed pursuant to the federal Rehabilitation Act of 1973, 29
- 7 United States Code, Section 794 (2015) or the federal Americans with
- 8 Disabilities Act of 1990, Title II, 42 United States Code, Section 12131 et seq.
- 9 (2009).

10 **2. Prohibitions on restraint and seclusion.** A covered entity that receives state or
11 federal assistance may not subject a student to unlawful seclusion or restraint.

12 **3. Report on data regarding the use of physical restraint.** The commissioner shall
13 submit a report on data regarding the use of physical restraint collected pursuant to the
14 department's rules governing physical restraint and special education. Each covered entity
15 shall submit to the department an annual report on incidents of physical restraint of students
16 of that covered entity that includes:

- 17 A. The aggregate number of uses of physical restraint;
- 18 B. The aggregate number of students placed in physical restraint;
- 19 C. The aggregate number of students who have disabilities and an individualized
- 20 education program under the federal Individuals with Disabilities Education Act, 20
- 21 United States Code, Section 1401 et seq. (2015) or a plan pursuant to the federal
- 22 Rehabilitation Act of 1973, 29 United States Code, Section 701 et seq. placed in
- 23 physical restraint;
- 24 D. The aggregate number of serious bodily injuries to students related to physical
- 25 restraint; and
- 26 E. The aggregate number of serious bodily injuries to staff related to physical restraint.

27 The commissioner's report must also include aggregate data gathered through a
28 performance review system and subsequent compliance plans under subsection 4 and any
29 use of unlawful seclusion or restraint. The report must be submitted to the Governor and
30 the joint standing committee of the Legislature having jurisdiction over education and
31 cultural affairs no later than January 15th of every odd-numbered year.

32 **4. Performance review system.** The department shall develop and implement a
33 performance review system to define and monitor the use of physical restraint by school
34 administrative units and special purpose programs. The performance review system must
35 monitor compliance with this section and relevant department rules, including the
36 requirement of submitting data to the department. The performance review system must
37 identify accountability standards and identify when a school administrative unit's or special
38 purpose program's level of incidents of physical restraint exceeds average levels. The
39 performance review system must include a compliance plan to require the school
40 administrative unit or special purpose program to reduce use of physical restraint with
41 specific targets and time frames. Rules adopted pursuant to this subsection are major
42 substantive rules as defined by Title 5, chapter 375, subchapter 2-A and must be submitted
43 for legislative review no later than December 5, 2022.

5. Guide for information regarding rule. The commissioner shall develop and provide information about rules adopted under subsection 4, including a guide that includes a template for a school administrative unit or special purpose program to use to explain any additional local policies or local complaint processes.

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

7. Rules. The department shall adopt rules to carry out the purposes of this chapter. Except for rules adopted under subsection 4, rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

SUMMARY

This bill, in the special education provisions of the Maine Revised Statutes, prohibits the use of seclusion, chemical restraints, mechanical restraints and certain physical restraints of students by schools and other entities. The bill directs schools to make annual reports to the Department of Education regarding incidents of physical restraint and directs the Commissioner of Education to report biennially to the Governor and the Legislature on data regarding the use of physical restraint and seclusion. The bill also directs the Department of Education to develop and implement a performance review system to define and monitor the use of physical restraint by school administrative units and special purpose programs.