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Resolve
123rd Legislature
First Regular Session

Chapter 138
H.P. 1333 - L.D. 1900

**Resolve, Regarding Legislative Review of Portions of Chapter
101: Maine Unified Special Education Regulation Birth to Age
Twenty, a Major Substantive Rule of the Department of Education**

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

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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. A-1 Adoption. Resolved: That final adoption of portions of Chapter 101: Maine Unified Special Education Regulation Birth to Age Twenty, a provisionally adopted major substantive rule of the Department of Education that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized only if the provisionally adopted rule is amended as follows:

1. The rule must be amended in Section VII by deleting the part of the rule designated "3. Determination of Adverse Effect for Children Three to Twenty";

2. The rule must be amended in Section V in the part designated "1. Evaluations, Parental Consent, and Revaluations" and Section V in the part designated "6. Time Limits for Evaluation Three to Twenty" to establish provisions that require that an initial evaluation or a reevaluation of a child be conducted within 60 calendar days of receiving parental consent for the evaluation;

3. The rule must be amended in Section V in the part designated "2. Evaluation Procedures" by deleting the note inserted at the end of paragraph G, subparagraph (1) that states that a school administrative unit is permitted to use a discrepancy model to determine if a child has a "specific learning disability;"

4. The rule must be amended in Section VI in the part designated "1. Individualized Family Service Plan (IFSP) Team or Individualized Education Program (IEP) Team for Children Three To Twenty" and in Section IX in the part designated "3. Individualized Education Programs (IEPs) for Children Three to Twenty" to establish provisions that permit the Individualized Education Program Team to begin transition planning at age 14 for the student's postsecondary participation in advanced placement courses, a vocational education program or an adult education program;

5. The rule must be amended in Section XVI in the part designated "5. Filing a Due Process Hearing Request" and in "Appendix 1" in the part designated "Due Process Hearing Procedures" to clarify that the timeline for filing a due process hearing request is 4 years for either a state or federal cause of action under the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq., as amended;

6. The rule must be amended in "Appendix 1" in the part designated "Prior Written Notice" to incorporate provisions that are equivalent to those contained in the former Chapter 101 rules pertaining to the minutes of Pupil Evaluation Team meetings to ensure that content of the written notice must include a summary of the comments made by the parent, including the parent's description of their child's progress, and the names and titles of each member of the team. The word "prior" must also be deleted from the term "prior written notice" in the header to this part in order to comport with provisions of this part of the rule;

7. The rule must be amended in "Appendix 1" in the part designated "The Child's Placement While the Due Process Hearing Request and Hearing are Pending ("Stay Put")" to restore the so-called "stay put" provisions contained in the former Chapter 101 rules that permit a child with a disability to remain in their educational placement while the child's parent was seeking mediation or a complaint investigation and awaiting a pending decision from a due process hearing or court proceeding; and

8. The rule must be amended in Section IV in the part designated "2. Qualifications of Evaluators" and in Section XI in the table designated "Related Services for Children 3 to 20" to provide that neurocognitive testing assistants who are registered with the Maine Psychological Association continue to administer and score psychological and neurological tests as long as they meet the minimum qualifications established for registration and when they are supervised by a psychologist who is the evaluator and who is licensed by the State Board of Examiners of Psychologists. The rule must also be amended to establish that this provision must remain in effect until the State Board of Examiners of Psychologists completes rulemaking on the licensure of neurocognitive testing assistants.

Sec. B-1 Stakeholder group review of adverse effect. Resolved: That the Commissioner of Education shall convene a stakeholder group to examine the federal and state rules and laws pertaining to the determination of adverse effect for children from 3 to 20 years of age; and be it further

Sec. B-2 Stakeholder group membership. Resolved: That the stakeholder group consists of 21 members appointed as set out in this section:

1. Two members who are parents of children with disabilities from birth to 6 years of age and who have knowledge of or experience with programs for children with disabilities, appointed by the Maine Parent Federation, Inc.;

2. Two members who are parents of children with disabilities between 6 years of age and 20 years of age and who have knowledge of or experience with programs for children with disabilities, appointed by the Maine Parent Federation, Inc.;

3. One member who is a director of a Child Development Services System regional site, appointed by the Child Development Services System Site Directors Council;

4. Two members who are special education directors, appointed by the Executive Director of the Maine Administrators of Services for Children with Disabilities;

5. Two members who are certified special education teachers in a public elementary or secondary school, appointed by the Executive Director of the Maine Education Association;

6. One member who is a principal of a public elementary or secondary school and who has knowledge of or experience with programs for children with disabilities, appointed by the Executive Director of the Maine Principals' Association;

7. One member who serves as a superintendent of a school administrative unit and who has knowledge of or experience with programs for children with disabilities, appointed by the Executive Director of the Maine School Superintendents Association;

8. One member who is a provider of related services, appointed jointly by the professional associations that represent speech therapists, occupational therapists and physical therapists;

9. One member who is an individual with a disability, appointed by the Executive Director of the Disability Rights Center;

10. One member who is a representative on the Maine Advisory Council for the Education of Children with Disabilities, appointed by the chair of the Maine Advisory Council for the Education of Children with Disabilities;

11. One member representing the Disability Rights Center, appointed by the Executive Director of the Disability Rights Center;

12. One member representing Pine Tree Legal Assistance, appointed by the Board of Directors of Pine Tree Legal Assistance;

13. One member representing the Maine Developmental Disabilities Council, appointed by the Executive Committee of the Maine Developmental Disabilities Council;

14. One member representing the Learning Disabilities Association of Maine, appointed by the Executive Director of the Learning Disabilities Association of Maine;

15. One member representing the Autism Society of Maine, appointed by the Executive Director of the Autism Society of Maine;

16. One member representing the Maine Children's Alliance, appointed by the Executive Director of the Maine Children's Alliance; and

17. One member representing the Department of Education, appointed by the Commissioner of Education; and be it further

Sec. B-3 Chair. Resolved: That the stakeholder group shall appoint a chair from among its members; and be it further

Sec. B-4 Appointments; convening of stakeholder group. Resolved: That all appointments must be made no later than 30 days following the effective date of this resolve. The appointing authorities shall notify the Commissioner of Education of the names of and contact information for the stakeholder group members once all appointments have been completed. Within 15 days after appointment of all members, the Commissioner of Education shall call and convene the first

meeting of the stakeholder group and shall notify the stakeholder group members of the appointments to the stakeholder group and the agenda for the organizational meeting of the stakeholder group; and be it further

Sec. B-5 Duties. Resolved: That the stakeholder group shall examine the portions of "Chapter 101: Maine Unified Special Education Regulation Birth to Age Twenty," the provisionally adopted rule submitted for legislative review during the First Regular Session of the 123rd Legislature by the Department of Education, that pertain to the determination of adverse effect and shall develop recommendations to the Commissioner of Education regarding any necessary changes to the Chapter 101 rules regarding the determination of adverse effect. In completing this task, the stakeholder group shall make every effort to avoid duplicating work already completed by the Task Force on Eligibility convened by the State Board of Education; and be it further

Sec. B-6 Technical assistance; facilitator. Resolved: That the Department of Education shall provide necessary staffing services to the stakeholder group including funding for an independent facilitator. Meetings of the stakeholder group must be moderated by the independent facilitator. The facilitator selected may not have a pecuniary or other vested interest in the outcome of the matters being reviewed and must certify to the Commissioner of Education and the members of the stakeholder group that the facilitator has no pecuniary or other vested interest in the outcome of the review. Such certification must be made in the manner prescribed jointly by the Commissioner of Education and the members of the stakeholder group; and be it further

Sec. B-7 Meetings. Resolved: That the stakeholder group shall hold up to 5 meetings, including the organizational meeting convened by the Commissioner of Education. The agenda for the organizational meeting of the stakeholder group must include:

1. Selection of a chair;
2. Selection of an independent facilitator;
3. Development of a work plan; and
4. Scheduling of not more than 4 additional meetings; and be it further

Sec. B-8 Report. Resolved: That the stakeholder group shall submit a report that includes its findings and recommendations, including suggested revisions for those portions of "Chapter 101: Maine Unified Special Education Regulation Birth to Age Twenty" that pertain to the determination of adverse effect, to the Commissioner of Education no later than September 28, 2007; and be it further

Sec. B-9 Adoption of rules. Resolved: That the Commissioner of Education is authorized to submit provisionally adopted, major substantive rules for those portions of "Chapter 101: Maine Unified Special Education Regulation Birth to Age Twenty" that pertain to the determination of adverse effect for legislative review in the Second Regular Session of the 123rd Legislature. The rules provisionally adopted by the Commissioner of Education pursuant to this section must expressly consider and address the recommendations contained in the report of the stakeholder group submitted under section 8.

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

Effective June 27, 2007.