

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill by striking out all of section 1 and inserting the following:

‘Sec. 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 in the part designated "3. Determination of Adverse Effect for Children Three to Twenty" to establish a definition for "educational performance" that includes a list of academic basic skills and the 5 domains of functional performance recognized in federal regulations. After summarizing the federal classifications of disability, this part of the rule must interpret and define the phrases from federal law "adversely affects educational performance" and "needs special educational and related services" in a way that will guide the Individualized Family Service Plan Team or the Individualized Education Plan Team to greater uniformity in determining eligibility throughout the State. The rule must list various forms of assessment that the team may consider as evidence of a "distinctly measurable and persistent gap" between the demands of the educational setting and the child's adverse performance caused by the disability. The objective criteria must be promulgated as permissibly sufficient but not essential to establish a gap in performance. The rule must further identify what is necessary for documenting intervention strategies for eligible children ages 5 to 20;

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 2 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.'

SUMMARY

This amendment is the majority report of the Joint Standing Committee on Education and Cultural Affairs. The amendment provides that final adoption of the provisionally adopted major substantive rule is authorized contingent upon the Department of Education amending the provisionally adopted rule to accomplish the following:

1. Amend the proposed definition of "adverse effect" to establish a definition for "educational performance" that includes a list of academic basic skills and the 5 domains of functional performance recognized in federal regulations. This part of the rule interprets and defines the phrases from federal law "adversely affects educational performance" and "needs special educational and related services" in a way that will guide the Individualized Family Service Plan Team or the Individualized Education Plan Team to greater uniformity in determining eligibility throughout the State;

2. Amend the proposed rule to 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. Amend the proposed rule to delete the note 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. Amend the proposed rule to 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. Amend the proposed rule to clarify that the timeline for filing a due process hearing request is 2 years for either a state or federal cause of action under the federal Individuals with Disabilities Education Act, as amended;

6. Amend the proposed rule 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;

7. Amend the proposed rule 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. Amend the proposed rule to provide that Neurocognitive Testing Assistants who are registered with the Maine Psychological Association shall continue to be able 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 Department of Professional and Financial Regulation Board of Examiners of Psychologists.

FISCAL NOTE REQUIRED
(See attached)