

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND FIFTEEN

H.P. 144 - L.D. 201

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. 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 following changes are made:

1. The rule must be amended in Section II.19, Section IV.2.B and Section VI.2.A to strike the term "Individualized Educational Program (IEP) Service Coordinator" and restore the term "Individualized Educational Program (IEP) Case Manager" in alignment with federal regulations adopted for Part B of the federal Individuals with Disabilities Education Act;

2. The rule must be amended in Section IV.2.E, which concerns the local policy developed by an Intermediate Educational Unit (IEU) or a School Administrative Unit (SAU) on the referral of a child to an Individualized Education Program (IEP) Team, by amending the timeline for additional evaluations needed for a child to require that the IEU must send a consent to evaluate form to the IEP Team within 15 days;

3. The rule must be amended in Section V.1.A, which concerns the initial evaluation of whether a child age 3 to age 20 is a child with a disability, by adding language that indicates that the initial evaluation must consist of procedures to determine if the child is a child with a disability and to determine the educational needs of such child, and in Section V.1.A(3)(a)(ii) by deleting language that indicates that, following the completion of the initial evaluation, the SAU shall proceed to determine the educational needs of the child;

4. The rule must be amended in Section V.2.F, which concerns determination of eligibility and educational need, to strike subparagraph (3), which establishes a new timeline for completion of the determination of eligibility and development of the IEP;

5. The rule must be amended in Section V.4.B, which concerns the submission of a written evaluation report of whether a child age 3 to age 20 is a child with a disability, by restoring the original language to this section regarding the requirement that the person completing an evaluation submit a report no later than 40 school days, or 50 days for children in the Child Development Services System, recognizing the requirement that parents receive the report at least 3 days prior to the meeting; and

6. The rule must be amended in Section IX.3.B(2), which concerns the implementation of a child with a disability's IEP, by restoring the language that specifies that a meeting to develop an IEP is conducted within 30 days of a determination that the child needs special education and related services.

The Department of Education is not required to hold hearings or undertake further proceedings prior to final adoption of the rule in accordance with this section.

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