

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN

H.P. 232 - L.D. 323

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 to strike the definition of "qualified professional" and replace it with the definition of "qualified personnel" in alignment with federal regulations adopted for the federal Individuals with Disabilities Education Act;
2. The rule must be amended in Section VII, Part 4, "Criteria for Change in Eligibility," by deleting this part, which exceeds federal requirements concerning the

evaluation procedures that must be used to determine that a child is ineligible for special education services;

3. The rule must be amended in Section VIII in the part concerning the so-called free and appropriate public education choice determination by the individualized education program team of a preschool child with a disability who reaches 5 years of age between July 1st and October 15th and is already receiving "free and appropriate public education" services through the Child Development Services System to clarify that:

A. When the individualized education program team is considering the choice of whether the child should receive "free and appropriate public education" services through the Child Development Services System or in kindergarten, the team must determine whether it "best meets the individual needs of the child" to remain in the Child Development Services System and not enroll in kindergarten until the start of the following school year;

B. The "best meets the individual needs of the child" standard may not be equivalent to the "free and appropriate public education" standard and that the individualized education program team may determine that remaining in the Child Development Services System may "best meet the individual needs of the child" even if the kindergarten program that is available to the child could provide the child with a "free and appropriate public education"; and

C. In the event that the parent disagrees with the decision of the individualized education program team and decides to use dispute resolution procedures, the standard for the review must be whether the individualized education program team decision "best meets the individual needs of the child";

4. The rule must be amended in Section IX in the part concerning the services that must be included in the transition plan developed during the 9th grade school year for a child who is eligible for special education by deleting the proposed addition of language related to the "consideration of assistive technologies," which exceeds federal requirements concerning the services that must be included in the child's annual transition plan;

5. The rule must be amended in Section X in the part concerning how new and veteran teachers can meet the federal requirements of the "High Objective Uniform State Standard of Evaluation" content knowledge rubrics to clarify that a special education teacher who is transferred to a new teaching assignment has 2 years to demonstrate content knowledge in the additional subject area or areas of the teacher's new assignment;

6. The rule must be amended in Section XVI in the part concerning the so-called "stay put" requirements to restore the provisions that allow a child who is eligible for early intervention under Part C of the federal Individuals with Disabilities Education Act to remain in the current placement or continue to receive current services when a dispute resolution proceeding is pending after a request from the child's parent, including a mediation request, a state complaint investigation request or a due process hearing request;

7. The rule must be amended in Section XVI in the part concerning the representation of a parent of a child who is eligible for special education at a mediation session to clarify that a school administrative unit may be accompanied by a nonattorney advocate or consultant at a mediation session when the parent is similarly accompanied by an individual who has been engaged by the parent to perform special education advocacy or consultancy;

8. The rule must be amended in Section XVI in the part concerning the ability of a party to amend its due process hearing request to restore the current provision that is consistent with federal regulations and that provides an exception for when a hearing officer may grant permission to amend a due process hearing request; and

9. The rule must be amended in Section XVIII in the part concerning the use of 3rd-party funding to add language consistent with new federal regulations that provide that an intermediate educational unit or a school administrative unit is required to:

A. Provide notice to the parent of a child eligible for special education under Part B of the federal Individuals with Disabilities Education Act of the legal protections when the unit seeks to access the State's public benefits or insurance program to pay for services provided under the federal Individuals with Disabilities Education Act; and

B. Obtain a one-time written consent from the parent before the unit accesses the child's or the parent's public benefits or insurance for the first time to pay for services provided under the federal Individuals with Disabilities Education Act.

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.