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Resolve, Regarding Continuity of Care in the Child Development Services System

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, immediate resolution of eligibility and other issues is necessary for children with disabilities affected by this resolve; and

Whereas, the Department of Education must engage in emergency major substantive rulemaking to resolve these issues for children with disabilities; and

Whereas, there is an immediate need to ensure that emergency implementation of rules be undertaken to minimize any harm that might come to children as a result of application of current practices; and

Whereas, immediate enactment of this resolve is necessary to direct the Department of Education to engage in emergency major substantive rulemaking to resolve these issues; 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 Department of Education to amend rules. Resolved: That, in order to ensure continuity of care, the Department of Education shall amend its rules governing special education to provide that:

1. The Individualized Educational Program Team make a determination about extended school year services at every Individualized Educational Program Team meeting;

2. The Individualized Educational Program Team may make a determination about extended school year services based on available data, including information about a child's disability, even if an interruption in service has not occurred;

3. In accordance with the federal Individuals with Disabilities Education Improvement Act of 2004, 20 United States Code, Sections 1400 to 1485 (2008), a regional site may not unilaterally limit the duration of extended school year services; and

4. Initial evaluations for special education must include procedures to determine whether a child is a child with a disability, as defined in 20 United States Code, Section 1401 (2008), within 60 calendar days of receiving parental consent for children in the Child Development Services System and within 45 school days of receiving parental consent for children in public schools and that the department may, as

part of the rule-making process and in a manner consistent with major substantive rulemaking, further amend its rules to adjust timelines in the Child Development Services System to be consistent with this section; and be it further

Sec. 2 Emergency major substantive rules. Resolved: That the Department of Education shall adopt emergency major substantive rules pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A as soon as practicable but not later than June 30, 2009 to implement the provisions of section 1.

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