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Resolve
124th Legislature
Second Regular Session

Chapter 200
H.P. 1238 - L.D. 1741

**Resolve, Regarding Legislative Review of Portions of
Chapter 101: Maine Unified Special Education Regulation,
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, 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 2A, is authorized only if the provisionally adopted rule is amended as follows:

1. The rule must be amended in Section II to clarify the definition of "educational performance" by incorporating a reference to the definition of "functional performance" and to provide that this change applies only through June 30, 2011 and the former rule is restored on that date;
2. The rule must be amended in Section II to incorporate a new definition of "formative assessment" to be used for the purposes of general education interventions;
3. The rule must be amended in Section III to revise the provisions regarding pre-referral procedure by inserting a new part to establish the procedures that school administrative units must develop in implementing general education interventions and adjusting section headings to reflect this change;

4. The rule must be amended in Section VI and in Section IX to strike the provisions that proposed to permit the Individualized Education Program Team to begin postsecondary transition planning at age 16 or younger for the student and instead to provide that postsecondary transition planning for the student must begin no later than the beginning of grade 9;

5. The rule must be amended in Section VII in the part concerning other health impairment to refine the procedural steps established for determining eligibility for the other health impairment disability;

6. The rule must be amended in Section XVI to clarify that a complaint for an alleged violation under the federal Individuals with Disabilities Education Act must allege a violation that occurred not more than one year prior to the date that the complaint is received unless a longer period is reasonable because the complainant is requesting compensatory services for a violation that allegedly occurred not more than 2 years prior to the date that the written complaint is received by the Department of Education;

7. The rule must be amended in Section XVI in those parts concerning a child's status during proceedings by deleting the proposed changes to the so-called "stay put" provisions permitting a child with a disability to remain in the child's educational placement while the child's parent is seeking mediation or a complaint investigation and is awaiting a pending decision from a mediation or due process hearing, as well as any court proceedings regarding a due process hearing request;

8. The rule must be amended in Section V in the part concerning evaluations, parental consent and reevaluations by deleting the proposed change that the evaluation of children from 3 to 5 years of age be conducted within 45 school days of receiving parental consent for the evaluation, restoring the 60 calendar day requirement for children from 3 to 5 years of age in the Child Development Services System;

9. The rule must be amended in that part of Section VII adopting a data based procedure for eligibility determination by providing that the provisions apply only through June 30, 2011 and the former rule is restored on that date;

10. The rule must be amended in Section VII in the part concerning criteria for change in eligibility by deleting only the provision related to demonstration of adverse effect;

11. The rule must be amended in Section XVIII in the part concerning payment for contracted services by striking this part of the rule and adding provisions that provide that:

A. Payment for services by school administrative units to qualified licensed contractors may be no higher than 140% of the Medicaid rate paid for comparable services on the effective date of the final adoption of this rule and must be considered payment in full. The rule must also provide that the payment for school psychological service providers may be no higher than 140% of the Medicaid rate that is provided for psychologists; and

B. If a school administrative unit is unable to find a qualified licensed contractor at or below 140% of the Medicaid rate for comparable services, the first priority of the school administrative unit must be to ensure the provision of free, appropriate public education for eligible children, and the second priority of the school administrative unit must be to enter into a short-term contract with a qualified licensed contractor. The rule must also provide that the Department of Education shall provide guidance to school administrative units on the procedures that must be followed when a qualified licensed contractor is not available at or below the Medicaid rate ceiling for comparable services;

12. The rule must be amended in Section VI with regard to transition from a regional Child Development Services site to public school to:

A. Provide that, in addition to the right of a parent to request a due process hearing, the parent must be permitted to request mediation and file a complaint if there is a dispute about the determination of the Individualized Education Program Team with respect to transition from a Child Development Services site to a public school; and

B. Restore alignment with the 60 calendar day requirement for conducting an evaluation or reevaluation for children from 3 to 5 years of age in the Child Development Services System;

13. The rule must be amended in Section V with regard to standardized reports of evaluation for children 3 to 20 years of age by removing the requirement that evaluation reports must provide that the "DSM multi-axial" must be included when "DSM diagnostic impression" is required; and

14. The rule must be amended in Section VI with regard to abbreviated school days to include a requirement that Individualized Education Program Teams make every effort to maintain students in full-day programs utilizing supplementary aids and services before determining that an abbreviated school day is appropriate and necessary and to provide that this change applies only through June 30, 2011 and the former rule is restored on that date.

Sec. B-1 Stakeholder group review. Resolved: That the Commissioner of Education shall convene a stakeholder group, referred to in this resolve as "the stakeholder group," to examine the federal and state rules and laws that pertain to the portions of Department of Education rule Chapter 101: Maine Unified Special Education Regulation that expire on June 30, 2011; and be it further

Sec. B-2 Stakeholder group membership. Resolved: That the stakeholder group consists of 13 members appointed by the Commissioner of Education as set out in this section:

1. Six members who are recommended by the Maine Educational Advocacy Alliance, including one member from each of the following organizations:

- A. The Autism Society of Maine;
- B. The Disability Rights Center;
- C. The Learning Disabilities Association of Maine;
- D. The Maine Developmental Disabilities Council;
- E. The Maine Parent Federation; and
- F. The Maine Transition Network;

2. Six members who are recommended by the Maine Administrators of Services for Children with Disabilities, including one member of each of the following organizations:

- A. The Maine Administrators of Services for Children with Disabilities;
- B. The Maine Education Association;
- C. The Maine School Superintendents Association;
- D. The Maine School Board Association;
- E. The Maine Principals' Association; and
- F. The Child Development Services System Site Directors Group within the Maine Administrators of Services for Children with Disabilities; and

3. One member who is appointed by the Commissioner of Education to represent the Department of Education; and be it further

Sec. B-3 Chair. Resolved: That the stakeholder group shall select 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 recommending authorities shall notify the Commissioner of Education of the names of and contact information for the recommended stakeholder group members. Within 15 days after appointment of all members, the Commissioner of Education shall convene the first meeting of the stakeholder group. During the first meeting of the stakeholder group, the members may add an additional member who is a faculty member at a Maine public or private higher education institution and who has expertise in the field of special education; and be it further

Sec. B-5 Duties. Resolved: That the stakeholder group shall perform the examination required under section 1; and be it further

Sec. B-6 First meeting agenda. Resolved: That the agenda for the first meeting of the stakeholder group must include the selection of a chair, a review of the enabling legislation that established the stakeholder group, consideration of adding an additional member as provided in section 4 and the development of a work plan and a meeting schedule; and be it further

Sec. B-7 Report. Resolved: That the stakeholder group shall submit a report that includes its findings and recommendations, including suggested revisions to the rule, to the Commissioner of Education no later than January 14, 2011; and be it further

Sec. B-8 Adoption of rules. Resolved: That the Commissioner of Education shall consider and address the recommendations contained in the report of the stakeholder group and may adopt major substantive rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2A for those portions of Department of Education rule Chapter 101: Maine Unified Special Education Regulation that pertain to the examination required under section 1 for consideration by the First Regular Session of the 125th Legislature.

Sec. C-1 Review of Medicaid rates. Resolved: That the Commissioner of Education shall conduct a review of the Medicaid rate schedule for qualified licensed contractors and report findings and recommendations by January 14, 2011 to the joint standing committee of the Legislature having jurisdiction over education matters.

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