

MAINE STATE LEGISLATURE

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majority

L.D. 1900

Date:

6/12/07

(Filing No. H-562)

majority

EDUCATION AND CULTURAL AFFAIRS

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
123RD LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1333, L.D. 1900, "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"

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

1 evaluation or a reevaluation of a child be conducted within 60 calendar days of receiving
2 parental consent for the evaluation;

3 3. The rule must be amended in Section V in the part designated "2. Evaluation
4 Procedures" by deleting the note inserted at the end of paragraph G, subparagraph (1) that
5 states that a school administrative unit is permitted to use a discrepancy model to
6 determine if a child has a "specific learning disability;"

7 4. The rule must be amended in Section VI in the part designated "1. Individualized
8 Family Service Plan (IFSP) Team or Individualized Education Program (IEP) Team for
9 Children Three To Twenty" and in Section IX in the part designated "3. Individualized
10 Education Programs (IEPs) for Children Three to Twenty" to establish provisions that
11 permit the Individualized Education Program Team to begin transition planning at age 14
12 for the student's postsecondary participation in advanced placement courses, a vocational
13 education program or an adult education programs;

14 5. The rule must be amended in Section XVI in the part designated "5. Filing a Due
15 Process Hearing Request" and in "Appendix 1" in the part designated "Due Process
16 Hearing Procedures" to clarify that the timeline for filing a due process hearing request is
17 2 years for either a state or federal cause of action under the federal Individuals with
18 Disabilities Education Act, 20 United States Code, Section 1400 et seq., as amended;

19 6. The rule must be amended in "Appendix 1" in the part designated "Prior Written
20 Notice" to incorporate provisions that are equivalent to those contained in the former
21 Chapter 101 rules pertaining to the minutes of Pupil Evaluation Team meetings to ensure
22 that content of the written notice must include a summary of the comments made by the
23 parent, including the parent's description of their child's progress, and the names and titles
24 of each member of the team. The word "prior" must also be deleted from the term "prior
25 written notice" in the header to this part in order to comport with provisions of this part of
26 the rule;

27 7. The rule must be amended in "Appendix 1" in the part designated "The Child's
28 Placement While the Due Process Hearing Request and Hearing are Pending ("Stay
29 Put")" to restore the so-called "stay put" provisions contained in the former Chapter 101
30 rules that permit a child with a disability to remain in their educational placement while
31 the child's parent was seeking mediation or a complaint investigation and awaiting a
32 pending decision from a due process hearing or court proceeding; and

33 8. The rule must be amended in Section IV in the part designated "2. Qualifications
34 of Evaluators" and in "Section XI in the table designated "Related Services for Children 3
35 to 20" to provide that neurocognitive testing assistants who are registered with the Maine
36 Psychological Association continue to administer and score psychological and
37 neurological tests as long as they meet the minimum qualifications established for
38 registration and when they are supervised by a psychologist who is the evaluator and who
39 is licensed by the State Board of Examiners of Psychologists. The rule must also be
40 amended to establish that this provision must remain in effect until the State Board of
41 Examiners of Psychologists completes rulemaking on the licensure of neurocognitive
42 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.

2025

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FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



123rd MAINE LEGISLATURE

LD 1900

LR 2670(02)

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

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Education and Cultural Affairs

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Additional costs to the Department of Education associated with rulemaking can be absorbed within existing budgeted resources.