

MAINE STATE LEGISLATURE

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minority

File

1
2 Date: 6/12/07

L.D. 1900

(Filing No. H-563)

minority

3 **EDUCATION AND CULTURAL AFFAIRS**

4 Reproduced and distributed under the direction of the Clerk of the House.

5 **STATE OF MAINE**

6 **HOUSE OF REPRESENTATIVES**

7 **123RD LEGISLATURE**

8 **FIRST REGULAR SESSION**

9 COMMITTEE AMENDMENT "B" to H.P. 1333, L.D. 1900, "Resolve, Regarding
10 Legislative Review of Portions of Chapter 101: Maine Unified Special Education
11 Regulation Birth to Age Twenty, a Major Substantive Rule of the Department of
12 Education"

13 Amend the resolve by striking out the title and substituting the following:

14 **'Resolve, Regarding Legislative Review of Portions of Chapter 101: Maine**
15 **Unified Special Education Regulation Birth to Age Twenty, a Major**
16 **Substantive Rule of the Department of Education and To Establish a**
17 **Stakeholder Group To Examine the Determination of Adverse Effect'**

18 Amend the resolve by striking out all of section 1 and inserting the following:

19 **'PART A**

20 **Sec. A-1. Adoption. Resolved:** That final adoption of portions of Chapter 101:
21 Maine Unified Special Education Regulation Birth to Age Twenty, a provisionally
22 adopted major substantive rule of the Department of Education that has been submitted to
23 the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375,
24 subchapter 2-A, is authorized only if the provisionally adopted rule is amended as
25 follows:

26 1. The rule must be amended in Section VII by deleting the part of the rule
27 designated "3. Determination of Adverse Effect for Children Three to Twenty";

28 2. The rule must be amended in Section V in the part designated "1. Evaluations,
29 Parental Consent, and Reevaluations" and in the part designated "6. Time Limits for
30 Evaluation Three to Twenty" to establish provisions that require that an initial evaluation
31 or a reevaluation of a child be conducted within 60 calendar days of receiving parental
32 consent for the evaluation;

COMMITTEE AMENDMENT

3. The rule must be amended in Section V in the part designated "2. Evaluation Procedures" in (G)(1) by deleting the note at the end of the statement that permits a school administrative unit to use a discrepancy model to determine if a child has a "specific learning disability";

4. The rule must be amended in Section VI in the part designated "2. Individualized Family Service Plan (IFSP) Team or Individualized Education Program (IEP) Team for Children Three To Twenty" and in Section IX in the part designated "3. Individualized Education Programs (IEPs) for Children Three to Twenty" to establish provisions that permit the Individualized Education Program Team to begin transition planning at 14 years of age for the student's postsecondary participation in advanced placement courses, a vocational education program or an adult education program;

5. The rule must be amended in Section XVI in the part designated "5. Filing a Due Process Hearing Request" and in "Appendix 1" in the part designated "Due Process Hearing Procedures" to clarify that the timeline for filing a due process hearing request is 4 years for either a state or federal cause of action under the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq., as amended;

6. The rule must be amended in "Appendix 1" in the part designated "Prior Written Notice" 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 the child's progress, and the names and titles of each member of the team. The word "prior" must also be deleted from the term "prior written notice" in the header to this part in order to comport with provisions of this part of the rule;

7. The rule must be amended in "Appendix 1" in the part designated "The Child's Placement While the Due Process Hearing Request and Hearing are Pending ("Stay Put")" 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 the child's educational placement while the child's parent is seeking mediation or a complaint investigation and awaiting a pending decision from a due process hearing or court proceeding; and

8. The rule must be amended in Section IV in the part designated "2. Child Find For Children Three to Twenty" in "G. Qualifications of Evaluators" and in Section XI in the table designated "Related Services 3 to 20" to provide that neurocognitive testing assistants who are registered with the Maine Psychological Association may continue 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 State Board of Examiners of Psychologists. The rule must also be amended to establish that this provision must remain in effect until the State Board of Examiners of Psychologists completes rulemaking on the licensure of neurocognitive testing assistants.

PART B

Sec. B-1. Stakeholder group review of adverse effect. Resolved: That the Commissioner of Education shall convene a stakeholder group to examine the federal and

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

1 state rules and laws pertaining to the determination of adverse effect for children from
2 three to twenty years of age; and be it further

3 **Sec. B-2. Stakeholder group membership. Resolved:** That the stakeholder
4 group consists of 19 members appointed as set out in this section:

5 1. Two members who are parents of children with disabilities between 3 years of age
6 and 6 years of age and who have knowledge of or experience with programs for children
7 with disabilities, appointed by the Maine Parent Federation, Inc.;

8 2. Two members who are parents of children with disabilities between 6 years of age
9 and 20 years of age and who have knowledge of or experience with programs for children
10 with disabilities, appointed by the Maine Parent Federation, Inc.;

11 3. One member who is a director of a Child Development Services System regional
12 site, appointed by the Child Development Services System Site Directors Council;

13 4. One member who is a special education director, appointed by the Executive
14 Director of the Maine Administrators of Services for Children with Disabilities;

15 5. One member who is a certified special education teacher in a public elementary or
16 secondary school, appointed by the Executive Director of the Maine Education
17 Association;

18 6. One member who is a principal of a public elementary or secondary school and
19 who has knowledge of or experience with programs for children with disabilities,
20 appointed by the Executive Director of the Maine Principals' Association;

21 7. One member who serves as a superintendent of a school administrative unit and
22 who has knowledge of or experience with programs for children with disabilities,
23 appointed by the Executive Director of the Maine School Superintendents Association;

24 8. One member who is a provider of related services, appointed jointly by the
25 professional associations that represent speech therapists, occupational therapists and
26 physical therapists;

27 9. One member who is an individual with a disability, appointed by the Executive
28 Director of the Disability Rights Center;

29 10. One member who is a representative on the Maine Advisory Council for the
30 Education of Children with Disabilities, appointed by the chair of the Maine Advisory
31 Council for the Education of Children with Disabilities;

32 11. One member representing the Disability Rights Center, appointed by the
33 Executive Director of the Disability Rights Center;

34 12. One member representing Pine Tree Legal Assistance, appointed by the Board of
35 Directors of Pine Tree Legal Assistance;

36 13. One member representing the Maine Developmental Disabilities Council,
37 appointed by the Executive Committee of the Maine Developmental Disabilities Council;

38 14. One member representing the Learning Disabilities Association of Maine,
39 appointed by the Executive Director of the Learning Disabilities Association of Maine;

15. One member representing the Autism Society of Maine, appointed by the Executive Director of the Autism Society of Maine;

16. One member representing the Maine Children's Alliance, appointed by the Executive Director of the Maine Children's Alliance; and

17. One member representing the Department of Education, appointed by the Commissioner of Education; and be it further

Sec. B-3. Chair. Resolved: That the stakeholder group shall appoint 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 appointing authorities shall notify the Commissioner of Education of the names of and contact information for the stakeholder group members once all appointments have been completed. Within 15 days after appointment of all members, the Commissioner of Education shall call and convene the first meeting of the stakeholder group and shall notify the stakeholder group members of the appointments to the stakeholder group and the agenda for the organizational meeting of the stakeholder group;

Sec. B-5. Duties. Resolved: That the stakeholder group shall examine the portions of "Chapter 101: Maine Unified Special Education Regulation Birth to Age Twenty," the provisionally adopted rule submitted for legislative review during the First Regular Session of the 123rd Legislature by the Department of Education, that pertain to the determination of adverse effect and shall develop recommendations to the Commissioner of Education regarding any necessary changes to the Chapter 101 rules regarding the determination of adverse effect. In completing this task, the stakeholder group shall make every effort to avoid duplicating work already completed by the Task Force on Eligibility convened by the State Board of Education. The stakeholder group may examine other issues pertaining to eligibility for special education and related services that the stakeholder group membership determines to be useful or necessary in examining this policy matter; and be it further

Sec. B-6. Technical assistance; facilitator. Resolved: That the Department of Education shall provide necessary staffing services to the stakeholder group including funding for an independent facilitator. Meetings of the stakeholder group must be moderated by the independent facilitator. The facilitator selected may not have a pecuniary or other vested interest in the outcome of the matters being reviewed and must certify to the Commissioner of Education and the members of the stakeholder group that the facilitator has no pecuniary or other vested interest in the outcome of the review. Such certification must be made in the manner prescribed jointly by the Commissioner of Education and the members of the stakeholder group; and be it further

Sec. B-7. Meetings. Resolved: That the stakeholder group shall hold up to 5 meetings, including the organizational meeting convened by the Commissioner of Education. The agenda for the organizational meeting of the stakeholder group must include the following items:

1. Selection of a chair;
2. Selection of an independent facilitator;

3. Development of a work plan; and

4. Scheduling of not more than 4 additional meetings; and be it further

Sec. B-8. Report. Resolved: That the stakeholder group shall submit a report that includes its findings and recommendations, including suggested revisions for those portions of "Chapter 101: Maine Unified Special Education Regulation Birth to Age Twenty" that pertain to the determination of adverse effect, to the Commissioner of Education no later than November 30, 2007; and be it further

Sec. B-9. Adoption of rules. Resolved. That, after consideration of the report submitted in section 8, the Commissioner of Education shall submit provisionally adopted, major substantive rules for those portions of "Chapter 101: Maine Unified Special Education Regulation Birth to Age Twenty" that pertain to the determination of adverse effect for legislative review in the Second Regular Session of the 123rd Legislature. The rules proposed by the commissioner must be based on the recommendations submitted by the stakeholder group. The commissioner shall report to the Joint Standing Committee on Education and Cultural Affairs by January 31, 2008 on the status of rulemaking for Chapter 101.'

SUMMARY

This amendment is the minority 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:

1. Amending the proposed rule by deleting the part of the rule pertaining to the determination of adverse effect for children 3 to 20 years of age;

2. Amending 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. Amending the proposed rule to delete the language permitting a school administrative unit to use a discrepancy model to determine if a child has a "specific learning disability";

4. Amending the proposed rule to permit the Individualized Education Program Team to begin transition planning at 14 years of age for the student's postsecondary participation in advanced placement courses, a vocational education program or an adult education program;

5. Amending the proposed rule to clarify that the timeline for filing a due process hearing request is 4 years for either a state or federal cause of action under the federal Individuals with Disabilities Education Act, as amended;

6. Amending 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 the child's progress, and the names and titles of each member of the team;

1 7. Amending the proposed rule to restore the so-called "stay put" provisions
2 contained in the former Chapter 101 rules that permit a child with a disability to remain in
3 the child's educational placement while the child's parent is seeking mediation or a
4 complaint investigation and awaiting a pending decision from a due process hearing or
5 court proceeding; and

6 8. Amending the proposed rule to provide that neurocognitive testing assistants who
7 are registered with the Maine Psychological Association may continue to administer and
8 score psychological and neurological tests as long as they meet the minimum
9 qualifications established for registration and when they are supervised by a psychologist
10 who is the evaluator and who is licensed by the State Board of Examiners of
11 Psychologists.

12 The amendment also directs the Commissioner of Education to establish a
13 stakeholder group to examine the portions of "Chapter 101: Maine Unified Special
14 Education Regulation Birth to Age Twenty," the provisionally adopted rule submitted for
15 legislative review during the First Regular Session of the 123rd Legislature by the
16 Department of Education, that pertain to the determination of adverse effect and to
17 develop recommendations to the Commissioner of Education regarding any necessary
18 changes to the Chapter 101 rules.

19 The amendment further authorizes the Commissioner of Education to adopt
20 provisionally adopted rules for those portions of "Chapter 101: Maine Unified Special
21 Education Regulation Birth to Age Twenty" that pertain to the determination of adverse
22 effect for legislative review in the Second Regular Session of the 123rd Legislature.

23 **FISCAL NOTE REQUIRED**

24 (See attached)



Approved: 06/04/07 *MAC*

123rd MAINE LEGISLATURE

LD 1900

LR 2670(03)

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 "B"

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.