

MAINE STATE LEGISLATURE

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Date: 3/29/10

L.D. 1741
(Filing No. H-795)

EDUCATION AND CULTURAL AFFAIRS

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
124TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to 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"

Amend the resolve by striking out everything after the emergency preamble and
before the emergency clause and inserting the following:

'PART A

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 2-A, 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;

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

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

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

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

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

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

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

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

36 B. If a school administrative unit is unable to find a qualified licensed contractor at
37 or below 140% of the Medicaid rate for comparable services, the first priority of the
38 school administrative unit must be to ensure the provision of free, appropriate public
39 education for eligible children, and the second priority of the school administrative
40 unit must be to enter into a short-term contract with a qualified licensed contractor.
41 The rule must also provide that the Department of Education shall provide guidance
42 to school administrative units on the procedures that must be followed when a
43 qualified licensed contractor is not available at or below the Medicaid rate ceiling for
44 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.

PART B

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;

R.O.S.

- 1 B. The Maine Education Association;
- 2 C. The Maine School Superintendents Association;
- 3 D. The Maine School Board Association;
- 4 E. The Maine Principals' Association; and
- 5 F. The Child Development Services System Site Directors Group within the Maine
- 6 Administrators of Services for Children with Disabilities; and
- 7 3. One member who is appointed by the Commissioner of Education to represent the
- 8 Department of Education; and be it further

9 **Sec. B-3. Chair. Resolved:** That the stakeholder group shall select a chair from

10 among its members; and be it further

11 **Sec. B-4. Appointments; convening of stakeholder group. Resolved:** That

12 all appointments must be made no later than 30 days following the effective date of this

13 resolve. The recommending authorities shall notify the Commissioner of Education of the

14 names of and contact information for the recommended stakeholder group members.

15 Within 15 days after appointment of all members, the Commissioner of Education shall

16 convene the first meeting of the stakeholder group. During the first meeting of the

17 stakeholder group, the members may add an additional member who is a faculty member

18 at a Maine public or private higher education institution and who has expertise in the field

19 of special education; and be it further

20 **Sec. B-5. Duties. Resolved:** That the stakeholder group shall perform the

21 examination required under section 1; and be it further

22 **Sec. B-6. First meeting agenda. Resolved:** That the agenda for the first meeting

23 of the stakeholder group must include the selection of a chair, a review of the enabling

24 legislation that established the stakeholder group, consideration of adding an additional

25 member as provided in section 4 and the development of a work plan and a meeting

26 schedule; and be it further

27 **Sec. B-7. Report. Resolved:** That the stakeholder group shall submit a report that

28 includes its findings and recommendations, including suggested revisions to the rule, to

29 the Commissioner of Education no later than January 14, 2011; and be it further

30 **Sec. B-8. Adoption of rules. Resolved:** That the Commissioner of Education

31 shall consider and address the recommendations contained in the report of the stakeholder

32 group and may adopt major substantive rules as defined in the Maine Revised Statutes,

33 Title 5, chapter 375, subchapter 2-A for those portions of Department of Education rule

34 Chapter 101: Maine Unified Special Education Regulation that pertain to the examination

35 required under section 1 for consideration by the First Regular Session of the 125th

36 Legislature.

37 PART C

38 **Sec. C-1. Review of Medicaid rates. Resolved:** That the Commissioner of

39 Education shall conduct a review of the Medicaid rate schedule for qualified licensed

40 contractors and report findings and recommendations by January 14, 2011 to the joint

41 standing committee of the Legislature having jurisdiction over education matters.'

SUMMARY

Part A of this amendment provides that final adoption of portions of Chapter 101: Maine Unified Special Education Regulation, a provisionally adopted major substantive rule of the Department of Education is authorized contingent upon the department's making specified changes to the proposed rules.

The amendment provides that 3 provisions of the rule must expire on June 30, 2011 and the portions of the rule that were in effect on June 15, 2009 that pertain to these provisions must be reinstated on July 1, 2011.

Part B of the amendment requires the Commissioner of Education to convene a stakeholder group to examine the federal and state rules and laws that pertain to the portions of the rule that expire June 30, 2011. The stakeholder group shall develop findings and recommendations regarding any changes to the rule, and the Commissioner of Education is authorized to submit major substantive rules that pertain to these provisions for legislative review in the First Regular Session of the 125th Legislature.

Part C of the amendment directs the Department of Education to conduct a review of the Medicaid rate schedule for qualified licensed contractors and report findings and recommendations no later than January 14, 2011 to the joint standing committee of the Legislature having jurisdiction over education matters.

FISCAL NOTE REQUIRED

(See attached)



124th MAINE LEGISLATURE

LD 1741

LR 2550(02)

Resolve, Regarding Legislative Review of Portions of Chapter 101: Maine Unified Special Education Regulation, 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

Current biennium savings - General Fund

Fiscal Detail and Notes

Amending certain provisions within Chapter 101: Maine Unified Special Education Regulation, a major substantive rule of the Department of Education, will result in General Fund savings to the Department of Education totaling \$224,629 in fiscal year 2009-10 and \$442,349 in fiscal year 2010-11. The programs affected are described below. The estimate is based on analysis of the fiscal impact of certain proposed changes within Chapter 101 where sufficient data was available to project savings and does not include estimated savings for those proposed rule changes within Chapter 101 where sufficient data was not available. Savings achieved as a result of this legislation are to remain within the department and local school administrative units to partially offset the impact of reductions in funding in the 2010-2011 biennium.

Of the total savings amounts provided above, it is estimated that General fund savings of \$124,629 in fiscal year 2009-10 and \$242,349 in fiscal year 2010-11 will be achieved in the General Purpose Aid for Local Schools program by reducing the reimbursement rate for contracted services to 140% of the MaineCare rate. Savings to local school administrative units are estimated to be \$130,080 in fiscal year 2009-10 and \$300,183 in fiscal year 2010-11.

Additionally, General Fund savings of approximately \$100,000 in fiscal year 2009-10 and \$200,000 in fiscal year 2010-11 are projected to be achieved in the Special Services Team program within the Department of Education as a result of eliminating the requirement for on-site reviews.

The following summarizes the methodology used and assumptions made to estimate the savings for certain proposed rule changes within Chapter 101:

1) Reimburse rates for contracted services at 140% of MaineCare rates.

- Utilized survey information of certain school administrative units of current rates for contracted occupational therapy, physical therapy and speech and language pathology. Survey was conducted by telephone by Department of Education.
- Calculated average cost per therapy for all SAU's surveyed and compared that cost

to MaineCare rate from MaineCare Benefits Manual (10-144 Ch. 101, Chapter III)

Determined that changing reimbursement to 140% of MaineCare rates would result in an estimated 7% reduction in rates, on average.

- Based on information provided by Department of Education, assumed contracted services for OT, PT and Speech/Language Pathology comprised approximately 85% of total contracted services.
- Adjusted FY 2007-08 costs by an inflationary factor to estimate costs for FY 2008-09 - FY 2012-13.
- Applied 7% reduction to adjusted cost of contracted services to SAU's in FY 2007-08 to estimate savings.
- Adjusted estimated savings to recognize the state's share and the local SAU's share of the annual savings
- Applied State's share % as proposed in Governor's 2010-2011 Supplemental Budget request.
- Assumed 6 months of savings in fiscal year 2009-10.

	2009-2010	2010-2011	2011-2012	2012-2013
Approved contracted services (S&L)	\$ 8,561,669	\$ 9,118,177	\$ 9,710,859	\$ 10,342,065
% OT,PT, Speech	85%	85%	85%	85%
Est. exp. For contracted OT, PT, Speech	\$ 7,277,419	\$ 7,750,451	\$ 8,254,230	\$ 8,790,755
Estimated cost (savings) @ 7%	\$ (509,419)	\$ (542,532)	\$ (577,796)	\$ (615,353)
State Share	\$ (249,259)	\$ (242,349)	\$ (317,788)	\$ (338,444)
Local Share	\$ (260,160)	\$ (300,183)	\$ (260,008)	\$ (276,909)
State share 6 month savings in FY 2009-10	\$ (124,629)			

2) Eliminating the requirement for on-site reviews

- This fiscal note accepts the Department of Education's estimated savings projection of \$200,000 per year by eliminating the requirement for on-site reviews.

Estimated 6 month savings in FY 2009-10 \$ (100,000)

<u>Summary of savings:</u>	2009-2010	2010-2011	2011-2012	2012-2013
Reimburse rates for contracted services @ 140% of MaineCare rates.	\$ (124,629)	\$ (242,349)	\$ (317,788)	\$ (338,444)
Eliminating the requirement for on-site reviews	\$ (100,000)	\$ (200,000)	\$ (200,000)	\$ (200,000)
Total estimated savings	\$ (224,629)	\$ (442,349)	\$ (517,788)	\$ (538,444)

Additional costs to the Department of Education associated with establishing the required stakeholder group to examine the federal and state rules and laws pertaining to certain portions of Chapter 101 and to conduct the required review of the MaineCare rate schedule can be absorbed within existing budgeted resources.