

MAINE STATE LEGISLATURE

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Date: 5/17/13

L.D. 323
(Filing No. H-191)

EDUCATION AND CULTURAL AFFAIRS

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
126TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 232, L.D. 323, "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 resolve 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 following changes are made:

1. The rule must be amended in Section II to strike the definition of "qualified professional" and replace it with the definition of "qualified personnel" in alignment with federal regulations adopted for the federal Individuals with Disabilities Education Act;

2. The rule must be amended in Section VII by deleting the changes proposed in the part concerning the criteria for change in eligibility for special education services for a child who no longer meets the eligibility criteria;

3. The rule must be amended in Section VIII in the part concerning the so-called free and appropriate public education choice determination by the individualized education program team of a preschool child with a disability who reaches 5 years of age between July 1st and October 15th and is already receiving "free and appropriate public education" services through the Child Development Services System to clarify that:

A. When the individualized education program team is considering the choice of whether the child should receive "free and appropriate public education" services through the Child Development Services System or in kindergarten, the team must determine whether it "best meets the individual needs of the child" to remain in the Child Development Services System and not enroll in kindergarten until the start of the following school year;

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- 1 B. The "best meets the individual needs of the child" standard may not be equivalent
- 2 to the "free and appropriate public education" standard and that the individualized
- 3 education program team may determine that remaining in the Child Development
- 4 Services System may "best meet the individual needs of the child" even if the
- 5 kindergarten program that is available to the child could provide the child with a "free
- 6 and appropriate public education"; and
- 7 C. In the event that the parent disagrees with the decision of the individualized
- 8 education program team and decides to use dispute resolution procedures, the
- 9 standard for the review must be whether the individualized education program team
- 10 decision "best meets the individual needs of the child";
- 11 4. The rule must be amended in Section IX in the part concerning the services that
- 12 must be included in the transition plan developed during the 9th grade school year for a
- 13 child who is eligible for special education by deleting the proposed addition of language
- 14 related to the "consideration of assistive technologies," which exceeds federal
- 15 requirements concerning the services that must be included in the child's annual transition
- 16 plan;
- 17 5. The rule must be amended in Section X in the part concerning how new and
- 18 veteran teachers can meet the federal requirements of the "High Objective Uniform State
- 19 Standard of Evaluation" content knowledge rubrics to clarify that a special education
- 20 teacher who is transferred to a new teaching assignment has 2 years to demonstrate
- 21 content knowledge in the additional subject area or areas of the teacher's new assignment;
- 22 6. The rule must be amended in Section XVI in the part concerning the so-called
- 23 "stay put" requirements to restore the provisions that allow a child who is eligible for
- 24 early intervention under Part C of the federal Individuals with Disabilities Education Act
- 25 to remain in the current placement or continue to receive current services when a dispute
- 26 resolution proceeding is pending after a request from the child's parent, including a
- 27 mediation request, a state complaint investigation request or a due process hearing
- 28 request;
- 29 7. The rule must be amended in Section XVI in the part concerning the representation
- 30 of a parent of a child who is eligible for special education at a mediation session to clarify
- 31 that a school administrative unit may be accompanied by a nonattorney advocate or
- 32 consultant at a mediation session when the parent is similarly accompanied by an
- 33 individual who has been engaged by the parent to perform special education advocacy or
- 34 consultancy;
- 35 8. The rule must be amended in Section XVI in the part concerning the ability of a
- 36 party to amend its due process hearing request to restore the current provision that is
- 37 consistent with federal regulations and that provides an exception for when a hearing
- 38 officer may grant permission to amend a due process hearing request; and
- 39 9. The rule must be amended in Section XVIII in the part concerning the use of 3rd-
- 40 party funding to add language consistent with new federal regulations that provide that an
- 41 intermediate educational unit or a school administrative unit is required to:
- 42 A. Provide notice to the parent of a child eligible for special education under Part B
- 43 of the federal Individuals with Disabilities Education Act of the legal protections
- 44 when the unit seeks to access the State's public benefits or insurance program to pay

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COMMITTEE AMENDMENT "A" to H.P. 232, L.D. 323

1 for services provided under the federal Individuals with Disabilities Education Act;
2 and

3 B. Obtain a one-time written consent from the parent before the unit accesses the
4 child's or the parent's public benefits or insurance for the first time to pay for services
5 provided under the federal Individuals with Disabilities Education Act.

6 The Department of Education is not required to hold hearings or undertake further
7 proceedings prior to final adoption of the rule in accordance with this section.'

8 **SUMMARY**

9 This amendment provides that final adoption of portions of Chapter 101: Maine
10 Unified Special Education Regulation Birth to Age Twenty, a provisionally adopted
11 major substantive rule of the Department of Education, is authorized contingent upon the
12 department's making specified changes to the proposed rule.

13 **FISCAL NOTE REQUIRED**

14 **(See attached)**



126th MAINE LEGISLATURE

LD 323

LR 1825(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" (H-191)
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 the rulemaking process can be absorbed within existing budgeted resources.