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Final Report

To Susan Gendron, Commissioner of Education

By the Stakeholder Group to Study Adverse Effect

Convened by Mandate of

RESOLVE 2007 Chapter 138, 123rd Maine State Legislature

Emergency Legislation Signed on June 27, 2007

**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**

September 28, 2007

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I. ACKNOWLEDGMENTS

The Stakeholder Group gratefully acknowledges the Department of Education for convening and hosting this process, including the provision of space at the Burton M. Cross Office Building and the provision of outstanding Maine Department of Education support by Jaci Holmes, who served as the Group’s note taker and who graciously arranged for closed caption technology to assist Stakeholder individuals with disabilities in processing meeting discussion. This response to individuals’ learning styles removed barriers for their work within the Group and demonstrated the value of coming together. Should this Group’s work continue in any way, we hope it will be built on this premise of removing barriers for the benefit of our special education children and students.

The Group wishes to express particular thanks to Jeff Edelstein for his facilitation and to Angela Faherty for her leadership and support of the Group’s activities on behalf of Commissioner Gendron. The Group also gratefully acknowledges the valuable support and personal participation of Senator Mills, and the input graciously provided to the Co-Chairs by Senator Bowman, Representative Norton, and the other members of the Education Committee who took the time to respond to our questions and to share their insights on our assignment.

The Stakeholder Group consisted of the following 21 appointed members, whose advocacy for children brought them together for 5 weeks to respond to their charge under the RESOLVE 2007 Chapter 138 of the 123rd Legislature, to address the determination of “adverse effect”. We commend these Stakeholders for the manner in which they worked together, representing their constituents, and seeking further input on the work in progress. We thank all constituencies who provided feedback and recommendations to the Stakeholders. Members are listed in order of appearance under Section B-1 of the Resolve. Stakeholder Group Membership¹:

Two members who are parents of children with disabilities from birth to 6 years of age.....
Appointed by the Maine Parent Federation were: **Casey Kimball and Robbin Pelletier**

Two members who are parents of children with disabilities between 6 years of age and 20 years of age.....
Appointed by the Maine Parent Federation were: **Elizabeth Collins and Barbara Ives**

One member who is a director of a Child Development Services System regional site.....
Appointed by the CDS Directors Council was: **Alfreda Fournier**

Two members who are special education directors.....
Appointed by the Maine Administrators of Services for Children with Disabilities (MADSEC) were: **Barbara Gunn and Frank Sherburne**

¹ Appendix 1

Two members who are certified special education teachers in a public elementary or secondary school.....

Appointed by Maine Education Association were: **Cindy Fish and Ellen Brochu**

One member who is a principal of a public elementary or secondary school.....

Appointed by the Maine Principals Association was: **Deb Emery**

One member who serves as a superintendent of a school administrative unit.....

Appointed by the Maine School Superintendents Association was: **Sandra MacArthur**

One member who is a provider of related services.....

Appointed by the Associations of the related service personnel was: **Bobbi Jo Yeager**

One member who is an individual with a disability.....

Appointed by the Disability Rights Center was: **Sara Squires**

One member who is a representative on the Maine Advisory Council for the Education of Children with Disabilities.....

Appointed by the Maine Advisory Council for the Education of Children with Disabilities (MACECD) was: **Mary Jo Laniewski**

One member representing the Disability Rights Center.....

Appointed by the Disability Rights Center was: **Diane Smith**

One member representing Pine Tree Legal Assistance.....

Appointed by Pine Tree Legal Assistance was: **Sarah Meerse**

One member representing the Maine Developmental Disabilities Council.....

Appointed by the Maine Developmental Disabilities Council was: **Julia Bell**

One member representing the Learning Disabilities Association of Maine.....

Appointed by the Learning Disabilities Association of Maine was: **Brenda Bennett**

One member representing the Autism Society of Maine.....

Appointed by the Autism Society of Maine was: **Nancy Intrieri-Cronin**

One member representing the Maine Children's Alliance.....

Appointed by the Maine Children's Alliance was: **Dean Crocker**

One member representing the Department of Education....

Appointed by the Commissioner of Education was: **Angela Faherty**

II. EXECUTIVE SUMMARY

The Stakeholder Group to Study Adverse Effect, mandated by Resolve 2007 Chapter 138, 123rd Maine State Legislature, met five times during August and September 2007. The Stakeholder Group's mandate is set forth in Section B-5 of the Resolve:

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 was assigned the task of examining the portions of the "proposed" language in Chapter 101 pertaining to the determination of adverse effect, making the necessary changes to Chapter 101 as finally adopted, and providing any additional recommendations to the Commissioner of Education. The Group was also given a copy of Senator Mills' work drafted on May 22, 2007. Neither the originally proposed language nor any other prior language served as the foundation of the Group's work. Instead, the Group focused on defining "adverse effect" in order to determine what necessary changes should be made to Chapter 101. The group decided at its first meeting that it would attempt to make all decisions by consensus and at its second meeting accepted the facilitator's suggested method for determining consensus.²

The Stakeholder Group **reached consensus** that there is **no federal statutory, regulatory, or judicial requirement** for Maine to define the term "adverse effect" as it pertains to eligibility for special education. The Stakeholder Group also **reached consensus** that **nothing in statute or case law prohibits Maine from adopting such a definition** as long as it does not transgress the minimum federal requirement for eligibility.

While the Stakeholder Group did not reach consensus as to whether a definition was either necessary or helpful, the Group **succeeded in crafting some definition language** that appeared to satisfy members' concerns about legal compliance and to reflect the language of current case law. This language was circulated to Stakeholder constituency groups for review and comment to determine if consensus could be reached.

This definition received support from the following constituencies: adults with disabilities, Associations of Related Services Personnel, Autism Society of Maine, CDS Directors' Council, Disability Rights Center, Learning Disabilities Association of Maine, Maine Advisory Council for the Education of Children with Disabilities (MACECD), Maine Children's Alliance, Maine Developmental Disabilities Council, Maine Education Association, Maine Parent Federation, and Pine Tree Legal Assistance. Representatives of these organizations reported receiving a large volume of input by telephone and email from their own memberships and were in favor of recommending this definition to the Commissioner. This definition did not receive support from the following constituencies: Maine Administrators of Services to Children with Disabilities (MADSEC), Maine Principals' Association, and Maine Superintendents' Association. Representatives of these organizations reported that, "Our members expressed great concern with the negative impact/negative influence terminology in isolation. There is zero consideration

² Appendix 2

of the disability causing the impact, and even then, to what degree it would be compared with peers. There are other states that have much stronger language in their definitions of adverse effect, indicating that the child’s progress must be impeded by their disability to the extent that the educational performance is significantly and consistently below the level of similar age peers. This definition carries no such substance.” The Group did not reach consensus on a definition that could be recommended to the Commissioner for adoption, but the Stakeholder Group believes that groundwork has been laid for continuing productive discussions on clarifying Maine’s determination of adverse effect.

The Group concluded its fifth and final meeting with a test for consensus on the following language:

Proposed Definition:

The term “adverse effect on educational performance” is broad in scope. An adverse effect is defined as a negative impact on educational performance.

Educational Performance includes performance in academic areas (for example, written literacy skills, math, communication), functional areas of performance (how the child demonstrates his/her skills and behaviors in cognition, communication, motor, adaptive, social/emotional and sensory areas), and for a child age 3-5, age appropriate developmental activities across five domains of development (communication, physical, cognitive, self-help/adaptive, and social/emotional) in the educational setting/learning environment.

Consideration of all facets of the student’s condition that adversely affect educational performance involves determining negative influences that the disability has on the student’s academic, functional or developmental (for children ages 3-5) activities.

We recommend that the Commissioner provide administrative guidance that explains the importance of using assessments that are appropriate to identify any area of educational performance that may be negatively influenced by the child’s disability.

Consensus-testing votes on this language were 16 in support, with three vetoes, as follows:

- **2 votes:** “Unqualified ‘Yes’. This is a great decision.”
- **14 votes:** “There are some things I dislike about the decision, but I can live with it.”
- **0 votes:** “I have some strong concerns about this decision but defer to the wisdom of the group and the need to move on. I promise not to sabotage it.”
- **3 votes:** “I veto this decision. We definitely need to discuss the matter further.”

This Final Report describes the process of the Stakeholder Group’s deliberations

and the definition language that was reviewed. It also describes areas of disagreement that remain among Stakeholders and the reasons for those disagreements.

III. DELIBERATIONS AND DISCUSSION

Meetings of the Stakeholder Group took place on August 13, August 23, August 30, September 6, and September 13, 2007, at the Burton M. Cross State Office Building in Augusta, Maine. The Legislative Resolve³ establishing the Stakeholder Group and defining its membership and its task is included as an Appendix to this report.

In preparation for the first meeting, Jaci Holmes (Department of Education staff to the Stakeholder Group) sent a message to the Stakeholder Group that included an Agenda,⁴ a document describing the Bernstein Shur Government Solutions Group,⁵ a Resume⁶ for Ms. Kay Rand, Esq., and a list of the appointed membership of the Stakeholders' Group, all of which are included as Appendices to this Report.

In an email on August 12, 2007, and in person at the meeting on August 13, 2007, one member (a parent) provided two documents relating to Jeff Edelstein, a potential alternative choice for Facilitator.⁷

The first meeting was held on August 13, 2007. At this meeting, the Stakeholder Group selected Jeff Edelstein as Facilitator, and elected two Co-Chairs: Alfreda Fournier, a member representing CDS Site Directors, and Mary Jo Laniewski, a representative on the Maine Advisory Council on the Education of Children with Disabilities (MACECD).

Prior to, and during this meeting, several documents were shared by the Department of Education staff. At the meeting, by consensus, these documents were assigned "exhibit numbers" for ease of reference and were to be reviewed as baseline information for discussion at the next meeting. Following are the exhibits:

- Exhibit A: a May 22, 2007 draft containing a proposed definition of "adverse effect" crafted by Senator Mills.⁸
- Exhibit B: a copy of Resolve 2007 Chapter 138, the charter and work requirement for the Stakeholder Task Force.⁹
- Exhibit C: a copy of the federal regulation 34 C.F.R. Section 300.8, embodying the federal definition of "child with a disability".¹⁰

³ Exhibit B

⁴ Appendix 3

⁵ Appendix 4

⁶ Appendix 5

⁷ Appendix 6

⁸ Exhibit A

⁹ Exhibit B

¹⁰ Exhibit C

- Exhibit D: a draft definition of “adverse effect” developed by MADSEC for submission to the Stakeholder Group.¹¹
- Exhibit E: a packet entitled “Documentation of Discussions Re Adverse Effect Language for Chapter 101 Regulations”. This packet contains numerous materials circulated between December 27, 2005 and January 19, 2007 relating to determination of adverse effect.¹²
- Exhibit F: a definition of adverse effect taken from the Idaho Special Education Manual, 2007.¹³

On August 14, 2007, one member (a parent) distributed a copy of a court case, *Mr. & Mrs. I. v. M.S.A.D. #55*, **480 F.3d 1** (1st Cir. 2007), discussed by the Stakeholder Group as “the LI case”.¹⁴

On August 17, 2007, the co-chairs received a memorandum from two members (special education directors) stating (in part): “We are aware that some task force members do not believe that any adverse effect definition is permissible in light of the ruling by the First Circuit Court of Appeals...It seems we should agree to set that issue aside... We should then leave it up to the Maine DOE legal counsel to advise the DOE on whether any proposal we may come up with is legal.”

The newly appointed Facilitator, Jeff Edelstein, circulated an email on August 20, 2007, with an attached Agenda¹⁵ for the August 23, 2007 meeting.

In response to expressed interest by Stakeholder Group members, Jaci Holmes circulated a Law Journal article on August 24, 2007. In addition, an August 24, 2007 email circulated by Jeff Edelstein presented some thoughts on the potential Agenda¹⁶ for the upcoming meeting on August 30, 2007.

On August 28, 2007, one member (representing the Disability Rights Center) circulated a modified version of the Idaho definition¹⁷ for consideration by the Stakeholder Group. This version became the basis for the proposed definition that emerged from discussion on August 30, 2007.

At the meeting on August 30, 2007, one member (representing MADSEC) presented a new proposed definition of Adverse Effect.¹⁸

At the end of the August 30, 2007 meeting, the Stakeholder Group reached consensus that the following proposed definition should be circulated to all members to be discussed with their respective constituencies so that feedback could be gathered and

¹¹ Exhibit D

¹² Exhibit E

¹³ Exhibit F

¹⁴ Exhibit G

¹⁵ Appendix 8

¹⁶ Appendix 9

¹⁷ Appendix 10

¹⁸ Appendix 11

discussed at the September 6, 2007 meeting.

The proposed definition circulated to Stakeholder Group members was:

The term "adverse effect on educational performance" is broad in scope. An adverse effect is defined as a negative impact on educational performance.

Educational Performance includes performance in academic areas (for example, written literacy skills, math, communication), functional areas of performance (how the child demonstrates his/her skills and behaviors in cognition, communication, motor, adaptive, social/emotional and sensory areas), and for a child age 3-5, age appropriate developmental activities across five domains of development (communication, physical, cognitive, self-help/adaptive, and social/emotional) in an educational setting.

Consideration of all facets of the student's condition that adversely affect educational performance involves determining negative influences that the disability has on the student's academic, functional or developmental (for children ages 3-5) activities.

On Monday, September 3, 2007, one member (representing MADSEC) requested via an email communication¹⁹ that the Assistant Attorney General be consulted regarding the legal sufficiency of the definitions being discussed.

On Wednesday, September 5, 2007, one member (representing MADSEC) circulated a new proposed definition²⁰ developed with feedback from MADSEC membership.

Also on Wednesday, September 5, 2007, a teleconference was convened by Facilitator Jeff Edelstein that included four attorneys: Diane Smith, representing the Disability Rights Center; Sara Meerse, representing Pine Tree Legal Assistance; Sarah Forster, legal representative for the Maine Department of Education; and Eric Herlan, who advises MADSEC and provides legal counsel to school districts throughout Maine. This teleconference resulted in a memorandum,²¹ prepared by Mr. Herlan and acknowledged as accurate by the other three attorneys, indicating areas of agreement and disagreement among the attorneys in the review of the modified Idaho definition and the most recent MADSEC proposal.

On Thursday, September 6, 2007, the Stakeholder Group met to consider constituent feedback on the proposed definition circulated after the August 30, 2007 meeting, and to review the legal memorandum. One of the Co-Chairs also provided input from Attorney Richard L. O'Meara, who had not been included in the teleconference but who had received and reviewed the proposed definitions. As an outcome of this meeting,

¹⁹ Appendix 12

²⁰ Appendix 13

²¹ Appendix 14

the Co-Chairs were directed to prepare a draft Final Report of the Stakeholder Group's deliberations and to circulate it to the membership by the close of business on Tuesday, September 11, 2007.

On Thursday, September 13, 2007, the Stakeholder Group convened its final meeting to review and to comment upon the proposed Final Report to the Commissioner. This report reflects revisions made by the Co-Chairs in response to the feedback received from membership.

IV. FINDINGS

The Stakeholder Group **reached consensus** that there is **no federal statutory or judicial requirement** for Maine to define the term "adverse effect" as it pertains to eligibility for special education.

The Stakeholder Group also **reached consensus** that **nothing in statute or case law prohibits Maine from adopting such a definition** as long as it does not transgress the minimum federal requirement for eligibility.

The Stakeholder Group, which had been charged by the Legislature with identifying "any necessary changes to the Chapter 101 rules regarding the determination of adverse effect," **did not reach consensus on whether the adoption of a definition of Adverse Effect was necessary.**

The Stakeholder Group **did not reach consensus on whether adoption of a definition would be helpful.** While many members shared the view that IEP Teams require greater guidance in making eligibility determinations, other members expressed the concern that it was unnecessary to define a term left undefined in federal regulation, and that by doing so Maine would be increasing its risks of litigation.

The Stakeholder Group **did not achieve consensus on whether quantitative or substantive language such as "below the broad range of average" or "below what is expected for typically developing peers" could or should be included in a definition of Adverse Effect.** This topic occupied a significant portion of the group's deliberations. Four members (representing MADSEC, Maine Superintendent's Association, and Maine Principal's Association) felt that any definition that did not at least include the phrase "below what is expected for typically developing peers" would be unacceptable to their groups. However, this view was not shared by other members, many of whom objected that any substantive language would transgress the Federal floor of eligibility. Concern about whether a definition of Adverse Effect would exclude children from eligibility who are currently eligible under existing regulation was expressed as a reason for many members' reluctance to endorse the use of quantitative language.

Likewise, the Group **did not reach consensus on whether specific guidance on**

Adverse Effect is relevant to the determination of eligibility for special education.

Many members indicated a belief that there is a two-prong eligibility test described in federal regulation, and that the second prong – determination by the Team of a student’s “need for special education” – is sufficient to ensure that eligibility determinations are made appropriately. These members felt that any further guidelines needed by IEP teams could be issued separately as guidance rather than as regulation. Further, there was an expressed need for a training component to support guidance elements. Other members believe that specific guidance on the method for determination of adverse effect required for eligibility should be included within a regulatory definition in Chapter 101. These members felt that this guidance would support IEP team work and ensure that consistency in determination of eligibility is applied throughout Maine.

Members of the Stakeholder Group **generally supported the suggestion that additional work on these questions would be beneficial**, and that the work should involve representatives from the Legislature as well as from direct stakeholders and from the Department of Education.

V. NEXT STEPS

The Stakeholder Group strongly urges the Commissioner to convene another study group to continue working on unresolved issues. This group should comprise similar representation as those individuals elected for the Stakeholder Group to Study Adverse Effect. Their charge should consist of:

1. Developing a comprehensive set of guidelines which will give practitioners and parents clear language in understanding the process for determining “adverse effect”. These guidelines should offer a variety of methods used to determine functional, developmental, and educational levels as they relate to the disability and to the learning/educational environment. These methods shall be applied to children ages 3-20.
2. Establishing a system of training for IEP Team members to facilitate decision-making in a well-informed and uniform manner across the State.
3. The Stakeholder Group believes that the issues can be resolved, given a group commitment to:
 - Vow not to make this process harder, but clearer.
 - Promise to provide uniform guidance to all who need it.
 - Commit to providing quality assessments so we can do the job we are legally, morally, and ethically mandated to do.

VI. APPENDICES AND EXHIBITS

1. Stakeholder Group to Examine Adverse Effect: July-September 2007
2. Levels of Consensus Proposed by Jeff Edelstein
3. RESOLVE 2007 Chapter 138
4. Agenda - August 13, 2007
5. Description of Bernstein Shur Governmental Solutions
6. Resume – Kay Rand, Proposed Facilitator
7. Jeff Edelstein Document as Proposed Second Consideration for Facilitator
8. Exhibit A – Senator Mills, May 22, 2007 Draft
9. Exhibit B – RESOLVE 2007 Chapter 138
10. Federal Regulations Section 300.8, Child With a Disability
11. Exhibit D – MADSEC 8/13/07 Definition of Adverse Effect
12. Exhibit E – Documentation of Discussions Regarding Adverse Effect Language for Chapter 101 Regulations
13. Exhibit F – Definition of Adverse Effect Taken from the Idaho Special Ed Manual 2007
14. Exhibit G – Court Case: Mr. & Mrs. I. v. M.S.A.D. #55
15. Agenda – August 23, 2007
16. Potential Agenda – Coming Meeting August 30, 2007
17. Maine Interpretation of Adverse Effect, Prepared by Diane Smith
18. MADSEC Adverse Effect Proposal
19. Email - Consideration of Assistant A.G. Review of the Proposed Definition
20. MADSEC Adverse Effect Proposal
21. Memorandum – Memo Regarding the Legal Issues Relating to the Proposed Definitions

MEMORANDUM

21

TO: Eligibility Task Force
FROM: Sarah Forster, Diane Smith, Sara Meerse, Eric Herlan
RE: Legal issues relating to proposed definitions
DATE: September 5, 2007

Jeff Edelstein and Jaci Holmes have asked that these four lawyers answer a number of questions that have been arising in regard to the various “adverse effect” definitions that are being considered by the Task Force. We discussed these issues by phone on September 5, 2007, and these are our answers. In addressing these questions, we focused primarily on the September 5 MADSEC proposal, and the “modified Idaho” standard that is supported by a number of the disability groups participating in the Task Force.

1) Would any of the definitions fall below the federal IDEA floor, as discussed by the First Circuit Court of Appeals?

Answer:

The “modified Idaho” version plainly would not fall below the federal floor, since it used language virtually identical to our First Circuit’s language, and avoids any substantive specifics.

We are unable to answer whether a Court would rule against the September 5 MADSEC proposal. The language avoids any of the specific terminology that was rejected by the First Circuit, but does include substantive language in addition to the “any negative impact” language used by the Court. We do not know whether the Court would accept this substantive standard if it went through the regulatory process and was ultimately approved by the Maine Legislature. Some attorneys in our group think the Court would reject it, and some think the Court would accept it. But we all agree that we do not know for sure what the Court would conclude.

We all agreed that if the *primary* concern for the Task Force was how to avoid litigation, then the Modified Idaho language would achieve that effect. Yet this group of attorneys could not agree on whether that should be the primary factor in the decisionmaking process – a question that is up to the Task Force and not us.

2) Does the group see any legal significance in the difference between “any negative impact” and “a negative impact.”

MEMO

September 21, 2007

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Answer:

Not really. We might each phrase our answer to this question a bit differently, but ultimately we do not see any meaningful difference between the phrases.

3) Any other legal issues that we wanted to raise for the Task Force?

Answer:

No.

STAKEHOLDER GROUP TO EXAMINE ADVERSE EFFECT
July – September, 2007

Member Type	Appointment By	Individuals
Two members who are parents of children with disabilities from birth to 6 years of age	Maine Parent Federation	<p>Casey Kimball 33 Oakwood Park Chelsea, ME 04330 ckimball@mpf.org</p> <p>Robbin Pelletier 198 Chase Road Readfield, ME 04355 rpelletier@mpf.org</p>
Two members who are parents of children with disabilities between 6 years of age and 20 years of age	Maine Parent Federation	<p>Elizabeth Collins 608 Neck Road China, ME 04358 ecollins@mpf.org</p> <p>Barbara Ives 9 Pease Lane Cornish, Maine 04020 bgives@adelphia.net</p>
One member who is a director of a Child Development Services System regional site	CDS Directors Council	<p>Alfreda Fournier CDS Androscoggin County 1567 Lisbon Street Lewiston, ME 04240 795-4022 Ext 12 afournier@cdsandro.org</p>
Two members who are special education directors	Maine Administrators of Services for Children with Disabilities MADSEC	<p>Barbara Gunn, Director Old Town Regional Program PO Box 543 21 Jefferson Street Old Town, ME 04469 827-4441, Ext 203 bgunn@otsd.org</p> <p>Frank Sherburne, Director MSAD # 57 86 West Road Waterboro, ME 04087 247-3221 frank_sherburne@fc.sad57.k12.me.us</p>
Two members who are certified special education	Maine Education Association MEA	<p>Cindy Fish Bangor School Department</p>

teachers in a public elementary or secondary school		941-6280 Home address: 139 Mountain View Drive Hermon, ME 04401 Home phone 848-2280 cfish@bangorschools.net Ellen Brochu Reeds Brook Middle School Hampden, ME Home phone 825-3616 joel35@yahoo.com
One member who is a principal of a public elementary or secondary school	MPA	Deb Emery Cottrell School 169 Academy Rd. Monmouth, Maine 04259 demery@monmouthschools.org
One member who serves as a superintendent of a school administrative unit		Sandra MacArthur Superintendent of Schools MSAD # 59 55 Weston Avenue Madison ME 04950 696-3323 smacarthur@msln.net
One member who is a provider of related services	Associations of the related service personnel	Bobbijo Yeager UCP of Northern Maine 700 Mt Hope Avenue Suite 320 Bangor, Maine 04401 941-2952 ext.225 bobbijo.yeager@ucpofmaine.org
One member who is an individual with a disability	Disability Rights Center	Sara Squires ssquires@drcme.org
One member who is a representative on the Maine Advisory Council for the Education of Children with Disabilities	Maine Advisory Council for the Education of Children with Disabilities MACECD	Mary Jo Laniewski PO Box 48 Moody, ME 04054 646-3784 mjal@excite.com
One member representing the Disability Rights Center	Disability Rights Center	Diane Smith 621-1419 dsmith@drcme.org
One member representing Pine Tree Legal Assistance	Pine Tree Legal Assistance	Sarah Meerse PO Box 547

		Portland, ME 04112 774-8246 smeerse@ptla.org
One member representing the Maine Developmental Disabilities Council,	Maine Developmental Disabilities Council MDDC	Julia Bell, Executive Director MDDC 139 State House Station Augusta, ME 04333-0139 287-4215 julia.j.bell@maine.gov
One member representing the Learning Disabilities Association of Maine	Learning Disabilities Association of Maine LDA	Brenda Bennett, Executive Director LDA 97 Rocky Shore Lane PO Box 67 Oakland, ME 04963 465-7700 bbennett@ldame.org or lda@ldame.org
One member representing the Autism Society of Maine	Autism Society of Maine	Nancy Intrieri-Cronin, Executive Director Autism Society of Maine 72B Main Street Winthrop, ME 04364 800-273-5200 nancy@asmonline.org
One member representing the Maine Children's Alliance	Maine Children's Alliance	Dean Crocker, Executive VP Maine Children's Alliance 303 State Street Augusta, ME 04330 623-1868 ext. 212 dcrocker@mekids.org
One member representing the Department of Education	Commissioner of Education	Angela Faherty Deputy Commissioner Maine Department of Education 23 State House Station Augusta, ME 04333-0023 624-6620 angela.faherty@maine.gov
Staff	Department of Education	Sarah Forster Assistant Attorney General Maine Attorney General's Office 6 State House Station Augusta, ME 04333-0006 626-8800 sarah.forster@maine.gov

		Jaci Holmes Federal Liaison Maine Department of Education 23 State House Station Augusta, ME 04333-0023 jaci.holmes@maine.gov
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Chair. That the stakeholder group shall appoint a chair from among its members.

Duties. 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;

Technical assistance; facilitator. 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;

Meetings. 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:

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

Report. 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 September 28, 2007.

APPENDIX II

Levels of Consensus Handout:

Fingers	Levels of Consensus
3	Unqualified "yes". This is a great decision.
2	There are some things I dislike about the decision, but I can live with it.
1	I have some strong concerns about this decision but defer to the wisdom of the group and the need to move on. I promise not to sabotage it.
Fist	I veto this decision. We definitely need to discuss the matter further.

RESOLVE Chapter 138

EMER SIGNED on 2007-06-27 - First Regular Session - 123rd Legislature - Get
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**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**

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 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 by deleting the part of the rule designated "3. Determination of Adverse Effect for Children Three to Twenty";

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

3. The rule must be amended in Section V in the part designated "2. Evaluation Procedures" by deleting the note inserted at the end of paragraph G, subparagraph (1) 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. The rule must be amended in Section VI in the part designated "1. 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 age 14 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 their 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 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. The rule must be amended in Section IV in the part designated "2. Qualifications of Evaluators" and in Section XI in the table designated "Related Services for Children 3 to 20" to provide that neurocognitive testing assistants who are registered with the Maine Psychological Association 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.

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 state rules and laws pertaining to the determination of adverse effect for children from 3 to 20 years of age; and be it further

Sec. B-2. Stakeholder group membership. Resolved: That the stakeholder group consists of 21 members appointed as set out in this section:

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

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

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

4. Two members who are special education directors, appointed by the Executive Director of the Maine Administrators of Services for Children with Disabilities;
5. Two members who are certified special education teachers in a public elementary or secondary school, appointed by the Executive Director of the Maine Education Association;
6. One member who is a principal of a public elementary or secondary school and who has knowledge of or experience with programs for children with disabilities, appointed by the Executive Director of the Maine Principals' Association;
7. One member who serves as a superintendent of a school administrative unit and who has knowledge of or experience with programs for children with disabilities, appointed by the Executive Director of the Maine School Superintendents Association;
8. One member who is a provider of related services, appointed jointly by the professional associations that represent speech therapists, occupational therapists and physical therapists;
9. One member who is an individual with a disability, appointed by the Executive Director of the Disability Rights Center;
10. One member who is a representative on the Maine Advisory Council for the Education of Children with Disabilities, appointed by the chair of the Maine Advisory Council for the Education of Children with Disabilities;
11. One member representing the Disability Rights Center, appointed by the Executive Director of the Disability Rights Center;
12. One member representing Pine Tree Legal Assistance, appointed by the Board of Directors of Pine Tree Legal Assistance;
13. One member representing the Maine Developmental Disabilities Council, appointed by the Executive Committee of the Maine Developmental Disabilities Council;
14. One member representing the Learning Disabilities Association of Maine, 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; and be it further

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; 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:

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 September 28, 2007; and be it further

Sec. B-9. Adoption of rules. Resolved: That the Commissioner of Education is authorized to 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 provisionally adopted by the Commissioner of Education pursuant to this section must expressly consider and address the recommendations contained in the report of the stakeholder group submitted under section 8.

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

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STAKEHOLDER GROUP TO EXAMINE ADVERSE EFFECT

August 13, 2007

Room 600 – Burton M. Cross State Office Building, Augusta

Agenda

- | | |
|---------|---|
| 9:00 am | Settling in; coffee |
| 9:15 | Welcome – Deputy Commissioner Angela Flaherty |
| 9:30 | Introduction of Stakeholder Group members; discussion of expectations
(see attached list of members) |
| 10:00 | Affirmation of Department's recommendation for facilitator (see attached
bio of Kay Rand) |
| 10:15 | Discussion of Meeting Ground Rules and Role of Chair |
| 10:30 | Selection of Chair |
| 10:45 | Development of Work Plan; Finalize next four meeting dates |
| Noon | Adjourn |

Bernstein Shur Government Solutions

Established in May 2003, Bernstein Shur Government Solutions (BSGS) is the governmental relations consulting affiliate of Bernstein Shur.

BSGS principals form a trusted, credible, and results-oriented public policy and management team able to help clients find solutions to complicated interactions in the government and public arena. Team members are recognized for their ability to strategically deal with difficult public policy challenges in a manner that cultivates mutual respect and beneficial long-term relationships.

BSGS services include:

- ⌚ Representing individual corporations and business community alliances, private individuals, and public/non-profit agencies in their dealings with local, state, and federal executive and legislative branch agencies.
- ⌚ Helping organizations strategize and implement both short- and long-term relationships with the state and federal governments.
- ⌚ Assisting alliances of political and public interests develop and implement public referenda, lobbying, and communications strategies.
- ⌚ Providing a full range of strategic advice and support for candidates running for major state and federal office including campaign finance, public opinion research, assistance with information technology systems, and electronic media strategy.
- ⌚ Assisting municipalities and governmental agencies in interactions with private industry, as well as with state and federal government.
- ⌚ Managing projects that involve public and private partners.

BSGS has represented clients in complex matters requiring skillful negotiation of complex regulatory, political, and policy issues. These include:

- ⌚ The privatization of the State of Maine's wholesale spirits business (a \$125 million transaction).
- ⌚ Establishment of the first state-owned privately managed/operated solid waste landfill at West Old Town (a \$25 million transaction).
- ⌚ Creation of the first-of-its-kind-in-the-nation STRIVE U, a post-secondary program for young adults with developmental disabilities at the University of Southern Maine.
- ⌚ The successful mediation of the first collective bargaining contract for the Legislature and legislative employees.
- ⌚ Representation of the Cumberland County Civic Trustees to advance a proposal to build a new 10,000 seat civic center, adjoining convention center, hotel, office building, and parking garage complex in a partnership with private investors.

BSGS has also represented a number of for-profit corporations, non-profit corporations, and quasi-municipal entities and municipalities in projects that require skillful negotiation and knowledge of public policy. It has also managed several statewide referenda campaigns, including the successful effort to defeat the so-called Palesky tax cap.

Kay Rand

207 622-9671 | krand@bernsteinshur.com

Kay Rand served as Chief of Staff to former Governor Angus S. King Jr. As Chief of Staff, Kay developed an intimate understanding of the executive branch of state government and a respectful and respected relationship with the Legislature. In 1994, Kay was the manager for Independent candidate King's successful campaign for governor.

Two years prior to her alliance with Governor King, Kay represented the business community in government affairs with a focus on real estate development, environmental permitting, and general economic development. Kay served as Deputy Commissioner during the McKernan Administration in the Office of Comprehensive Land Use Planning, working with municipalities, regional entities, and state agencies on growth management strategies.

For 12 years, Kay was the lobbyist representing the Maine Municipal Association and Maine municipalities before the State Legislature and state administrative agencies and was the key liaison with Maine's congressional delegation on municipal matters.

Kathryn J. Rand

247 Winthrop St

Hallowell, ME 04347

207-622-1047

kayrand@roadrunner.com

Education

B.A. in Political Science, University of Maine at Portland-Gorham, Portland, Maine,
May 1977

Valedictorian, Ashland Community High School, Ashland, Maine, June 1973

Work Experience

Managing Director, Bernstein Shur Government Solutions, Augusta, Maine, May 2003
to present

Working as a government relations consultant with a number of diverse projects.

Chief of Staff, Office of Governor Angus S. King, Jr., Augusta, Maine, August 1998 to
January, 2003.

Worked as chief policy advisor to the Governor and Cabinet with a special
focus on the state budget and administrative operations, responsible for the
internal and external activities of the Governor's office and primary liaison with
the Legislature and the Legislative Council.

Director, Policy and Legislation, Office of Governor Angus S. King, Jr., Augusta,
Maine, January 1995 to August 1998.

Coordinated all aspects of the Governor's relationship with the Legislature,
including all state departments and agencies and served as primary advisor on
legislative policy.

Campaign Manager, Angus King for Governor, Brunswick, Maine, January 1994 to
December 1994

Oversaw all the operations of this successful Independent candidacy for
Governor, including field operations, policy development, press relations,
fundraising, scheduling, media relations and political strategy.

Vice President of Government Relations, The Maine Alliance, Portland and Hallowell,
Maine, January 1992 to December 1993.

Acted as an advocate for this business organization before the Legislature, state
administrative agencies, the Congressional Delegation and federal executive
agencies with a focus on environmental and land use issues.

Deputy Commissioner, Department of Economic and Community Development,
Augusta, Maine, August 1988 to December 1991.

Directed the newly created Office of Comprehensive Land Use Planning,
implementing the 1988 Comprehensive Land Use Planning and Regulatory Act
and other municipal and regional planning and regulatory activities such as
floodplain management, coastal zone management and Land and Water

Conservation (LAWCON) funding for municipal outdoor recreation.

Director of State and Federal Relations, Maine Municipal Association, Augusta, Maine, December 1977 to July 1988.

Worked as an advocate for local governments in Maine before the Legislature and state administrative agencies, the Congressional Delegation and federal executive agencies.

Related Experience and Activities

Board of Directors, YMCA, Augusta, Maine, 2006 to present, currently a member of Executive Committee

Member, Loring Development Authority, November 2003 to present, currently vice-chair.

Trustee, Old South Congregational Church, Hallowell, Maine, 1998 to present. Chair since 2003

Member, USM Board of Visitors, January 2006 to present

Member, Board of Directors, Gulf of Maine Research Institute, September 2006 to present

Member, Maine Leadership Council, ANTHEM, November 2006 to present

Corporator, Kennebec Savings Bank, February 2007 to present

Member, Board of Directors, Small Woodlot Owners Association of Maine, July 2006 to present

Board of Advisors, Friends of Baxter State Park, Readfield, Maine, 2002 to present.

Board of Directors, KIDS Consortium, Lewiston, Maine, 1997 to present.

Board of Directors, Maine Center for Economic Policy, April 2002 to April 2007.

Chairman and Member, Hallowell Planning Board, Hallowell, Maine, 1992 to December 2002.

Trustee, The Nature Conservancy, Brunswick, Maine, 1991 to 1995.

Board of Directors, Big Brothers/Big Sisters of Kennebec Valley, Augusta, Maine, 1982 to 1989.

Ambassador, Safety Patrol at Sugarloaf Mountain, December 2002 to May 2004.

From the Ground Up: Community Forums to Raise Awareness and Build Support

Jeff Edelstein

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Tamara Pinard

Cumberland County Soil and Water Conservation District
tamara-lee-pinard@me.nacdnet.org

Betty Williams

Cumberland County Soil and Water Conservation District
betty-williams@me.nacdnet.org

River and lake restoration projects can be challenging endeavors given the complex variables involved in restoring impaired ecosystems. But the technical challenges often pale in comparison to the social and cultural challenges presented by local opposition and concerns. A technique to overcome these challenges which has taken hold in Maine with notable success is the use of local and regional community watershed forums to engage local residents early on. These forums raise the awareness of previously uninvolved residents, provide an opportunity for networking and community-building around shared resources, and involve local residents directly in decision-making on the issues that matter to them.

A key component of this method, as implemented by the authors, is the creation of a local planning team made up of community representatives who plan and implement the forum. By avoiding a top-down agency-directed approach, greater community ownership is built and the forums are more successful because they are planned by individuals who know the needs and preferences of community residents.

The lead author of this presentation is a professional facilitator and mediator who has assisted local planning teams in the development and implementation of several major community watershed forums in Maine, as well as being involved in the resolution of a number of landscape-scale water resource issues in New England. The lead author has also served as the process designer and facilitator for the past three years of a highly-acclaimed regional watershed collaboration among fifteen municipalities in the Greater Portland, Maine area. The supporting presenters have served as project managers for watershed restoration projects of which community forums were used as the focal points for public participation.

The presentation will be based on four community forums which the authors have held over the past two years: Forest Lake, Tannery Brook, Raymond/Crescent Pond, and the Great Works River. Issues which have been addressed at these forums include fish

passage restoration, dam removal, habitat restoration, development activities, land and water access, stream degradation, soil erosion, recreational vehicle impacts, motorized boat pollution, recreational access, and similar topics.

The Forest Lake Community Watershed Forum is a good example of this format. This was the first forum of its kind to be held in Maine and it established the model for future forums. Close to 50 residents from the four towns within the watershed came together for a day-long gathering to learn about the state of the lake, identify issues of concern to them, strategize on protection measures, and identify next steps to advance those strategies. Participants included watershed residents, developers, businesspeople, town government staff and officials, and regional and state agency representatives. The participants worked in small groups, with guidance from facilitators from regional or state agencies, as well as in full-group sessions. Rather than simply being a one-time event, an outcome of the forum was attendee commitment to participate in several topic-based workgroups, which met over several months and developed detailed actions and strategies for inclusion in a regional watershed management plan.

The presentation will consist of three components:

1. Overviews of the four forums (Forest Lake, Tannery Brook, Raymond/Crescent Pond, and Great Works River), including:

- a) Description of the water resource, restoration issues, and community dynamics.
- b) Development process leading to the forum.
- c) Structure and activities at the forum.
- d) Forum outcomes, including follow-on activities.

2. Lessons learned and assumptions proven right or wrong.

3. Guidelines and action steps for session attendees to use to:

- a) Evaluate if their situation is right for a community forum (including key evaluative measures for situations with active community conflict over resources).
- b) Assess the type of forum to hold.
- c) Assemble a planning team.
- d) Design and implement the forum.
- e) Develop alternatives for public involvement, if the situation is not suited to a community forum.

The presentation will be done in PowerPoint with selected video clips from the actual forums to illustrate key points.

A

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Section II.

2. Academic Basic Skills. "Academic basic skills" are:

- A. Oral expression;
- B. Listening comprehension;
- C. Written expression;
- D. Basic reading;
- E. Reading fluency;
- F. Reading comprehension;
- G. Mathematics calculation;
- H. Mathematics reasoning; and
- I. Physical motor skills.

10. Educational Performance. "Educational performance" means performance in academic basic skills and/or functional performance. For a child age 3-5, age appropriate developmental activities across five domains of development (communication, physical, cognitive, adaptive and social/emotional)

14. Functional Performance. "Functional performance" means the child's level of development in each of the five principal domains recognized by federal regulations:

- A. Physical (sensory and motor);
- B. Cognitive;
- C. Communicative;
- D. Social and emotional; and
- E. Adaptive.

Section VII

3. Determination of Adverse Effect and the Need for Special Education Services among Children Three to Twenty

A. Federal background.

For a child to access special education services, the IEP or IFSP Team must determine that he or she is a "child with a disability" as defined in federal regulations (34CFR §300.8).

For children with certain multiple disabilities, for those with a "specific learning disability" (SLD) and for those children ages 3 through 5 who experience measured developmental delays, qualification for special education services depends on establishing that by reason of the disability the child "needs special education and related services."

For other forms of disability, however, including mental retardation; impairments to hearing, speech, language, or vision; serious emotional disturbances; orthopedic impairments; autism; traumatic brain injury; and certain other health impairments, as defined in Chapter 101 and in federal regulations, the Team must also find that the disability "adversely affects the child's educational performance." In these cases, three elements must be shown:

which includes academic skills or functional performance

1. that the specific disability exists;
2. that the disability "adversely affects the child's educational performance;" and
3. that by reason of the disability, the child "needs special education and related services."

B. The "adversely affects" requirement.

Although federal regulations do not define "adversely affects," the word "adverse" commonly means "harmful, impeding, obstructing or detrimental." "Adversely affects" means a negative impact that is more than a small or transient hindrance. It means a chronic or episodic condition, not merely detectable, but distinctly measurable over time from more than one source or setting.

It is evidenced by persistent findings and observations based on objective assessments with replicable results. It does not include minor or transitory effects or those that are commonly experienced by children in the general population.

For children 5 to 20, a disability that "adversely affects educational performance" is one that creates a distinctly measurable and persistent gap between the demands of the educational setting and the child's educational performance (as defined in paragraph 10 of Section II).

For children ages 3 to 5, a disability that "adversely affects educational performance" is one that creates a distinctly measurable and persistent gap between the demands of the educational setting and the child's functional performance (as defined in paragraph 14 of Section II).

C. "Needs special education and related services."

Although federal regulations do not define "needs," the word commonly signifies a "necessity," an exigency," or the "lack of something essential." A child "needs" special education and related services when, because of the disability, the child can neither progress effectively in a regular education program nor receive reasonable benefit from such a program in spite of other services available to the child.

The need is best established through evidence of a distinctly measurable and persistent gap in the child's educational or functional performance that cannot be addressed through services or accommodations available through the general education program.

D. Evidence of a gap

When a child's measured academic or functional performance is persistently measured at or below the 15th percentile (on assessments that yield percentile rankings), is measured at or below a -1.0 standard deviation below the mean (on assessments that yield standard scores) or is measured at an equivalent level on other forms of assessment, it is evidence of a gap when found in two or more of the following categories:

- (1) Standard or percentile scores on a nationally normed individually administered achievement test; or, for children ages 3 to 5, an appropriate multi-domain nationally normed test or rating scales;
- (2) Standard or percentile scores on a nationally normed group administered achievement test, including nationally normed curriculum-based measures;
- (3) Any reports prepared by the SAU which reflect academic or functional performance;
- (4) Performance on comprehensive assessments based on Maine's Learning Results or measurement of indicators within the Early Childhood Learning Guidelines;
- (5) Criterion referenced assessments of academic or functional performance;
- (6) Student work products, language samples or portfolios;
- (7) Disciplinary evidence or rating scales based on systematic observations in more than one setting by professionals or parents;
- (8) In cases of reevaluation, a determination by the IEP Team, including the parent, that adverse performance may result from removal of current supports and services that cannot be provided by general education;
- (9) Attendance patterns; or
- (10) Social or emotional deficits as observed by professionals or parents in multiple settings, in clinical rating scales or in clinical interviews.

While the above criteria may be regarded as sufficient to define a need for special education and related services, they are neither essential nor necessarily sufficient in and of themselves. They are intended as a guide for IEP Teams, including the parent, to employ in determining eligibility.

E. Documentation

The evaluations process must include documentation of the intervention strategies employed in a general education setting for children ages 5 to 20. The documentation shall include:

- (1) Each type of measure considered by the Team;
- (2) The findings of the IEP Team, with respect to each measure considered, as to whether the measure is sufficient to support a finding of adverse effect and a need for special education services;
- (3) The specific testing, data, scores, student work and education records relied up on by the IEP Team to support its findings; and
- (4) An identification of each academic, functional, or developmental domain affected by the child's disability.

RESOLVE Chapter 138



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**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**

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 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:

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

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4. The rule must be amended in Section VI in the part designated "1. 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 age 14 for the student's postsecondary participation in advanced placement courses, a vocational education program or an adult education program;

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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 their 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 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. The rule must be amended in Section IV in the part designated "2. Qualifications of Evaluators" and in Section XI in the table designated "Related Services for Children 3 to 20" to provide that neurocognitive testing assistants who are registered with the Maine Psychological Association 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.

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 state rules and laws pertaining to the determination of adverse effect for children from 3 to 20 years of age; and be it further

Sec. B-2. Stakeholder group membership. Resolved: That the stakeholder group consists of 21 members appointed as set out in this section:

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

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

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

4. Two members who are special education directors, appointed by the Executive Director of the Maine Administrators of Services for Children with Disabilities;

5. Two members who are certified special education teachers in a public elementary or secondary school, appointed by the Executive Director of the Maine Education Association;

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

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

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

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

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

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

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

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

14. One member representing the Learning Disabilities Association of Maine, 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; and be it further

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; 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:

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 September 28, 2007; and be it further

Sec. B-9. Adoption of rules. Resolved: That the Commissioner of Education is authorized to 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 provisionally adopted by the Commissioner of Education pursuant to this section must expressly consider and address the recommendations contained in the report of the stakeholder group submitted under section 8.

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

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(2) Are binding on each public agency in the State that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the Act.

(c) Private schools and facilities. Each public agency in the State is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities—

(1) Referred to or placed in private schools and facilities by that public agency; or

(2) Placed in private schools by their parents under the provisions of § 300.148.

[57 FR 44798, Sept. 29, 1992; 64 FR 12406, 12421, Mar. 12, 1999; 71 FR 46540, 46753, Aug. 14, 2006]

(20 U.S.C. 1412)

[EFFECTIVE DATE NOTE: 71 FR 46540, 46753, Aug. 14, 2006, revised Part 300, effective Oct. 13, 2006.]

§ 300.3 [This section was removed. See 71 FR 46540, 46753, Aug. 14, 2006.]

[No text in original]

[57 FR 44798, Sept. 29, 1992; 64 FR 12406, 12421, Mar. 12, 1999]

(20 U.S.C. 1221e-3(a)(1))

[EFFECTIVE DATE NOTE: 71 FR 46540, 46753, Aug. 14, 2006, revised Part 300, effective Oct. 13, 2006.]

DEFINITIONS USED IN THIS PART

§ 300.4 Act.

Act means the Individuals with Disabilities Education Act, as amended.

[57 FR 44798, Sept. 29, 1992; 64 FR 12406, 12421, Mar. 12, 1999; 71 FR 46540, 46753, Aug. 14, 2006]

(20 U.S.C. 1400(a))

[EFFECTIVE DATE NOTE: 71 FR 46540, 46753, Aug. 14, 2006, revised Part 300, effective Oct. 13, 2006.]

§ 300.5 Assistive Technology Device.

Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

[57 FR 44798, Sept. 29, 1992; 64 FR 12406, 12421, Mar. 12, 1999; 71 FR 46540, 46753, Aug. 14, 2006]

(20 U.S.C. 1401(1))

[EFFECTIVE DATE NOTE: 71 FR 46540, 46753, Aug. 14, 2006, revised Part 300, effective Oct. 13, 2006.]

§ 300.6 Assistive Technology Service.

Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes—

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

[57 FR 44798, Sept. 29, 1992; 64 FR 12406, 12421, Mar. 12, 1999; 71 FR 46540, 46753, Aug. 14, 2006]

(20 U.S.C. 1401(2))

[EFFECTIVE DATE NOTE: 71 FR 46540, 46753, Aug. 14, 2006, revised Part 300, effective Oct. 13, 2006.]

§ 300.7 Charter School.

Charter school has the meaning given the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 et seq. (ESEA).

[57 FR 44798, Sept. 29, 1992; 64 FR 12406, 12421, Mar. 12, 1999; 71 FR 46540, 46753, Aug. 14, 2006]

(20 U.S.C. 7221i(1))

[EFFECTIVE DATE NOTE: 71 FR 46540, 46753, Aug. 14, 2006, revised Part 300, effective Oct. 13, 2006.]

§ 300.8 Child with a Disability.

(a) General. (1) Child with a disability means a child evaluated in accordance with §§ 300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§ 300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

(ii) If, consistent with § 300.39(a)(2), the related service required by the child is considered special

education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

(b) Children aged three through nine experiencing developmental delays. Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in § 300.111(b), include a child—

(1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(2) Who, by reason thereof, needs special education and related services.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(1)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.

(iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

(2) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.

(4)(i) Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

(5) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

(6) Mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

(7) Multiple disabilities means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

(8) Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(9) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that —

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a child's educational performance.

(10) Specific learning disability—(i) General. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) Disorders not included. Specific learning disability does not include learning problems that are

primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(11) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

(12) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(13) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

[57 FR 44798, Sept. 29, 1992; 64 FR 12406, 12422, Mar. 12, 1999; 71 FR 46540, 46753, Aug. 14, 2006]
(20 U.S.C. 1401(3); 1401(30))
[EFFECTIVE DATE NOTE: 71 FR 46540, 46753, Aug. 14, 2006, revised Part 300, effective Oct. 13, 2006.]

§ 300.9 Consent.

Consent means that—

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.

(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

[57 FR 44798, Sept. 29, 1992; 64 FR 12406, 12422, Mar. 12, 1999; 71 FR 46540, 46753, Aug. 14, 2006]
(20 U.S.C. 1414(a)(1)(D))
[EFFECTIVE DATE NOTE: 71 FR 46540, 46753, Aug. 14, 2006, revised Part 300, effective Oct. 13, 2006.]

§ 300.10 Core Academic Subjects.

Core academic subjects means English, reading or language arts, mathematics, science, foreign lan-

guages, civics and government, economics, arts, history, and geography.

[57 FR 44798, Sept. 29, 1992; 64 FR 12406, 12422, Mar. 12, 1999; 71 FR 46540, 46753, Aug. 14, 2006]

(20 U.S.C. 1401(4))

[EFFECTIVE DATE NOTE: 71 FR 46540, 46753, Aug. 14, 2006, revised Part 300, effective Oct. 13, 2006.]

§ 300.11 Day; Business Day; School Day.

(a) Day means calendar day unless otherwise indicated as business day or school day.

(b) Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in § 300.148(d)(1)(ii)).

(c)(1) School day means any day, including a partial day that children are in attendance at school for instructional purposes.

(2) School day has the same meaning for all children in school, including children with and without disabilities.

[57 FR 44798, Sept. 29, 1992; 64 FR 12406, 12422, Mar. 12, 1999; 71 FR 46540, 46753, Aug. 14, 2006]

(20 U.S.C. 1221e-3)

[EFFECTIVE DATE NOTE: 71 FR 46540, 46753, Aug. 14, 2006, revised Part 300, effective Oct. 13, 2006.]

§ 300.12 Educational Service Agency.

Educational service agency means—

(a) A regional public multiservice agency—

(1) Authorized by State law to develop, manage, and provide services or programs to LEAs;

(2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State;

(b) Includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and

(c) Includes entities that meet the definition of intermediate educational unit in section 602(23) of the Act as in effect prior to June 4, 1997.

[57 FR 44798, Sept. 29, 1992; 64 FR 12406, 12423, Mar. 12, 1999; 71 FR 46540, 46753, Aug. 14, 2006]

(20 U.S.C. 1401(5))

[EFFECTIVE DATE NOTE: 71 FR 46540, 46753, Aug. 14, 2006, revised Part 300, effective Oct. 13, 2006.]

§ 300.13 Elementary School.

Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

[57 FR 44798, Sept. 29, 1992; 64 FR 12406, 12423, Mar. 12, 1999; 71 FR 46540, 46753, Aug. 14, 2006]

(20 U.S.C. 1401(6))

[EFFECTIVE DATE NOTE: 71 FR 46540, 46753, Aug. 14, 2006, revised Part 300, effective Oct. 13, 2006.]

D

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Draft Adverse Effect Definition

II. DEFINITIONS

2. *Adverse Effect.* A child's impairment adversely affects educational performance when the child achieves below the broad range of average compared to same age peers in at least one area of educational performance, as measured by a minimum of three assessment tools determined to be appropriate for that purpose by the IEP Team.

#

Definition of Adverse Effect taken from the Idaho Special Education Manual, 2007; provided by the Idaho Department of Education:

Experiences Adverse Effect on Educational Performance:

The term "adverse effect on educational performance" is broad in scope. An adverse effect is a harmful or unfavorable influence. Educational Performance includes both academic areas (reading, math, communication, etc.) and non-academic areas (daily living activities, mobility, prevocational and vocational skills, social adaptation, self help skills, etc.). Consideration of all facets of the student's condition that adversely affect educational performance involves determining any harmful or unfavorable influences that the disability has on the student's academic or daily life activities.

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STAKEHOLDER GROUP TO EXAMINE ADVERSE EFFECT

August 23, 2007
9:00 a.m. – Noon
Room 600, Cross State Office Building
Augusta, ME

Draft Agenda (to be confirmed by group)

- 9:00 a.m. **Welcome, Introductions and Agenda Acceptance/Modification**
- 9:10 a.m. **Group protocols and decision-making processes**
- Review of meeting summaries
 - Participation of observers
 - Norms for decision-making
 - Other
- 9:30 a.m. **Essential Questions/Insights from reading materials**
Problem statements, examples, solutions
- 10:00 a.m. **Legal Briefs and Case law summaries**
Diane Smith will lead off with information on legal briefs and case law summaries including data from the other states.
- 10:30 p.m. **Break**
- 10:45 a.m. **Definitions**
Frank Sherburne will lead off with information around definitions.
- 11:15 a.m. **General Discussion**
- 11:45 a.m. **Re-cap meeting progress and identify next steps**
- Noon **Adjourn**

STAKEHOLDER GROUP TO EXAMINE ADVERSE EFFECT

August 30, 2007
9:00 a.m. – Noon
Room 600, Cross State Office Building
Augusta, ME

Draft Agenda (to be confirmed by group)

- 9:00 a.m. **Welcome, Introductions and Agenda Acceptance/Modification**
- 9:10 a.m. **Group protocols**
 - Comments on prior meeting summary
 - Other
- 9:20 a.m. **Policy Discussion**
 - Review of (a) Idaho Definition and (b) Revised Idaho Definition provided by Diane Smith
 - Review of Idaho Guidance
 - Review of Maine Chapter 101 Adverse Effect sections
- 10:30 p.m. **Break (if needed)**
- 10:45 a.m. **Policy Discussion (cont'd)**
- 11:45 a.m. **Re-cap meeting progress, identify next steps**
- Noon **Adjourn**

A Maine Interpretation of the Idaho Adverse Effect Definition

(Bold is Idaho language that was retained. Some Idaho language has been replaced)

The term "adverse effect on educational performance" is broad in scope. An adverse effect is defined as any negative impact on educational performance. (From the LI decision, page 33)

Educational Performance includes performance in academic areas (for example, written literacy skills, math, communication.), functional areas of performance (how the child demonstrates his/her skills and behaviors in cognition, communication, motor, adaptive, social/emotional and sensory areas), and for a child age 3-5, age appropriate developmental activities across five domains of development (communication, physical, cognitive, self-help/adaptive, and social/emotional) in an educational setting. (from the Maine regs. pages 5 and 6)

Consideration of all facets of the student's condition that adversely affect educational performance involves determining any negative influences that the disability has on the student's academic, functional or developmental (for children ages 3-5) activities.

Holmes, Jaci

From: Barbara Gunn [bgunn@otsd.org]
Sent: Monday, September 03, 2007 10:55 AM
To: Jeff Edelstien; Alfreda Fournier; mjal@excite.com
Cc: frank_sherburne@fc.sad57.k12.me.us; Holmes, Jaci; Sandra MacArthur; Jill Adams
Subject: AG review

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Jeff, Alfreda and MJ,

I think it would be helpful if we ask the AG to review all definitions presented over the past three meetings to see if any of them go below the floor. Sarah should be the one providing the guidance here. Once she does that, we should be able to (should any member need to) revisit any language in any of the definitions on the table without getting caught up in whether the court case allows it. This is something that Sarah would/should have done all along had she been able to be with us more.

Barbara

--
Barbara Gunn, Director
Old Town Regional Program
827-4441 Ex. 203

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Adverse Effect Definition Proposal 09/05/07:

The term “adverse effect on educational performance” is broad in scope. A child’s disability adversely effects educational performance when the child achieves below the broad range of average compared to the same age peers in at least one area of educational performance, as measured by a minimum of three assessment tools determined to be appropriate for that purpose by the PET. The PET shall consider all facets of the student’s disability that adversely effect educational performance to determine harmful or unfavorable influences that the disability has on the student’s educational performance as defined in Maine Special Education Regulations.