

ADMINISTRATIVE LETTER NO: 16
POLICY CODE: IHBA

TO: Superintendents of Schools; CDS Board Chairs; Directors of
Special Education; CDS Site Directors; MADSEC; Disability Rights Center
FROM: Angela Faherty, Ph. D., Commissioner of Education
DATE: September 30, 2010
RE: Impact of Psychological Diagnoses on Eligibility
Determination

On August 16, 2010, the Department received a request for a systemic complaint investigation, alleging that the two respondent SAUs had a policy or practice of denying eligibility to children under the category of Emotional Disturbance, solely upon the basis of the children having received a certain psychological diagnosis, without first applying the eligibility criteria listed in MUSER §VII.2.E. The complaint investigation report sought, as its proposed resolution, to have the Department of Education provide guidance to all SAUs regarding this subject.

Without reaching any determination as to whether or not the allegations of the complaint were founded as to those respondents, the Department has determined that it would serve the interest of the Department, the SAUs and the children of the State of Maine to issue guidance to the field, and this letter provides that guidance.

Neither the presence nor the absence of any specific diagnosis, received by a child, may solely dictate the result when determining the eligibility of the child for special education services under the category of Emotional Disturbance. Instead, the IEP Team must make that determination through the application of the criteria laid out in MUSER §VII.2.E, following the evaluation procedure prescribed in MUSER §V.2. Thus, for example, although the Team would normally consider a psychological report containing a certain diagnosis, no single assessment may be used as the sole criterion for the eligibility determination. MUSER §V.2.B(2). Rather, the Team must draw upon information from a variety of sources, including parent input and teacher recommendations. MUSER §V.2.F(1)(a). Note that, although MUSER §VII.2.E states that the term Emotional Disturbance does not apply to students who are "socially maladjusted," that statement does not correlate to any specific diagnosis; note further that it is immediately followed by: "unless it is determined that they have an emotional disability."

All special education administrators are hereby directed to ensure that all special education personnel working under their supervision who are authorized to commit the SAU in making eligibility determinations are made aware of the contents of this Administrative Letter. In addition, any special education administrators who are, or who are made, aware that their SAU has a policy or has followed a practice at variance with the contents of this Administrative Letter, are hereby directed to: conduct a review of all files involving a determination of ineligibility under the category of Emotional Disturbance during the previous two school years; and identify whether any of those determinations was made solely on the basis of a psychological diagnosis. If any such files are identified, the parents of those

children must be contacted and provided the opportunity to have their children reevaluated in light of the above instructions, and they must be made aware of their due process rights. Where an SAU has a policy at variance with the contents of this Administrative Letter and such policy exists in writing, the policy must be removed or revised to comply with this Administrative Letter.

Any questions regarding this Administrative Letter should be submitted to the Due Process Office by e-mail at <mailto:susan.parks@maine.gov> or by phone at 624-6646.