

Final Adoption of Amendments to Maine Unified Special Education Regulation Birth To Age Twenty

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To: Superintendents of Schools, Special Education Directors, CDS Regional Board Chairs, CDS Regional Site Directors

From: Susan A. Gendron, Commissioner

Date: April 13, 2010

Subject: Final Adoption of Amendments to Maine Unified Special Education Regulation Birth To Age Twenty

The Maine Unified Special Education Regulation Birth to Age Twenty has been finally adopted pursuant to LD 1741, now P.L. 2010, Chapter 200. This rulemaking makes five sets of changes to the rule:

- 1) pursuant to State legislative action – extended school year provisions have been modified;
- 2) pursuant to the U.S. Department of Education, Office of Special Education Programs for Part C (0-2) - specific federal language has been added for: comprehensive, multidisciplinary, interagency system; definition of “homeless child”; implementation of child find for child identified as affected by illegal substance abuse or withdrawal symptoms resulting from prenatal exposure; transition at age three; early intervention services based upon scientifically based research; assistive technology; and qualified personnel;
- 3) pursuant to U.S. Department of Education final regulations - for Part B(3-20), a new definition component for parental consent has been added to the procedural safeguards;
- 4) pursuant to the Department’s intent to not exceed minimum federal requirements and to address cost containment through fidelity of implementation: postsecondary transition to begin at age 16; the statute of limitations for due process hearings changed to the federal standard of two years; the program approval process refined; the monitoring process deletes the reference to a cycle of on-site reviews; a data- based procedure for eligibility determination added; the criteria for change in eligibility refined; educational technician IIIs permitted to provide tutorial services; and the implementation of the primary service provider model refined;
- 5) for clarity and consistency of procedures - enhances the transition from the CDS system to the public school with the addition of the specific procedural steps that were

included in the Commissioner's Administrative Letter #25 (10/30/08); removes the definition of collateral contact which is a Medicaid term and not a covered service under IDEA; provides a definition and a procedure for abbreviated day; and provides a definition of "diagnostic impression."

The changes for the Part C program (#2 above) are required for the Part C federal application. The required changes to the procedural safeguards per the final Part B federal regulations (effective December 31, 2008) (#3 above) were addressed in Administrative Letter #36 (12/31/08), until such time as Chapter 101 went through the rulemaking process.

The finally adopted regulation replaces the emergency regulation that went into effect on January 19, 2010. All other provisions of the provisionally adopted regulation are **effective May 8, 2010**.

Please Note: Two provisions of the emergency regulation were revised and are effective immediately based upon the passage of P.L. 2010, Chapter 200, as follows:

1. **V(1)(A)(3)(a)(1)** To determine whether a child is a child with a disability (as defined in 20 USC 1402) within *60 calendar days of receiving parental consent for the evaluation for children in the Child Development Services System* and within *45 school days of receiving parental consent for the evaluation for children 5-20 years of age under the responsibility of the public school system*;
2. **XVI. 20. Child's Status During Proceedings**

A. Except as provided in § 300.533, during the pendency of any *mediation or state complaint investigation request or administrative or judicial proceeding* regarding a due process *hearing request* notice requesting a due process hearing under § 300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the hearing request must remain in his or her current educational placement.

The regulations are located on www.maine.gov/education/rulechanges.htm .