

## Summary of Comments/Responses

### Department of Education

#### Emergency Adopted Maine Department of Education Reg. 101 “Maine Unified Special Education Regulation”

A public hearing on the proposed Department of Education Regulation 101, entitled “Maine Unified Special Education Regulations Birth to Age Twenty”, was held on December 21, 2009. At the hearing, 42 individuals commented on the proposed regulation. Twenty commenters were oral only.

The deadline for submission of written comments was December 31, 2009. 172 letters of written comment were submitted by that date. Written and oral comments were received from the following:

1. Leah Rideout, Parent
2. Michael Opuda, Special Education Consultant, Drummond Woodsum
3. Will Burrow, Special Education Director
4. Dr Rick Dale, University of Maine at Farmington
5. Beth Lorigan, Special Services Director, Orrington/MSAD 30/Union 110
6. Susan Watson, Director of Special Services, MSAD #68
7. Louise St. Saviour, Director of Special Education, MSAD #55
8. Susan Lifer, Physical Therapist, Lincoln, Maine
9. Ingrid Vail, Associate Professor, Southern Maine Community College
10. Ann Belanger, Special Education Administrator, MSAD #54
11. Dorothy Marecaux, Director of Special Services, Biddeford School Department
12. Juan Lavalle-Rivera, RSU #11
13. Kathy Theriault, Special Education Teacher Grades 7-12, MSAD #33
14. Christine Schmidt, Assistant Director Special Education, RSU #26
15. Joan Warren, Principal, Biddeford School Department
16. Harriet Trafford, Principal Alvert Hall School, Waterville AOS #92
17. Nicole Richardson, Special Education Teacher, MSAD #59
18. Gregory Bagley, PK-5 Principal/PK-12 Special Services Administrator, CSD #9 Southern Aroostook Community School
19. Steve Floyd, Assistant Director of Student Services, RSU # 14
20. Will Burrows, Director of Special Services, RSU #4
21. Steve Ocean, Special Education Coordinator, RSU #40
22. Lynne Wells, Director of Special Services, MSAD #22
23. Ellen Surprenant, Assistant of Special Services, MSAD #22
24. Clarissa Errington, Co-Director of Special Services, RSU #10
25. Deryl Holt, Director of Special Services, AOS #93
26. Lesley Snyer, Director of Special Services, RSU #87/MSAD #23
27. Kim Kenniston, Special Education Director, RSU #34/Milford School Department

28. Constance Lambert, IEP Coordinator, Biddeford School Department
29. Roger Marchant, Director of Special Education, Riverside School, LLC.
30. Jennifer Donlon, Co-Director of Special Services, MSAD #6
31. Nancy Hall, Director of Special Services, MSAD #72
32. Karen Etheridge, Director of Student Services, RSU #40
33. Edward Ferreira, Special Education Director, Mt. Blue RSU
34. Vicki Collins, Special Education Teacher, MSAD #59
35. Cindi McNutt, Director of Special Services, MSAD #70
36. Sarah-Jane- Poli, Superintendent, Biddeford School Department
37. Kelly Clenchy, Superintendent, RSU #26
38. Lucy Mallar, Special Education Director, AOS #94
39. Diane Castonguay, Special Education Director, AOS #95
40. Scott Mitchell, Principal, MSAD #59 Athens Elementary School
41. David Foster, Principal, Kittery School Department
42. Douglas A. Schnackel, Private Contractor to multiple districts
43. Polly Crowell, Director of Special Services, Falmouth School Department
44. Catherine Faust, Special Education Director, RSU #23
45. Jane Durgin, Director of Special Services, Kittery School Department
46. Ronald Ramsay, Principal, MSAD #37
47. Scott Drown, Principal, MSAD #59
48. Barry Raymond, Director of Special Services, Union #106
49. Ralph Spaulding, Director of Special Education, RSU #24
50. John Barton, Special Education Coordinator, MSAD #55
51. Cheryl Mercer, Director of Special Services, RSU # 18
52. Jacqueline Misenheimer, Special Education Department Head, Edward Little High School , Auburn
53. James Underwood, Superintendent, School Union #106
54. Denise Hamlin, Principal/Special Services Coordinantor, Greenbush School Department
55. Deborah Bailey, Assistant Special Education Director, Five Town CSD/MSAD #28
56. Lisa Clarke, Principal, Edgecomb Eddy School
57. Lynn Silva, Assisctant Director of Student Support, Portland School Department
58. Jill Hastings, Assistant Director of Special Services, RSU #23
59. Christopher Hallett, Principal, MSAD #32
60. Mary Guerrette, Director of Special Services, Director of Special Services, MSAD #1 and MSAD #32
61. Irene Christopher, Director of Special Services, RSU #59/MSAD #59
62. Marcy Gray, Director of Special Services, Oxford Hills School Department
63. Susan Mulsow, Director of Special Services, RSU #21
64. Howard Tuttle, Curriculum Director, MSAD #11
65. Paul Knowles, Superintendent, RSU /MSAD #11
66. Peg Long, Special Education Director, MSAD #11
67. Catherine Bowker, Acting Executive Director/Academic Dean of the Maine School of Science and Math
68. Judith Gove, Director of Special Education, Five Town CSD/MSAD #28

69. Deb Alden, Director of Special Education Director, MSAD #52
70. Cheryl Morin, Special Education Director, RSU #67
71. Tonya Thibault, Special Education Teacher, Union 49 Edgecomb
72. Ellen Whitcomb, Special Education Administrator, AOS #92 Kennebec Valley Consolidated Schools
73. Susan Worster, Director of Student Services, MSAD #41
74. Trish Harrison, Special Education Director, Union #49
75. Paul Andrade, Superintendent, MSAD #60
76. Peg Long, Director of Special Education, MSAD 11
77. Pam Rasmussen, CCCV-SLP, Waldo County General Hospital
78. Lee-Ann Bragdon, parent
79. Del Peavey, Occupational Therapist, Lewiston School Department
80. Heather Perry, Superintendent, Union 106 and MSAD 12
81. Erin Chase, Director of Special Education, MSAD #15
82. Lew Collins, Assistant Superintendent/Special Education Director, Maranacook Area Schools/Winthrop/Fayette
83. Debra Garcia, RSU #19 School Board Director
84. Janna Stacey, Special Education Director, Maine Indian Education
85. Robert Vail, School Board Member, SAD #51
86. Don Tardy, School Board Member, RSU #67
87. Kathy Ostergaard, Parent
88. Jennifer Christensen, Parent
89. Karen Gervasoni, Parent
90. Wayne and Kelly Maines, Parent
91. Julianna Myers, Parent
92. Betsey Mahoney, Parent
93. Bianca Badershall, student
94. Diane Frechette, Parent
95. Frank Sherburne, Superintendent , RSU #57
96. Richard and Shirley Reese
97. Jennifer Beckett, Special Education Teacher, CDS Three Rivers
98. Wayne Johnson
99. Jill Adams, Executive Director of MADSEC
100. Sandra MacArthur, Deputy Executive Director, Maine School Management Association
101. Irene Christopher, Director of Special Services, MSAD #59
102. Lee Canning, Parent
103. Julia Bell on behalf of the Maine Educational Advocacy Alliance, 103B additional comments
104. Phyllis Fischer
105. Richard Dale, University of Maine at Farmington
106. Ruth Crowell, Maine Association of School Psychology
- 107.A,B Timothy Luff, Vice President of MADSEC and Special Education Administrator, Oxford Hills School District
108. Ed Ferreira, Special Education Director, MSAD #9
109. Beth Lorigan, Special Education Director [Verbal]

110. Barbara Ives, Parent
111. Kelly Sastamoine, Parent
112. Abi Ordway
113. Lew Collins, Assistant Superintendent, Special Education Director, RSU 38
114. Karen Farber, Disability Rights Center
115. Lee Ann Bragdon, Parent
116. Buckley Hugo, Parent and private special education advocate
117. Ellen McQuiston, Member of the LDA and college faculty
118. Patrick Moore, Special Education Director, MSAD 75
119. Dean Crocker, President and CEO, Maine Children's Alliance
- 120.A,B Leslie Snyer, Director of Special Education, MSAD #23
121. Joan Nason, Director of Special Education, RSU #5
122. Maureen Greene, Committee on Transition/Maine Transition Network
123. Roann Enright, Parent
- 124.A, B. Brian Foster, Superintendent, Rangeley Lakes Region
- 125.A,B,C. Alan Cobo-Lewis, Parent and Associate Professor of Psychology, UMO
126. Linda Mazzola, Speech Language Pathologist
127. Amy Sneirson, Maine Center for Deafness
128. Sarah Cecil, Parent
129. Mary Lou Dyer, Maine Association of Community Providers
130. Will Rowan, Parent
131. Sandra Court , Learning Disabilities Association
132. Ann Fensle, Parent
133. Laura Connor, Speech Language Pathologist
134. David Cowing, Parent
135. Joe Pietroski, Parent
136. Kathalene LaCroix, Parent
137. Pamela Perry, OTR/L
138. Nancy Burnette, Special Education Teacher, Middle School, Brunswick
139. Lisa Vaillancourt, Parent
140. Ann Gray, Parent
141. Craig Lomma
142. Danielle and Matthew Skillin, Parents
143. Desarae Bourgoine, Parent
144. Mark Hammond, Hammond Associates
145. John Hites
146. Michael Dixon
147. Claire Pelletier
148. Jody Rich, Special Education Director
149. Lori Prestridge, Maine Advisory Council on the Education of Children with Disabilities
150. Sharon Goguen, Director of Special Services, RSU #20
151. W.F.MacDonald Jr. MD
152. David Celiberti, Clinical psychologist and Board Certified Behavior Analyst
153. Erin Rowan, Parent
154. Laurie Lemieux, Special Education Coordinator, Auburn School Department

155. Beth Lorigan , Special Education Director
156. Dewey Meteer, CDS Site Director, Waldo and Hancock Counties
157. Richard Farnsworth, Woodfords Family Services
158. Marcy Gray, Special Education Director, MSAD 17
159. Robin Fugazzi, OTR
160. Gene Perreault
161. Gene Kucinkas, President Learning Disabilities Association of Maine
162. Karen Etheridge, Director of Special Services, MSAD #40
163. Steve Ocean, Special Education Coordinator, MSAD/RSU 40
164. Janice Lachance, Maine Parent Federation
165. Ellen Decotiis, Speech Pathologist
166. Patrick Phillips, Superintendent and Kathleen Beecher, Assistant Superintendent, MSAD #61
167. Robert Rhonemus, Parent
168. Candace Bray
169. Mary Lou Warn, Parent
170. Christine Walker, Case Manager, Independence Association
171. Louise St. Saviour, Director of Special Education, MSAD #55
172. Mary Jo Laniewski, Parent
173. Pamela Dawson, Executive Director, Hear Me Now
174. Ginger Taylor, Parent
175. Jennifer McVeigh, Maine Psychological Service Provider
176. Jayne Boulos, School Psychological Service Provider, Portland
177. Sara Poli, Superintendent, Biddeford School Department
178. Marsene Caswell, Licensed Psychological Examiner
179. Cindy Brown, CDS Site Director, Two Rivers CDS
180. Jim Boothby, Superintendent, RSU 25
181. Karen and J. Scott Ewert,MDs
182. Dr. Kenneth Smith, Superintendent of Schools, MSAD 13 and MSAD 74
183. Dyron Boutte
184. Jennifer Billings, Independence Association
185. Lucy Millar, Director of Special Services, MSAD 46/AOS 94
186. Special Education Team, Drummond Woodsum
187. Rachel Belanger, Certified School Service Provider
188. Melissa Plourde, OTR/L
189. Maryann Guernsey, Parent
190. Nicole Bradick, Esq. on behalf of the Disability Rights Center Board of Directors
191. Maine Psychological Association
192. Karen Farber on behalf of Janice Lachance, Julia Bell and herself for children B-5 years of age.
193. Richard O'Meara, Murray Plumb and Murray
194. Rachel Brown-Chidsey, University of Southern Maine

## CONTEXTUAL OVERVIEW

The proposed rules changes that the Department has submitted to the Secretary of State's Office that will have the effect of bringing Maine's special education rules into further alignment with federal regulations. The Appropriations Committee requested that the Commissioner examine the possible savings from such a change, and a majority of superintendents who have participated in discussions around financial strategies since June have asked the Department to consider these changes, as well as other cost-containing measures. Most recently, a working group on special education (that included superintendents, teachers, principals and special education directors) that the Commissioner convened to review the regulations and any other cost-reduction strategies, such as regionalized programs, made a series of recommendations including concepts that needed refinement in the regulations. In reviewing the potential changes, Governor John Baldacci has also supported this effort to bring Maine's requirements into even greater alignment with federal IDEA regulations and to not exceed them in any area, whenever possible.

The Maine Department of Education is proposing changes to Chapter 101: Special Education rules to accomplish the following:

- No longer exceed minimum federal requirements as a way to contain costs; and
- Effect more uniform statewide application of special education rules and provision of services to ensure appropriate and consistent services for all students statewide.

The Department has submitted two proposed rules changes: an emergency rule change to a major substantive rule and a non-emergency provisional rule change to the same major substantive rule – in both cases, Maine Department of Education Regulation 101.

The emergency rule is being promulgated because of the immediate savings it will generate and the current economic and budgetary climate which demands quick action to find savings wherever possible, especially when those actions will not have a negative impact on services. This emergency rule change will go into effect immediately upon our submission for emergency adoption in early January and will be in effect for one year only.

The provisional rule change will require legislative action and incorporates the cost-containing changes in the emergency rule above; it incorporates the cost-containing changes in the emergency rule above, along with changes (that were already adopted in a separate June 2009 emergency rule) regarding summer services and some technical federal IDEA language, and additional clarifications and provisions to ensure consistency of implementation. Once approved and finally adopted by the Legislature, this rule will supersede the others and have no end date.

Due to significant interest in the proposed changes, the Department elected to hold a hearing and accept written comments to the proposed emergency rule exactly as if it was a proposed amendment to a major-substantive rule. When the Department filed the provisionally adopted rule it included a set of comments which included material relating to both the emergency rule and the provisionally adopted rule changes. This document contains only those comments and responses relating to the emergency rule.

Many commenters were passionately opposed to the Department's proposed changes, and the responses that follow are not intended to be dismissive or disrespectful of that passion; however, the State is faced with significant financial challenges, and the Department is no longer able to justify continuing to exceed that which is required by federal law with regard to special education when other educational programs are being severely reduced or eliminated. Nothing in the proposed changes jeopardizes the right of eligible students with disabilities to receive the services to which they are entitled under the IDEA. To the contrary, the Department believes that through the data based decision making, research based methodologies, and fidelity and consistency of implementation required by the proposed changes to Chapter 101, children in Maine with disabilities will receive the high quality special education and related services to which they are entitled.

## GENERAL COMMENTS

**1. Comment (#1,125,127,135,142,143,167):** Commenters indicated disappointment with the fact that the Department was proposing to move to the federal standards.

**Response:** See the last paragraph of the overview above. No change made as a result of this comment.

**2. Comment (#1):** Commenter would like the Department to consolidate all of the programs and services it offers to children with disabilities to mainstream paperwork and intake processes for families.

**Response:** The Department believes that the implementation of a single special education regulation B-20 leads to exactly this result. No change made as a result of this comment.

**3. Comment (#3):** Commenter stated that "In general, the proposed regulations represent a substantial improvement in that they will lead to more consistency across districts and they will provide some degree of cost containment. While I would not anticipate any large immediate savings from the changed regulations I believe there will be significant long term savings by leveling out current levels of expenditures. Realizing the gains in special education will be dependent on maintaining and modestly expanding general education interventions for students at risk of school failure. If I do not comment on a specific change you may assume that I support the proposed wording."

**Response:** No change made as a result of this comment.

**4. Comment (#5, 6,7,  
11,12,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37,38,39,40**

,41,41,42,43,44,45,46,47,48,49,50,51,52,53,54,55,56,57,58,59,60,61,62,63,64,65,66,67,68,69,70,71,72,73,74,75,76,80,82,83,84,85,86,95,97,99,100,101,107A,108,109,113,118,120A,121,124A,147,148,150,154,155,157,160,162,163,171,177,179,180,182,185,194):

Commenters indicated that after careful review it is their opinion that the regulations will provide a positive improvement for the delivery of special education. Commenters further indicated that some of the proposals bring the current Maine Regulations back into harmony with the federal law and regulations, save money , and lessens the degree of conflict between schools and parents. Further the commenters indicated that other proposals provide clearer guidelines for determining eligibility, which should provide for more consistency within districts and across the state in terms of who is eligible and who is not.

**Response:** No change made as a result of this comment.

**5. Comment (#9):** Commenter asked that the Department not cut the funding for children with autism.

**Response:** The Department is proposing changes in the state regulations to no longer exceed minimum federal requirements as a way to contain costs and to effect more uniform statewide application of special education rules and provision of services to ensure appropriate and consistent services for all children statewide. Nothing in the proposed changes cuts funding for children with autism. No change made as a result of this comment.

#### **6. Comment**

**(#77,87,91,92,93,94,96,98,103,130,141,151,153,157,165,170,173,178,183,184):**

Commenters would like the Department to not adopt the proposed emergency regulations and to hold off implementation until after there was a thorough review.

**Response:** The Department is promulgating regulations on an emergency basis because of the immediate savings it will generate and the current economic and budgetary climate which demands quick action to find savings. Nevertheless, the Department held a hearing and provided a comment period in exactly the same manner it would for proposed amendments to a major-substantive rule. No response made as a result of this comment.

**7. Comment (#78,137,168,169):** Commenters urge a careful review of the proposed regulations.

**Response:** The Department has carefully reviewed the regulations to ensure that the regulations do not exceed federal requirements and to effect more uniform statewide application of the regulations and provision of services, and will carefully review all the comments that we receive. No change made as a result of this comment.

**8. Comment (#104,117,129,149,167):** Commenters questioned which items in the emergency regulation would save money and which ones would not.

**Response:** The Department intends to submit a basis statement which will reflect the amount of savings that are estimated as a result of the changes in the emergency regulation.

**9. Comment (#119):** Commenter recognizes the dire economic situation in the State, does not agree with the Department's assessment that the actions will not have a negative impact on services, and suggests that one way to save money is to integrate the Child Development Services System into the Division of Early Childhood in DHHS.

**Response:** The Department of Education has seen no evidence that supports the proposition that integrating CDS into any DHHS program would provide savings, has serious concerns that such a move would jeopardize the State's compliance with IDEA, and therefore, does not support the concept of transferring the CDS System to the Department of Health and Human Services. No change made as a result of these comments.

**10. Comment (#125):** Commenter indicates that the Department of Education has exceeded its rulemaking authority.

**Response:** The Department has carefully followed the Administrative Procedures Act [APA] process with regard to Maine Regulation 101. Last summer the Department was required by Public Law 113 to promulgate an emergency regulation by no later than June 30<sup>th</sup>, 2009. The Governor signed the bill on the 9<sup>th</sup> of June. There was no time to complete a hearing and the basis statement reflected that. This November we filed both proposed provisional and proposed emergency regulations consistent with APA process, including hearings and comment periods for both.

**11. Comment (#128,132):** Commenters have appreciated the special education and related services that her family has received.

**Response:** No change made as a result of this comment.

**12. Comment (#131):** Commenter did not feel part of the process in the development of the proposed regulations.

**Response:** Under the APA, the Department is responsible for developing its proposed regulations and then receiving and responding to comment from all interested parties. No change made as a result of this comment.

**13. Comment (#134):** Commenter feels that the entrance to and exit from the system are critical points.

**Response:** No change made as a result of this comment.

**14. Comment (#149):** Commenter is concerned about the impact of the emergency regulations on the schools, educators and students if they go into effect in January and then are reversed in the second regular session of the 124<sup>th</sup> Legislature.

**Response:** The school personnel who have provided comments to the Department are overwhelmingly supportive of the changes made in the emergency regulation and have indicated to that they understand the APA process and will adjust accordingly.. No change made as a result of this comment.

## I. Policy and Purpose

## II. Definitions

**1. Comment (#13,107B,124B,150,155,158,162):** Commenters support the amended definition of educational performance.

**Response:** No change made as a result of this comment.

**2. Comment (#125,140,190,103B,193):** Commenters do not support the amended definition of educational performance.

**Response:** The Department refined the definition to provide clarity and consistency of implementation statewide. No change made as a result of this comment.

## III. Pre-Referral Procedures

**1. Comment (#3):** Commenter feels the changes to the pre-referral section are long overdue. The changes will correct problems with specific sections that were in conflict with current research and best practice. The proposed approach provides local districts excellent flexibility while maintaining a clear expectation that children at risk of school failure will receive needed interventions. The proposed changes will allow local districts to accomplish desired objectives in the most efficient manner possible.

**Response:** No change made as a result of this comment.

**2. Comment (#105):** Commenter appreciates the Department's intentions to require pre-referral and offers rationale and suggested language to make the section clearer:

a. Since Title 20-A §4710 already mandates a pre-referral process (without naming it so), and includes specific language, commenter suggests importing that language into Chapter 101 as follows. Commenter has underlined language to be added and struck out language to be deleted.

### **III. PRE-REFERRAL PROCEDURE**

#### **1. General**

By the school year that begins in the fall of 2012 all school administrative units shall develop and implement pre-referral procedures kindergarten to grade 12 that provide each student who is not progressing toward meeting the content standards of the parameters for essential instruction and graduation requirements with different learning experiences or assistance to achieve the standard. The interventions must be specific, timely and based upon ongoing formative assessments that continuously monitor student progress. Although it is the intent that pre-referral procedures will enable a child to achieve typical educational performance within the general education classroom, by law, the parent of a child receiving general education interventions may request that the agency conduct a full and individual evaluation for possible special education eligibility

~~determination at any time during the implementation of these general education interventions.~~

b. The commenter's second sub-comment regarding the proposed rules is related to the proposal to strip out all the procedures from Section III.1. through Section III.3. While the commenter thinks the existing procedures in those sections are lengthier than necessary and somewhat confusing, the commenter also thinks that some procedural guidance is needed in order to assure that schools in Maine are implementing pre-referral procedures at minimum levels of effectiveness. Recommended language is as follows:

2. Procedures

While variations in how school administrative units develop and implement pre-referral procedures are expected, all pre-referral procedures must include:

a. Screening at reasonable intervals to determine whether all students are progressing toward meeting the content standards of the parameters for essential instruction and graduation requirements;

b. A team-based decision-making process;

c. Documentation that every student, prior to entering the pre-referral process, was provided with appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C.A. §6368(3), appropriate instruction in math, and positive behavioral interventions;

d. Repeated formative assessments, conducted at reasonable intervals, that generate measurable data for both identifying academic and behavioral concerns and monitoring student progress during general education interventions;

e. Provision of research-based general education interventions targeted at the student's presenting academic and/or behavioral concerns as determined by repeated formative assessment measures;

f. Documentation that parents were notified about the process, given the opportunity to participate in teaming, and kept informed of their student's progress during general education interventions;

g. A determination as to whether a student's assessed difficulties are the result of linguistic or cultural differences;

h. Provisions for general education interventions to continue during a subsequent special education referral; and.

i. A maximum amount of time of 60 school days between the beginning of general education interventions and a decision whether to pursue a special education evaluation.

c. Commenter's third sub-comment relates to procedural safeguards. At the end of Section III, suggested the following language. It does not exceed IDEA requirements, and provides or clarifies important protections for school administrative units.

3. Procedural Safeguards

a. The parent of a child receiving general education interventions may request that the agency conduct a full and individual evaluation for possible special education eligibility determination at any time during a school administrative unit's established pre-referral process.

b. Special education due process procedures may not be used to address parental concerns regarding the successful implementation of these pre-referral procedures, and the failure to use a pre-referral process may not be used in special education due process proceedings to establish that a school has failed to meet its child find or referral obligations.

**Response: a.** The recommended language has been included in the introductory paragraph as follows:

By the school year that begins in the fall of 2012 all school administrative units shall develop and implement pre-referral procedures kindergarten to grade 12 that provide each student who is not progressing toward meeting the content standards of the parameters for essential instruction and graduation requirements with different learning experiences or assistance to achieve the standard. The interventions must be specific, timely and based upon ongoing formative assessments that continuously monitor student progress.

**b.** The language recommended will be posted on the RTI web page as suggested elements of procedures.

**c.** The recommended language has been included as #2 of Section III.

#### 2.. Procedural Safeguards

a. The parent of a child receiving general education interventions may request that the agency conduct a full and individual evaluation for possible special education eligibility determination at any time during a school administrative unit's established pre-referral process.

b. Special education due process procedures may not be used to address parental concerns regarding the successful implementation of these pre-referral procedures, and the failure to use a pre-referral process may not be used in special education due process proceedings to establish that a school has failed to meet its child find or referral obligations.

**3. Comment (#106,161,166,175,176,187):** Commenters were disappointed that the detailed pre-referral procedures have been removed from the regulations but does support the extension of the deadline.

**Response:** The Department changed the deadline as the result of statutory amendment last session requiring K-12 interventions for all students by 2012. Additional research on response to intervention has occurred since the Department proposed the language in section III of Chapter 101. As a result the Department has removed the specific language and will provide exemplars of policies on the Department's website. No change made as a result of this comment.

**4. Comment (#112):** Commenter supports the implementation of pre-referral or response to intervention and provided an article on the Responsiveness to Intervention and learning disabilities.

**Response:** See response to #3 Comment above. No change made as a result of this comment.

**5. Comment (#118):** Commenter has been implementing response to intervention for over two years and is seeing the benefit of the regular education interventions.

**Response:** See response to #3 Comment above. No change made as a result of this comment.

**6. Comment (#149,103B):** Commenter would like to retain the 2010 date for implementation for pre-referral.

**Response:** State statute was amended during the last legislative session to require K-12 interventions for all students by July 1, 2012, and the Department is proposing to amend Chapter 101 for consistency. No change made as a result of this comment.

**7. Comment (#107B,124B,150,155,158,162,163):** Commenters support the elimination of the detailed language and would ask that the Department be sure to provide the general education interventions in other rulemaking.

**Response:** See response to #3 Comment above. No change made as a result of this comment.

**8. Comment (#194):** Commenter states that “Importantly, the proposed removal of the requirement for a Response to Intervention (RTI) pre-referral system creates an important opportunity for Maine's schools to have more time to develop and implement responsive instruction for students. As these proposed rules are reviewed and implemented, it will be important for the Department of Education to provide training and support for all education personnel about Maine's other RTI requirements. Specifically, all Maine educators need to understand that the removal of the Chapter 101 RTI language does not take away the requirement for tiered supports for students. This requirement remains in Maine's Chapter 313 as follows:

By the school year that begins in the fall of 2012, all school administrative units shall *develop and implement a system of interventions* for kindergarten to grade 12 that provide each student who is not progressing toward meeting the content standards of the parameters for essential instruction and graduation requirements with different learning experiences or assistance to achieve the standard. The interventions must be specific, timely and based upon ongoing *formative assessments* that continuously **monitor student progress** (emphasis added).”

**Response:** The Department appreciates the comment and has made revisions to the regulation to reflect the statutory changes of the last session and the need to place the pre-referral pieces in regular education regular regulations in the future. No change made as a result of this comment.

#### **IV. Responsibility for Child Find, Early Intervention and Special Education**

**1. Comment (#107B,150,155,158,162,163,186):** Commenters support the deletion of the child find responsibility for children at risk.

**Response:** No change made as a result of this comment.

## V. Evaluations and Reevaluations

**1. Comment (#3,185):** Commenters feel that the proposed change in the 3-5 evaluation time line will eliminate a very confusing section of the regulations. The 45 school day rule provides appropriate flexibility without compromising services to children.

**Response:** No change made as a result of this comment.

**2. Comment (#10):** Commenter indicated that diagnostic impressions had been added in the regulation in sections where diagnosis had been included. However the required components of evaluation reports is limited to diagnosis.

**Response:** The evaluation report components already include diagnostic impressions at bullets #10 and #11. No change made as a result of this comment.

**3. Comment (#79):** Commenter questions whether prior to a referral for an evaluation can the special education staff can consult with the regular education teacher to determine the child's performance in all areas of educational performance.

**Response:** The regular education teacher can perform a review of a child's performance in all areas of the child's academic day and based on that review either refer to the IEP Team or not. No change made as a result of this comment.

### 4. Comment

**#88,89,90,91,92,94,102,110,111,125,126,129,130,136,140,141,144,164,165,172,173,174, 181,189,192):** Commenters do not support the change in the evaluation timeline for children 3-5 from 60 calendar days to 45 school days.

**Response:** The Department opposed the change during the last legislative session as it breaks with the Department's goal of a unified special education system 3-20. The calendar day provision has a significant fiscal impact on the summer staffing requirements for the Child Development Services System which was shared with the Legislature during the last session. No change made as a result of this comment.

## VI. Individualized Plan Team Membership

**1. Comment (#3,13, 107B,109,120A,124B,150,155,158,162,163,186):** Commenters state that changing the transition timeline to age 16 will have minimal practical impact, but it will avoid compliance issues.

**Response:** No change made as a result of this comment.

### 2. Comment

**(#88,89,90,91,92,94,102,103B,110,116,122,123,125,129,130,136,138,139,140,141,149,1**

**64,165,172,174,181,190,193):** Commenters do not support changing the transition timeline to age 16.

**Response:** The Department has elected to no longer exceed the minimum federal standard of age 16. Earlier transition planning might still occur where the child's IEP Team determines it should.. No change made as a result of this comment.

## **VII. Eligibility Criteria Defined and Procedures for Determination**

**1. Comment (#3):** Commenter states that “The changes in the OHI definition are a move in the right direction. The DOE will need to do some significant staff development with regard to measurement strategies. Very few current instruments have solid standard deviation information.

**Response:** No change made as a result of this comment. The Department recognizes that there will be a need for professional development in the implementation of the proposed provision.

**2. Comment (#3):** Commenter suggests that in the new eligibility section (page 82) the grouping of nationally normed group administered tests with individual CBMs is awkward and could lead to misunderstandings and would suggest creating separate sections or putting the CBM reference in the first section. The commenter further indicates that the Department could add to the last sentence on page 81 "following are some examples of".

**Response:** The intent is to differentiate individually administered tests from group administered tests and measures. The suggested language for page 81 is already included in the proposed regulation. No change made as a result of these comments.

**3. Comment (#4):** Commenter indicated that in Section VII.3.B, the phrase "(as defined in item #9 of Section II)" should read "(as defined in item #10 of Section II)."

**Response:** The citation has been changed from #9 to # 10 in both the emergency and proposed provisional regulations.

**4. Comment (#4):** Commenter indicated that in Section VII.3.D., the phrase "evaluations process" should read "evaluation process."

**Response:** The “s” has been removed from the phrase in both the emergency and proposed provisional regulations.

**5. Comment (#13, 81,108, 121,124A,B,107B,150,155,158,162,163186):** Commenters support the deletion of the requirement of a medical evaluation and the added language to reflect a quantitative standard for eligibility determination. Commenter did suggest that the word “approximately” be added before the 1.5 standard deviations to avoid a definitive cut score

**Response:** The word “approximately” has been added .

**6. Comment (#89,90,91,92,94,103B, 110,116,125,136,141, 164,165,172,173,174,181,190,193):** Commenters do not support the data based procedure for eligibility determination.

**Response:** The Department believes that a data-based procedure for eligibility determination is necessary to ensure uniform application across the state. No change made as a result of this comment.

**7. Comment (#106,175,176,178),187:** Commenters do not support the requirement of a multi-axial DSM diagnosis under the eligibility criteria procedures for autism, emotional disturbance, mental retardation and other health impaired and recommends that the phrase “under the DSM codes” be removed.

**Response:** The language was developed by the Task Force on Eligibility in 2005 and reflects a statewide practice by special education directors. No change made as a result of this comment.

**8. Comment (#106,175,176):** Commenters support the deletion of the medical evaluation under the eligibility criteria of Other Health Impaired. The commenter does not support the quantitative language “showing that the child’s alertness in the educational environment is 1.5 standard deviations below the mean for the child’s age or grade level” because it singles out alertness and there are no scales or instruments. The commenter assumes that the intent is to incorporate some measure of severity into the identification which is addressed with other provisions of the OHI and the new requirement for the Data Based Procedure for Eligibility Determination.

**Response:** The Department did want a quantitative measure for this criteria. There are measures that address alertness which are routinely used in the field. No change made as a result of these comments.

**9. Comment (#107A and B,108,113,124A,B,150,155,158,162,163,186):** Commenters strongly support the implementation of a data based procedure for eligibility determination.

**Response:** No change made as a result of this comment.

**10. Comment (#125,161,193):** Commenters do not support the changes made to the Criteria for Change in Eligibility.

**Response:**The Department believes that the changes are necessary in order to ensure clarity and uniform application statewide.. No change made as a result of this comment.

**11. Comment (#107B,150,155,158,162,186):** Commenters support the changes in reference to pre-referral to general education interventions to be comparable to the state statutory language added during the last session.

**Response:** No change made as a result of this comment.

**12. Comment (107B,124B,150,155,158,162,163,186):** Commenters support the refinements to the criteria in change for eligibility.

**Response:** No change made as a result of this comment.

**13. Comment (#103B,161,164,190,191,193):** Commenters do not support the new addition of standard deviations for alertness in the eligibility criteria for Other Health Impaired.

**Response:** The Department did want a quantitative measure for this criteria. There are measures that address alertness which are routinely used in the field. No change made as a result of these comments.

**14. Comment (#186):** Commenter opposes the inclusion of parent observations of social or emotional deficits in VII(3)©(10). Commenter feels that social or emotional deficits should be readily observable within an educational setting.

**Response:** The language at VII(3)©(10) reflects “observed by professionals or parents” and was developed by a multi member group with parents and educators. No change made as a result of this comment.

**15. Comment (#191):** Commenter believes that the definition of mental retardation should be updated if there is a discrepancy between performance on IQ and adaptive behavior measures. The commenter suggest that the Department use the *Manual of Diagnosis and Professional Practice in Mental Retardation*. This definition is the standard used by psychologists in the diagnosis of MR.

**Response:** The definition that is contained within the regulation is the federal regulatory definition verbatim. No change made as a result of this comment.

**16. Comment (#191):** Commenter suggests that the Department clarify the *Procedure for Determination* under the category of autism so that it is consistent with the recommendations put forth by the PDD Systems Change Initiative. Specifically the medical professionals that should be included as qualified to make a PDD diagnosis are: developmental pediatricians, child neurologists, child psychiatrists, psychologists who have declared child competency to the licensing board, and board eligible developmental pediatricians who meet the 2008 grandfather criterion.

**Response:** The eligibility criteria procedures for autism do not prescribe specific qualified personnel and the Department does not believe such a prescription is necessary or advisable at this time. No change made as a result of this comment.

**17. Comment (#192):** Commenter proposes that the children 3-5 be excluded from the data based eligibility determination process, because under developmental delay the condition requires adverse effect in either educational performance or achievement in age relevant, developmentally and individually, appropriate activities such that the child does not achieve or perform..., the documentation at D. requires general education interventions, there are no statewide learning standards that govern early childhood programs and the #4 needs special education assumes the existence of statewide public education programs.

**Response:** Given the language under developmental delay that the condition requires adverse effect in either educational performance or achievement in age relevant, developmentally and individually, appropriate activities such that the child does not achieve or perform..., the team would need to look at that information; there are Early Childhood Guidelines that were developed by a cross agency workgroup in 2005 that are

adhered to by most all early childhood programs; and under #4 there has always been a review of child data against what their typically developmentally peers are expected to be capable as a measure of a child's need for special education and related services. No change made as a result of these comments.

**18. Comment (#192):** Commenter suggests that there be clarification as to whether in the title of VII.4.A that it included Part C.

**Response:** The Department has included in the title after preschool "natural environment".

## **VIII. Eligibility for FAPE For Five Year Olds by Parent Choice**

### **IX. Individualized Plans**

#### **X. Early Intervention/ Special Education Services and Settings**

**1. Comment (#3, 13,107B,120B,121,124A,B,150,155,158,162,163,186):** Commenters stated the changes to the tutoring section are positive. The change will lower cost and increase flexibility without compromising service quality. In fact, the quality is likely to improve because most of the tutors who were eligible under the current rules were retired and were not effective with high need students.

**Response:** No change made as a result of this comment.

**2. Comment (#88,89,90,91,92,94,111,114,126,130,140,141,164):** Commenters feel that the Primary Service Provider model can be very effective but does not work for all families.

**Response:** Using a primary service provider is not a "service delivery model". Using a primary service provider or primary coach model is a teaming model. The federal regulations require that children in need of early intervention supports and services have access to a team that is multidisciplinary. OSEP/NECTAC recommend the use of a primary provider teaming approach in early intervention. . The IFSP team is in full control of identifying the priorities and needs of the child and family, writing outcomes, and designing a plan, which includes specific services, to support achievement of the prioritized outcomes. Using a primary service provider approach to teaming entitles every child and family enrolled in early intervention access to a full multidisciplinary team. Identifying a primary service provider is a strategy used in the teaming approach to organize supports and services to ensure individualization, responsiveness, and timeliness. No change made as a result of this comment.

**3. Comment (#88):** Commenter thought that the regulation change originally made in June 2009 would make permanent the reductions in extended school year.

**Response:** The change made to the extended school year provision did not make reductions, it added a phrase, 'if appropriate' after the phrase about impact of a service disruption. No change made as a result of this comment.

**4. Comment (#125):** Commenter requests withdrawal of the primary service provider model as it should be an option.

**Response:** See Response to #3 above. No change made as a result of this comment.

**5. Comment (#125):** Commenter requests that the exact language of LD 489 – “if any service interruptions have occurred” be placed in Section X.2.A(7)© rather than “if applicable” and add the following sentence deleting the specific reference to the provision applying only to young children 3-5 – “and the Individualized Educational Program Team may make a determination about extended school year services based on available data, including information about a child’s disability, even if an interruption in service has not occurred.”

**Response:** The specific language of the LD noted above read awkwardly and was revised to the ‘if applicable’. Secondly, LD 489 , now Public Law 113 was clear that the ESY provision applied to children 3-5, not the full 3-20 age span of Part B of IDEA. No change made as a result of these comments.

**6. Comment (#150):** Commenter supports the added phrase “if applicable” to the sentence that begins Consideration of the impact of the previous service interruption and added the new sentence “The Individualized Education team makes a determination about extended school year services for young children 3-5 at every Individualized Program Team meeting.”

**Response:** No change made as a result of this comment.

**7. Comment (#156):** Commenter recommends the words in bold in the section below to add clarity to the description of primary service provider model:

*Early intervention services are built upon the principles and procedures of evidence-based practice. These family-centered practices are based on the outcome of well-controlled, replicable experience and client values. **Early intervention** Practitioners provide **instruction, support, and resources** to assist family members and caregivers ~~to facilitate~~ **in their facilitation of** children's learning and development in the natural environment and in the context of everyday activities that provide learning opportunities throughout the child's day.*

Second the commenter recommends that the word “The” be added at the beginning of the sentence in A, before “primary role...”

**Third**, the commenter feels the following sentences should be deleted as the language is more on how to fill out a forma that could be addressed in another manner. **This practitioner is listed on the IFSP as “primary coach.” The multidisciplinary team of professionals who support to primary coach is referred to as the “Early Intervention Team.” Members of this team are listed on the IFSP by their professional titles. The service to be provided by the Primary Coach is listed as “Early Intervention – Direct.” The service to be provided by other professional team members, with the exception of the case manager, is listed as “Early Intervention – Consultation, as needed.” The types of early intervention direct or consultation are articulated in Section XI of this rule.** The Commenter

also indicated that the language in B.indicating ‘preferred model’ leaves the door open for other options.

**Response:** The Department has added the phrases indicated in the text above to provide clarity and has deleted the sentences in the gray shading as not regulatory in nature.

**8. Comment (#192):** Commenter raises questions about the primary service provider model and proposes that under X.1.A that the word “the” be added and at the end of the sentence , “ and to provide early intervention services.”

**Response:** See Response to Comment #10 above. No additional changes made to the regulation as a result of this comment.

**9. Comment(#192):** Commenter raised questions about the X.1.B Evidence of Early Intervention Practices ,a) specifically that the preferred model needs to reflect that the decision is the responsibility of the IFSP Team; b.Is the primary coach determined by the IFSP Team; c,. recommends that the membership of the multidisciplinary team be amended to include , “ and/or other qualified professionals as determined by the IFSP Team, which includes the parents.”; d. raises questions about the Primary Coach listed as early Intervention – Direct and e. suggests that the services are to the family and the child..

**Response:** a. The rule needs to be read in totality , in section X.1 in federal text it is the IFSP Team that is the decision maker. No change made as a result of this comment.  
b. The primary coach is as the regulation reads determined by the IFSP Team.  
c. The language , “ and/or other qualified professionals as determined by the IFSP Team, which includes the parents.” Has been added to Section X.1.B;  
d. the IFSP Team determines the services that the child and family will receive.  
e. the phrase “and the child” has been added to the sentence that reflects the work of the coach.

**10. Comment (#192):** Commenter questioned if the primary service direct is equivalent to special instruction.

**Response:** Yes, primary service direct is equivalent to special instruction. No change made as a result of this comment.

## **XI. Early Intervention Services for Young Children B-2 and Related Services for Children Three to Twenty**

**1. Comment (#99,145,150):** Commenters suggest adding “offer diagnostic impressions” on page 128 under the services that a certified school psychological service provider may provide.

**Response:** The phrase “offer diagnostic impression” has been added on page 128 under the services that a certified school psychological service provider may provide.

**2. Comment (#150):** Commenter supports the addition at #1 that early intervention services based on scientifically based research.

**Response:** No change made as a result of this comment.

**3. Comment (#150):** Commenter supports the added language under assistive technology – “the term does not include a medical device that is surgically implanted , or replacement of such device.”

**Response:** No change made as a result of this comment.

## **XII. Program Approval**

**1. Comment (#2,136):** Commenters questioned whether Program Approval Section XII. applies to all school including public schools or only to private schools with a special education program? While the original rule applied only to private school this is not clear in the proposed rule. Perhaps this should be clarified to apply only to private schools.

**Response:** A sentence has been added to the first paragraph, “The State approval applies only to private schools.”

**2. Comment (#2):** Commenter states that it is clear that there is no longer a need to submit an EF-S-01 for an out of district placement. Yet, there still appears to be a requirement to have documentation for the DOE sped team to review for placements in out of state schools, general purpose school with a special education program and regional sped programs. Will this review be a similar “desk audit” with subsequent request for submission of information after the placement has been made?

**Response:** The Department will develop a web-based documentation process. No change made as a result of this comment. An administrative letter will address the web-based process and any interim steps that may be necessary.

**3. Comment(#2):** Commenter questioned regarding the EF-S-01 – Why is there a continued requirement to have placements in regional special education programs subject to reviewed but not for private special purpose schools in Maine?

**Response:** See Response to Comment #1 above which reflects the application to private schools. Department believes the provision should apply to regional programs because the child is being served away from the school administrative unit where peers attend. No change made as a result of this comment.

**4. Comment(#3):** Commenter asked the following questions:

**a.** Do any of these sections apply to public schools?

**b.** Is the EFS 01 eliminated except for out of state residential placements? If so, how will the state track these placements?

**Response: a.** No

**b.** See Response to Comment #1 above.

**5. Comment (#107B,150,155,158,162,186):** Commenters support the refinement to the program approval process.

**Response:** No change made as a result of this comment.

**6. Comment (#107B,150,155,158,162,163,186):** Commenters support the Department’s review of placements as the EFS-01 was burdensome.

**Response:** No change made as a result of this comment.

**7. Comment (#164):** Commenter indicates that on Page 141-142 and refers to students who require a regional program because they are not able to take *advantage of least restrictive environment programming in their local school districts SAU*. Any regional program considered for a student should be part of the LRE continuum. For a student, who is determined by the IEP Team, including the parent, to need a regional program, this is LRE for that student. Commenter requests that the Department provide further clarification in this section.

**Response:** The IEP Team is responsible for determining the types of services and the types of placements that would be the least restrictive environment for each child. No change made as a result of this comment. Specific language about LRE was not proposed in this rulemaking , but will be considered in the future.

**8. Comment (#164):** Commenter questions why the following section has been removed from program approval and ask that the language be reinstated : “Policy for immediate notification and reporting of serious events. In the event of serious injury or death of a child, criminal activity on the part of a child or staff member, or other serious incident affecting the well-being of any child, the approved special purpose private school shall immediately notify, by telephone and by letter, the parents, the sending school district(s), any state agency involved in child care or program placement, and the Department of Education.”

**Response:** The paragraph “Policy for immediate notification and reporting of serious events. In the event of serious injury or death of a child, criminal activity on the part of a child or staff member, or other serious incident affecting the well-being of any child, the approved special purpose private school shall immediately notify, by telephone and by letter, the parents, the sending school district(s), any state agency involved in child care or program placement, and the Department of Education.” Was inadvertently deleted and has been added back in to Section XII.

### **XIII. General Supervision System**

**1. Comment (#3):** Commenter indicated that a verb was left out of the second paragraph (should read: Commissioner shall collect data). Commenter feels the changes appear positive and expects that the implementation will be done with refined state policies not articulated in the regulation.

**Response:** The verb “shall” is the sentence in the second paragraph. No change made as a result of this comment.

**2. Comment (#107B,150,155,158,162):** Commenters support the refinements to the monitoring to delete the reference to a cycle of on-site reviews.

**Response:** No change made as a result of this comment.

## XIV. Education Records

### XVI. Dispute Resolution Procedures

**1. Comment (#13,107A and B,108,113,120A,124A,B,150,155,158,162,163,186):**

Commenters support the change in the statute of limitations from four to two.

**Response:** No change made as a result of this comment.

**2. Comment**

**(#88,89,90,91,92,94,102,103B,116,125,129,130,136,140,141,144,164,165,172,173,174,181,190,193):** Commenters do not support the change in the statute of limitations from four to two years.

**Response:** The Department will no longer exceed the minimum federal standard of two years. See last paragraph Of the contextual framework above. No change made as a result of this comment.

**3. Comment**

**(#88,89,90,91,92,94,102,103B,116,125,129,130,141,164,165,172,173,174,181,190,193):** Commenters do not support the stay put provision for only due process.

**Response:** The Department will no longer exceed the minimum federal standard of stay put. It will only apply to due process. See last paragraph Of the contextual framework above. No change made as a result of this comment.

**4. Comment (#107B,124B,150,155,158,162,163,186):** Commenters support the stay put provisions only pertaining to due process.

**Response:** No change made as a result of this comment.

**5. Comment (#186):** Commenter recommends that the revision to the statute of limitations be retroactive to allow for the cost savings envisioned, otherwise the current statute of limitations would expire in 2012.

**Response:** The Department does not believe retroactivity is appropriate, even though it would enhance potential savings. In addition the Department is concerned that a retroactive change made at the administrative agency level, rather than by the Legislature, could be subject to legal challenge.

### XVII. Discipline of Children with Disabilities

### XVIII. Special Education Finance

**1. Comment (#3,191):** Commenters understand the fiscal reasons for using Medicaid rates for contracted services, but questions whether it will impact service delivery.

**Response:** The Department included a comparable provision in the former Chapter 180, the birth to age five special education regulations and the provision did not adversely effect service provision. No change made as a result of this comment.

**2. Comment (#8,159):** Commenters are concerned about the impact that the shift to the Maine Care rate of reimbursement may have on her practice in a rural section of Maine.

**Response:** The Department recognizes the challenge that a statewide rate of reimbursement may have on individual providers, but the Department must implement cost containment in the special education system in this economic environment. No change made as a result of this comment.

**3. Comment (#13,107B,155,158,186):** Commenters support the statewide rates for reimbursement for contracted services.

**Response:** No change made as a result of this comment.

**4. Comment (#89,103B, 125,126,133,141,144,150,162,163,173,):** Commenters do not support statewide rates for reimbursement for contracted services.

**Response:** The Department feels that it is necessary to contain costs. No change made as a result of this comment.

**5. Comment (#115):** Commenter raised concerns about the costs for special education consultation.

**Response:** With the Department's proposed language that the related services rates of reimbursement are the Medicaid rate, there could be an impact on consultation fees. No change made as a result of this comment.

**6. Comment (#125A,C):** Commenter while opposing the state wide rates for reimbursement in comment #4 above provided alternative language if the Department wants to keep the provision. “When school administrative units access state funds for contracted services that exceed the average Medicaid rate paid for comparable services, they must maintain documentation that such payment was necessary to ensure that the children receive the needed services and that the service could not have been reasonably secured through a payment that did not exceed the average Medicaid rate paid for comparable services. This documentation shall be subject to audit by the Department of Education , and failure to maintain adequate documentation may result in reduction of subsidy to the level that would have been received if the contracted service had been paid at no more than the average Medicaid rate for comparable services.” Commenter provides the following recommendation: To ensure that the Department be able to count on the savings (that is, to avoid what might seem like a loophole of an SAU being able to justify exceeding average Medicaid rate), the Department should also consider rewriting Sec XVIII.1.C.(3)(d) to reduce or eliminate state subsidy for amounts that exceed the Medicaid rate. However, if the Department took this approach (which would seem to maximize savings) then it would be essential to include in the same section of rule that this does not relieve the SAU of the obligation under IDEA to ensure that there are no unmet needs.

**Response:** The special education allocations to the school administrative units under EPS are based on a formula, not the actual expenditures, therefore there is not a relationship between subsidy and the units expenditures. No change made as a result of this coment.

**7. Comment (#146,152):** Commenters question if the combination of the Medicaid rates and the deletion of collateral contact would not allow psychologists to be reimbursed for record reviews, teacher and parent interviews, classroom observations, and individual or programmatic consultation.

**Response:** The record reviews, teacher and parent interviews, classroom observations are a part of the evaluation process and would therefore be reimbursable.

**8. Comment (#188):** Commenter would like the statewide rates to be eliminated or permit local SAU negotiation.

**Response:** As the commenter has indicated there is significant variation in the rates that are charged by independent contractors. In this significantly dire economic environment the Department feels that it is prudent to standardize rates across the state. No change made as a result of this comment.

## **XIX. Waivers**

### **Appendix 1 Procedural Safeguards**

**1. Comment (#3):** Commenter questioned why the compensatory language remained with regard to complaints in the procedural safeguards.

**Response:** The state statutory language must be changed before the regulatory language can be changed. The Department has proposed the statutory change and will change the regulatory provision once the statute has been amended.

**2. Comment(#164):** Commenter states that language has been added in several areas of the regulations about parent consent and revocation of consent and would like the following language italics added “If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent, *but shall give consideration to a parent request to do so and shall inform the parent in writing of the reason(s) for not doing so.*”

**Response:** The language that was added to the Procedural Safeguards in new federal regulatory language. The Department will maintain the federal language. No change made as a result of this comment.