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## *Highlights of Changes to Maine Unified Special Education Regulations (M.U.S.E.R.) Chapter 101 Effective July 2, 2011*

*(Refer to M.U.S.E.R. 101 Final Adoption effective July 2, 2011  
<http://www.maine.gov/sos/cec/rules/05/071/071c101.doc>)*

### 1. Abbreviated School Day

- a) Revised definition of *Abbreviated school day* [M.U.S.E.R. 101 §II.1]

When a child attends school or receives educational services for less time than same age/grade peers without disabilities.

- b) Revised procedure regarding *Abbreviated school day* [M.U.S.E.R. 101 §VI.2.L]

- c) Only two reasons to shorten a child's day: 1) individual educational need or 2) individual medical need.

If IEP Team determines there is an educational need:

Five steps must be completed: 1) identify how the child will meet the learning results, access the general curriculum and IEP services, 2) determine how the child will participate in local and statewide assessments, 3) revise IEP and include development of an individualized re-entry plan, 4) delineate steps the district will take to support re-entry; and 5) document in the Written Notice the basis for the determination and how it meets the child's individualized needs.

If child does not return to full-time in 45 calendar days, IEP Team must meet every 20 school days thereafter and continue to work toward transitioning the child to full-time.

If the IEP determines there is a medical need:

Team must complete the above steps with the exception of those related to the re-entry plan plus consider the child's medical needs as identified by the qualified medical professional(s).

Reconvene every 90 calendar days, however, the Team may exceed this timeframe if an extension is consistent with medical recommendation.

When medically able to increase length of day, the Team reconvenes to revise IEP.

## 2. Adverse effect/Adversely affects

- a) Addition of definition of *Adverse effect/Adversely affects* [M.U.S.E.R. 101 §II.3]

Used in eligibility categories and determination **for all except** Deaf-Blindness, Multiple Disabilities and Specific Learning Disability.

- b) Revised procedure for determination of *Adverse Effect* [M.U.S.E.R. 101 §VII.3]

Determination of adverse effect does not apply to eligibility categories of Deaf-Blindness, Multiple Disabilities and Specific Learning Disability.

Decision must be data-based; use of multiple data elements is encouraged; and required, state-provided, form must be used.

## 3. Tutorial Instruction (formerly Services)

- a) Revisions to *Tutorial Instruction (formerly Services)* [M.U.S.E.R. 101 § X.2(4)]

Tutoring may be used only in conjunction with Abbreviated School Day or as part of disciplinary procedures.

There is no minimum or maximum number of hours; it is an individualized determination.

It may not be used in lieu of specialized instruction.

Tutoring does not preclude the child's participation in school activities and programs.

Tutorial instruction must be delivered by certified special education teacher, regular education teacher or educational technician III.

## 4. Educational Performance

- a) Revisions to definition of *Educational Performance* [M.U.S.E.R. 101 §II.11]

Encompasses performance in academic and functional areas; for child age 3 to 5 it means performance in age appropriate developmental activities across five domains of development.

To be used only in special education eligibility categories that require determination of adverse effect of disability on educational performance (not used for Deaf-Blindness, Multiple Disabilities and Specific Learning Disability).

## 5. Transition Plan

Clarification about timing of *IEP's transition plan* [M.U.S.E.R. 101 §IX.3.A(1)(h)]: “The IEP Team shall adopt a transition plan during the child’s 9<sup>th</sup> grade school year, to be updated annually thereafter...” (Note, federal floor is “...not later than the first IEP to be in effect when the child turns 16...”)

6. Mental Retardation

- a) Change phrase “*mental retardation*” to “*intellectual disability*.”
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## *Upcoming Changes to Maine’s Special Education Scene*

1) Attorneys at IEP Meetings

Effective 10/1/2011: School districts may have an attorney present at an IEP meeting only if it provides the parents with at least 7 days written notice prior to the meeting which the attorney will attend. If the parent has an attorney present at an IEP meeting, the district may have an attorney present without giving prior notice.

2) Permitting alternative means to participation in IEP meetings for all parties

Rule change required by 12/1/2011: If technology is available, this change will permit the use of technology (e.g. conference call, videoconferencing, etc.) as an alternative means of meeting participation to ensure that the parents of a child with a disability are able to have appropriate persons participate in the IEP Team meeting and special education dispute resolution procedures. This includes case managers, advocates, evaluators, private providers, etc.

3) Permitting educational observations by qualified examiners who are performing independent educational evaluations

Rule change required by 12/1/2011: A qualified examiner performing an independent educational evaluation at the request of the parent must be permitted to observe the child in the educational setting at the same time of day and for the same duration as the school would permit a qualified examiner employed by the school.

4) Revisions to psychological services

Note, this change is not expected to have a direct impact on children and families and is provided here for informational purposes.

Effective 10/1/2011: Rather than “school psychological services provider” the regulatory language is “school psychologist” which covers two types of professionals: “School psychologist—doctoral” and “School psychologist—specialist.” These individuals are certified by the MDOE to provide school psychological services consistent with national

standards articulated by “Model for Comprehensive and Integrated School Psychological Services developed and published by the National Association of School Psychologists.”