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ABSTRACT

This document contains regulations governing the provision of equal educational opportunities and free, appropriate public education in the least restrictive educational alternative to all Maine student residents with disabilities between the ages of 5 and 20. Twenty sections contain provisions relating to: (1) the policy and purpose of special education; (2) definitions of special education terms; (3) the classification of students with disabilities; (4) the responsibility of the state for providing special education services; (5) special education services; (6) supportive services; (7) child find and referrals; (8) the pupil evaluation team process; (9) evaluation and identification of students with disabilities; (10) the Individualized Education Program; (11) the least restrictive environment alternative; (12) due process requirements; (13) dispute resolution procedures, including mediations, complaints, and hearings; (14) the discipline of students with disabilities; (15) education records; (16) special education reviews; (17) state approval of programs at private schools; (18) the state subsidy and direct payments for special education programs; (19) public school tuition computations; and (20) private school tuition computations and approval procedures. An appendix includes provisions defining the "use of a dangerous weapon." (CR)

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Maine Special Education Regulations

Chapter 101

November 1, 1999

ED 459 564



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1 05-071 DEPARTMENT OF EDUCATION

2 CHAPTER 101

3 SUMMARY: This rule governs the provision of equal educational
4 opportunities / free appropriate public education (F.A.P.E.) in the least
5 restrictive educational alternative to all students with disabilities between
6 the ages of 5 and 20 enrolled in the schools who are residents of the
7 State of Maine.

8 1. POLICY AND PURPOSE

9 1.1 Introduction

10 Maine law (20-A M.R.S.A. Chapters 301 and 303) entitles all school-age
11 students with disabilities to an equal educational opportunity / free
12 appropriate public education. This objective is to be implemented by
13 school administrative units (S.A.U.s) and private schools approved for the
14 provision of special education and supportive services through
15 implementation of the policies and procedures required in this rule.

16 This rule is intended to implement the State's obligations under the
17 Federal Individuals with Disabilities Education Act (P.L 105-17, 20 U.S.C.
18 1401 *et seq.*) and implementing regulations.

19 The general principles governing the provision of a free appropriate public
20 education for students with disabilities are set forth in these rules.

21 1.2 Nondiscrimination

22 No student with a disability may be excluded from the benefits of a free
23 appropriate public education in the schools of Maine. Each school
24 administrative unit shall provide a free appropriate public education to
25 each such student regardless of the nature or severity of the student's
26 disability.

27 Appropriate education shall include the provision of regular and/or special
28 education and supportive services that are designed to meet appropriately
29 the individual educational needs of students with disabilities based on the
30 procedures set forth in this rule and applicable federal law.

31 1.3 Free Appropriate Public Education

32 The guarantee of equal educational opportunity entitles each student with
33 a disability residing in the State, including students with disabilities who
34 have been suspended or expelled, to be provided with a free appropriate
35 public education that emphasizes special education and supportive
36 services designed to meet their unique needs and prepare them for
37 employment and independent living. This education includes special
38 education and supportive services which:

1 A. Are provided at public expense, under public supervision and
2 direction, and at no cost to the parents;

3 B. Meet the standards and personnel qualifications required by these
4 regulations;

5 C. Are appropriate to the special needs of the student as defined in an
6 Individualized Education Program; and

7 D. Are provided in the least restrictive educational alternative (see
8 §11.2).

9 1.4 Special Education Process: An Overview

10 The special education process for which school units are responsible has
11 several components. In brief, the process includes a child find process to
12 determine which students may have disabilities that would require referral
13 to a Pupil Evaluation Team (P.E.T.). A second phase includes more
14 individualized evaluations of each referred student and a discussion of the
15 evaluative and other data by the P.E.T. composed of school staff and
16 parents. Other persons who have knowledge of the student may be
17 invited to attend the P.E.T. meeting at which it is determined:

18 A. Whether the student is a student with a disability in need of special
19 educational services; and

20 B. What special education and supportive services are appropriate for
21 the student's educational needs.

22 Once these determinations are made, the Pupil Evaluation Team shall
23 write an Individualized Education Program (I.E.P.) for the student.

24 The provision of a free appropriate public education and the placement of
25 the student shall be made according to the provisions of the I.E.P. The
26 I.E.P. shall be developed and placement shall be made in accordance
27 with the principle of the "least restrictive educational alternative" (see Part
28 11).

29 The special education process affords special rights to students with
30 disabilities and their parents through "due process" protections. A parent
31 must be involved in the evaluation, identification, development of the
32 student's Individualized Education Program and the placement of the
33 student in a special education placement. If the parent does not agree
34 with the proposed or refused evaluation, identification, program or
35 placement, the parent may request mediation, file a complaint or request
36 a due process hearing (see Part 13, Dispute Resolution Procedures).

37 1.5 Approval of Special Education Services

38 Special education services and supportive services may be provided to
39 students with disabilities only in schools which have been approved by the
40 Commissioner.

1 The Commissioner, through the staff of the Special Services Team, Maine
2 Department of Education reviews and approves or disapproves all special
3 education services or proposed services provided by public or private
4 schools.

5 The approval of the special education services provided by a school unit
6 or private school shall include the Department's review and approval of
7 the special education reports submitted in the form and manner required
8 by the Commissioner and the program review and technical assistance
9 process specified in this rule.

10 1.6 Due Process; Opportunity to Question

11 The parents of each student with a disability or an adult student may
12 question any matter, decision or determination relating to the
13 identification, evaluation, placement of the student and/or the provision of
14 a free appropriate public education to the student, as set forth in this rule.

15 1.7 Advisory Rulings

16 Any interested person may submit a written request to the Commissioner
17 for an advisory ruling. The Department may, at its discretion, issue an
18 advisory ruling with respect to the applicability of any of these regulations
19 to an actual state of facts. All such advisory rulings, or determinations not
20 to issue an advisory ruling, shall be in writing within 60 days of the receipt
21 of the request.

22 An advisory ruling shall not be binding upon the Department nor on any
23 hearing officer appointed by the Commissioner to conduct due process
24 hearings under this rule.

25 26 27 2. DEFINITIONS

28 All terms used in this rule shall have the meanings established by
29 applicable state or federal law. The following terms have the definitions
30 specified herein:

31 2.1 Adult Student

32 An adult student is a student who has reached the age of majority or has
33 been emancipated by a court of competent jurisdiction. Each adult
34 student shall be entitled to exercise the parental rights specified under
35 these rules. The term does not include students who have reached the
36 age of majority and for whom a court of competent jurisdiction has
37 appointed a guardian.

1 2.2 Assistive Technology Device

2 As used in these rules, "assistive technology device" means any item,
3 piece of equipment, or product system, whether acquired commercially off
4 the shelf, modified, or customized, that is used to increase, maintain, or
5 improve the functional capabilities of students with disabilities.

6 2.3 Assistive Technology Service

7 As used in these rules, "assistive technology service" means any service
8 that directly assists a student with a disability in the selection, acquisition,
9 or use of an assistive technology device. The term includes:

10 A. The evaluation of the needs of a student with a disability, including
11 a functional evaluation of the student in the student's customary
12 environment;

13 B. Purchasing, leasing, or otherwise providing for the acquisition of
14 assistive technology devices by students with disabilities;

15 C. Selecting, designing, fitting, customizing, adapting, applying,
16 retaining, repairing, or replacing assistive technology devices;

17 D. Coordinating and using other therapies, interventions, or services
18 with assistive technology devices, such as those associated with existing
19 education and rehabilitation plans and programs;

20 E. Training or technical assistance for a student with a disability or, if
21 appropriate, that child's family; and

22 F. Training or technical assistance for professionals (including
23 individuals providing education or rehabilitation services), employers, or
24 other individuals who provide services to, employ, or are otherwise
25 substantially involved in the major life functions of students with
26 disabilities.

27 2.4 Commissioner

28 The term "Commissioner" means the Commissioner of the Maine
29 Department of Education or a designee.

30 2.5 Day

31 The term "day" means a calendar day. The term "school day" shall mean
32 a day or partial day on which school was in operation as an instructional
33 day (see Department of Education Regulations 125, Basic School
34 Approval). The term "business day" means Monday through Friday except
35 for Federal and State Holidays.

36 2.6 Department

37 The term "Department" means the Maine Department of Education.

1 2.7 Educational Performance

2 The term "educational performance" includes academic areas (reading,
3 math, communication, etc.), non-academic areas (daily life activities,
4 mobility, etc.), extracurricular activities, progress in meeting goals
5 established for the general curriculum, and performance on State-wide
6 and local assessments.

7 2.8 Evaluation

8 The term "evaluation" means procedures selectively used to determine
9 whether a particular student is a student with a disability and the nature
10 and extent of the special education and supportive services needed by
11 the student. The term does not include basic tests administered to or
12 procedures used with all students in a school, grade, or class nor
13 individualized procedures used to assist a regular education teacher to
14 adapt the general curriculum so that the student may benefit from the
15 general curriculum.

16 2.9 Expulsion

17 The term "expulsion" means the termination of all educational services by
18 a school board for a student who has been deliberately disobedient,
19 deliberately disorderly, or for infractions of violence or possession,
20 furnishing of or trafficking of any scheduled drug as defined in 17-A
21 M.R.S.A. Chapter 45.

22 2.10 Functional Behavior Assessment

23 The term "functional behavior assessment" means a school-based
24 process used by the Pupil Evaluation Team, which includes the parent
25 and, as appropriate, the student, to determine why a student engages in
26 challenging behaviors and how the behavior relates to the student's
27 environment. The term includes direct assessments, indirect assessments
28 and data analysis designed to assist the P.E.T. to identify and define the
29 problem behavior in concrete terms; identify the contextual factors
30 (including affective and cognitive factors) that contribute to the behavior;
31 and formulate a hypothesis regarding the general conditions under which
32 a behavior usually occurs and the probable consequences that maintain
33 the behavior.

34 2.11 General Curriculum

35 The term "general curriculum" shall mean the school administrative unit's
36 local curriculum for grades K-12 which incorporate the content standards
37 and performance indicators of the Learning Results.

38 2.12 Illegal Drugs

39 The term "illegal drugs" means a controlled substance; but does not
40 include such a substance that is legally possessed or used under the

1 supervision of licensed health-care worker or that is legally possessed or
2 used under any other authority or provision of law.

3 2.13 Instructional Time

4 The term "instructional time" means the period in which a student is
5 provided an opportunity to engage in learning activities. The term does
6 not include lunch, recess, or the time between classes unless the
7 student's I.E.P. contains specific goals and objectives addressing these
8 periods.

9 2.14 Parent

10 The term "parent" means a natural or adoptive parent, a guardian, a
11 person acting as a parent of a child (such as a grandparent or step-parent
12 with whom the child lives, or a person who is legally responsible for the
13 child's welfare) or a surrogate parent (see §2.29) of a child who has been
14 appointed in accordance with these rules. The term "parent" does not
15 include the State or employees of a state department responsible for the
16 education or care of a student.

17 A foster parent may qualify as a parent under this section if:

18 A. The natural parent's authority to make educational decisions on the
19 student's behalf has been terminated under State law;

20 B. The foster parent has an ongoing, long-term parental relationship
21 with the student;

22 C. The foster parent is willing to participate in making educational
23 decisions on the student's behalf; and

24 D. The foster parent has no interest that would conflict with the
25 interests of the student.

26 2.15 Positive Behavior Supports And Interventions

27 The term "positive behavior intervention" means an intervention system
28 individually designed by the Pupil Evaluation Team to assist a student to
29 acquire educationally and socially appropriate behaviors and to reduce
30 patterns of dangerous, destructive, disruptive or defiant behaviors.
31 Positive behavior supports and interventions are determined by the Pupil
32 Evaluation Team and based upon the results of functional behavior
33 assessments. A primary goal of positive behavior supports and
34 interventions is to teach educationally and socially appropriate behavior
35 as a replacement for problem behavior.

36 2.16 Private General Purpose School

37 A "private general purpose school" is a private school which provides a
38 regular elementary or secondary instructional program for students of

1 eligible or compulsory school age and which is approved for such
2 purposes in accordance with 20-A M.R.S.A. §§ 2901 and 2951.

3 2.17 Private Special Purpose School

4 A "private special purpose school" is a private school approved by the
5 Commissioner to provide special education and supportive services
6 exclusively to students with disabilities. For purposes of this rule, the term
7 includes, but is not limited to, day schools, day treatment programs with
8 educational components and residential treatment centers.

9 2.18 Resident Student

10 A "resident student" is a student of eligible school age whose parent or
11 legal guardian resides in the school unit.

12 2.19 School Administrative Unit

13 The term "school administrative unit" means a state approved unit of
14 school administration composed of one or more municipalities which must
15 provide public education to all public school students in the unit. For
16 purposes of this rule, the Unorganized Territory Schools, 20-A M.R.S.A.
17 §§3201 *et seq.* shall be included within this definition.

18 2.20 School Year

19 "School year" is defined as the period from July 1 through June 30 of the
20 next calendar year.

21 2.21 Special Education Placement

22 "Special education placement" means the instructional setting in which
23 special education services are provided and is a physical location
24 characterized by the enrollment of students with disabilities. A placement
25 is neither a type of service nor a type of program.

26 2.22 Special Education Program

27 A "special education program" is a full-time or part-time educational
28 program designed to provide a free appropriate public education to
29 students with disabilities through the delivery of special education services
30 by qualified individuals as specified in a student with a disability's
31 Individualized Education Program.

32 2.23 Special Education Services

33 "Special education services" are educational services specially designed
34 to meet the unique needs of a student with a disability provided at no cost
35 to the parent by qualified individuals as defined by the commissioner. All
36 special education services shall be provided by qualified individuals
37 employed or contracted by a school administrative unit, a private special
38 purpose school, or a private general purpose school approved to provide
39 special education and supportive services.

1 **2.24 State Agency Client.**

2 A "state agency client" is a student of eligible school age who is:

3 A. In the care or custody, or both, of the Department of Human
4 Services or the Department of Mental Health, Mental Retardation and
5 Substance Abuse Services;

6 B. Placed, by a caseworker from the Department of Human Services
7 or an authorized agent of Children's Services, Department of Mental
8 Health, Mental Retardation and Substance Abuse Services for reasons
9 other than educational reasons, with a person who is not the student's
10 parent, legal guardian or relative;

11 C. Attending a public or private school while still a resident of a state-
12 operated institution; or

13 D. In the custody or under the supervision of the Department of
14 Corrections, including, but not limited to, a juvenile on conditional release,
15 an informally adjusted juvenile, a probationer or a juvenile on aftercare
16 status from the Maine Youth Center and who is placed, for reasons other
17 than educational reasons, pursuant to a court order or with the agreement
18 of an authorized agent of the Department of Corrections, outside the
19 juvenile's home.

20 **2.25 State-Operated Institution**

21 A "state-operated institution" is a facility owned and operated by the
22 Maine Department of Mental Health, Mental Retardation and Substance
23 Abuse Services, including:

24 Aroostook County Residential Center

25 Augusta Mental Health Institute

26 Bangor Mental Health Institute

27 Elizabeth Levinson Center

28 **2.26 State Ward**

29 A "state ward" is a person under the age of 18, or an older person of
30 eligible school age, for whom the State of Maine is legal guardian by court
31 order. The term does not include residents of Maine's correctional
32 facilities.

33 **2.27 Student with a Disability**

34 The term "student with a disability" is defined in Part 3 of these rules.

35 **2.28 Supportive Services**

36 "Supportive Services" means special education transportation, and such
37 developmental, corrective, and other supportive services as are required

1 to assist a student with a disability to benefit from his/her special
2 education program. The term includes, but is not limited to, speech-
3 language pathology, audiology, counseling services including
4 rehabilitation counseling, orientation and mobility services, psychological
5 services, physical therapy, occupational therapy, recreation including
6 therapeutic recreation, early identification and assessment of students
7 with disabilities, and medical services except that such medical services
8 shall be for diagnostic or evaluation purposes only. The term also
9 includes school health services, social work services in schools, and
10 parent counseling and training. All supportive services shall be provided
11 by appropriately certified or licensed professionals or appropriately
12 supervised support staff. The term "Supportive Services" is synonymous
13 with the term "Related Services" as used in the 1997 Amendments to the
14 Individuals with Disabilities Education Act.

15 **2.29 Surrogate Parent**

16 A "surrogate parent" is a person appointed to fulfill the duties of a parent
17 in accordance with §12.6, Surrogate Parents, of this rule.

18 **2.30 Suspension**

19 "Suspension" means a disciplinary action taken by an authorized school
20 administrator or school board which results in the temporary
21 discontinuation of educational services and the removal of the student
22 from educational opportunities.

23 **2.31 Transition Services**

24 The term "transition services" means a coordinated set of activities for a
25 student with a disability, designed within an outcome-oriented process,
26 which promotes movement from school to post-school activities, including
27 post-secondary education, vocational training, integrated employment
28 (including supported employment), continuing and adult education, adult
29 services, independent living, or community participation. The coordinated
30 set of activities shall be based on the individual student's needs, taking
31 into account the student's preferences and interests, and shall include, but
32 not be limited to, special education services, instruction, supportive
33 services, community experiences, the development of employment and
34 other post-school adult living objectives, and if appropriate, acquisition of
35 daily living skills and functional vocational evaluation.

36 **2.32 Weapon**

37 The term "weapon" means a dangerous weapon as defined by 18 U.S.C.
38 §930 (g)(2) or 17-A M.R.S.A. §2(9).

39 (NOTE: The Federal and Maine definitions of weapon are attached as
40 Appendix 1.)

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3. STUDENTS WITH DISABILITIES

3.1 Student with a Disability; General Definition

This rule addresses the duty to provide a free appropriate public education to a "student with a disability."

A student with a disability is an individual who:

- A. Has reached the age of 5 years on or before October 15;
- B. Has neither graduated from a secondary school program with a regular high school diploma nor reached 20 years of age at the start of the school year; and
- C. Has been evaluated according to these rules and has been determined to have a disability which requires the provision of special education and supportive services.

A student with a disability shall have one or more of the disabilities listed in this section (Part 3, Students with Disabilities).

3.2 Autism

Autism means a developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three, that adversely affects 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. The term does not apply if a student's educational performance is adversely affected primarily because the student has an emotional disability, as defined in §3.5 of these rules.

A student who manifests the characteristics of autism after age 3 could be identified as a student with autism if the criteria in the preceding section are satisfied.

3.3 Deaf-Blindness

A student who has deaf-blindness exhibits concomitant visual and hearing 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 students with deafness or students with blindness.

3.4 Deafness

A student who is deaf has a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing,

1 with or without amplification, that adversely affects the student's
2 educational performance.

3 3.5 Emotional Disability

4 A student with an emotional disability has a condition which exhibits one
5 or more of the following characteristics over a long period of time and to a
6 marked degree that adversely affects the student's educational
7 performance:

8 A. An inability to learn that cannot be explained by intellectual,
9 sensory, or health factors;

10 B. An inability to build or maintain satisfactory interpersonal
11 relationships with peers and teachers;

12 C. Inappropriate types of behaviors or feelings under normal
13 circumstances;

14 D. A general pervasive mood of unhappiness or depression;

15 E. A tendency to develop physical symptoms or fears associated with
16 personal or school problems.

17 The term includes schizophrenia. The term does not apply to students
18 who are "socially maladjusted," unless it is determined that they have an
19 emotional disability.

20 3.6 Hearing Impairment

21 A student who has a hearing impairment has an impairment in hearing
22 whether permanent or fluctuating, and that adversely affects the student's
23 educational performance but who is not included under the definition of
24 deafness in §3.4.

25 3.7 Mental Retardation

26 A student with mental retardation exhibits significantly subaverage general
27 intellectual functioning existing concurrently with deficits in adaptive
28 behaviors and manifested during the developmental period that adversely
29 affect the student's educational performance.

30 3.8 Multiple Disabilities

31 A student with multiple disabilities exhibits concomitant impairments (such
32 as mental retardation and blindness, mental retardation and orthopedic
33 impairment, etc.) the combination of which causes such severe
34 educational needs that they cannot be accommodated in special
35 education programs solely for one of the impairments. The term does not
36 include students who have deaf-blindness.

1 3.9 Orthopedic Impairment

2 A student with an orthopedic impairment exhibits a severe orthopedic
3 impairment that adversely affects the student's educational performance.
4 The term includes impairments caused by congenital anomaly (e.g.,
5 clubfoot, absence of some member, etc.), impairments caused by disease
6 (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other
7 causes (e.g., cerebral palsy, amputations, and fractures or burns that
8 cause contractures).

9 3.10 Other Health Impairment

10 A student with an other health impairment exhibits limited strength, vitality
11 or alertness, including a heightened alertness to environmental stimuli,
12 that results in limited alertness with respect to the educational
13 environment, that is due to chronic or acute health problems, such as
14 asthma, attention deficit disorder, attention deficit hyperactivity disorder,
15 diabetes, epilepsy, a heart condition, hemophilia, lead poisoning,
16 leukemia, nephritis, rheumatic fever, or sickle cell anemia, and that
17 adversely affects the student's educational performance.

18 3.11 Specific Learning Disability

19 A student with a specific learning disability exhibits a disorder in one or
20 more of the basic psychological processes involved in understanding or in
21 using language, spoken or written, that may manifest itself in an imperfect
22 ability to listen, think, speak, read, write, spell, or to do mathematical
23 calculations, including conditions such as perceptual disabilities, brain
24 injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

25 The Pupil Evaluation Team may determine that a student has a specific
26 learning disability if:

27 1. The student does not achieve commensurate with his or her age and
28 ability levels in one or more of the areas listed in paragraph (2) of this
29 section, if provided with learning experiences appropriate for the student's
30 age and ability levels; and

31 2. The Team finds that the student has a severe discrepancy between the
32 student's achievement and intellectual ability as determined by
33 individualized assessment of intelligence and academic achievement in
34 one or more of the following areas:

35 Oral expression;

36 Listening comprehension;

37 Written expression;

38 Basic reading skill;

39 Reading comprehension;

1 Mathematical calculation; or
 2 Mathematical reasoning.

3 The Pupil Evaluation Team may not identify a student as having a specific
 4 learning disability if the severe discrepancy between ability and
 5 achievement is primarily the result of visual, hearing or motor
 6 impairments; mental retardation; emotional disability; or environmental,
 7 cultural, or economic disadvantage.

8 3.12 Speech and Language Impairment

9 A student with a speech and language impairment has a communication
 10 disorder such as stuttering, impaired articulation, a language impairment,
 11 or a voice impairment, that adversely affects the student's educational
 12 performance.

13 3.13 Traumatic Brain Injury

14 Traumatic brain injury means an acquired injury to the brain caused by an
 15 external physical force resulting in total or partial functional disability or
 16 psychosocial impairment or both that adversely affects a student's
 17 educational performance. The term includes open or closed head injuries
 18 resulting in impairments in one or more areas, such as cognition;
 19 language; memory; attention; reasoning; abstract thinking; judgment;
 20 problem-solving; sensory, perceptual and motor abilities; psychosocial
 21 behavior; physical functions; information processing; and speech. The
 22 term does not include brain injuries that are congenital or degenerative, or
 23 brain injuries induced by birth trauma.

24 3.14 Visual Impairment including blindness

25 A student with a visual impairment has an impairment in vision that, even
 26 with correction, adversely affects the student's educational performance.
 27 The term includes both partial sight and blindness.

28 4. RESPONSIBILITY FOR SPECIAL EDUCATION SERVICES

29 4.1 General Principles: Responsibility for Special Education Services and 30 Finances

31 Each school administrative unit is responsible for providing special
 32 education services to all resident students and other eligible students (as
 33 defined in these rules) within its geographical jurisdiction who are
 34 identified as students with disabilities according to the procedures
 35 established in this rule. Where a school unit has the responsibility for
 36 providing special education services to students with disabilities, it may
 37 also bear financial responsibility for the cost of such services, receiving
 38 state subsidy in accordance with the Maine School Finance Act. In some
 39 situations, the cost may be borne directly by one or more state agencies,
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1 although the provision of special educational services remains the
2 responsibility of the unit.

3 4.2 Resident Students

4 A school unit shall provide special education services to all students with
5 disabilities whose parent resides within the school unit and to all adult
6 students who reside within the school unit. This shall include all students
7 who attend the public schools of the unit, or who attend other public
8 schools or private schools on a tuition or contract basis at public expense.

9 In the case of students attending home schools, religiously affiliated
10 schools, or other private schools at private expense, the school unit shall
11 provide a genuine opportunity for equitable participation in the unit's
12 special education services. Amounts expended for the provision of these
13 services by a school administrative unit shall be no less than a
14 proportionate amount of Federal funds made available to the unit under
15 the IDEA, (see §4.7, Responsibility for Students with Disabilities Enrolled
16 by Their Parents In Private Schools or Receiving Home Schooling).

17 In the case of a student who is homeless as defined by 20-A M.R.S.A.
18 §1(13-A) the parents, the student's social worker if the parent is
19 unavailable, or the adult student may chose to attend school at either the
20 school of origin or the school district of residence for the remainder of any
21 school year, or in any case in which a family becomes homeless between
22 academic years, for the following academic year. Services for homeless
23 students shall be comparable to other students in the school of choice
24 and shall be provided consistent with the requirements of Maine
25 Department of Education Regulations 14 regarding School Board Policies
26 on Exceptions to the General Residency Rules and Education of
27 Homeless Students

28 4.3 State Wards

29 A state ward who is placed by a state agency in a residential placement
30 other than a residential treatment center as defined in 20-A M.R.S.A.
31 §1(24-A)(D)(3), shall be considered a resident of the school administrative
32 unit where the residential placement is located.

33 A school unit shall provide special education services to any state ward
34 who requires special education services and who resides within the unit's
35 boundaries in a foster home, group home, therapeutic group home,
36 emergency shelter, residential treatment facility (as defined by 20-A
37 M.R.S.A. §1(24-A), state-operated institution, skilled nursing facility or
38 intermediate care facility.

39 The costs for such services shall be paid directly by the Department of
40 Education at 100 percent of the cost during the year in which the services

1 were provided upon receipt of appropriate statements from the
2 administrative unit and subject to 20-A M.R.S.A. §15613.

3 The regional administrator of the responsible state agency or the member
4 of the agency's staff identified as responsible for case management of the
5 state ward and the foster parent or administrator of the residence are
6 entitled to participate in any Pupil Evaluation Team meeting for the state
7 ward.

8 If a state ward is placed in a residential treatment center, (as defined by
9 20-A M.R.S.A. §1(24-A)(D)(3)), the costs for such services shall be paid
10 directly by the Department of Education at 100 percent of the cost during
11 the year in which the services were provided upon receipt of appropriate
12 statements from the residential treatment center and subject to 20-A
13 M.R.S.A. §15613. Responsibility for the student shall remain with the
14 school administrative unit which placed the student. These
15 responsibilities include development of the student's Individualized
16 Education Program (I.E.P.), annual review of the I.E.P. and a
17 determination of future appropriate programs and placements. The
18 school unit which placed the state ward in a residential treatment center
19 shall retain responsibility for program monitoring, I.E.P. development, and
20 annual review, until the state ward is discharged from the residential
21 treatment center.

22 When a state ward has moved frequently between school administrative
23 units, and there is a request for the P.E.T. to consider a residential
24 placement of the state ward for educational reasons, the School
25 Administrative Unit (S.A.U.) in which the state ward was last enrolled for a
26 full academic quarter shall be the responsible S.A.U. to consider this
27 request

28 4.4 State Agency Clients

29 A state agency client who is placed by a state agency in a residential
30 placement other than a residential treatment center as defined in 20-A
31 M.R.S.A. §1(24-A)(D)(3), shall be considered a resident of the school
32 administrative unit where the residential placement is located.

33 A school unit shall provide special education services to any state-agency
34 client who requires special education services and who resides within the
35 unit's boundaries in a foster home, group home, therapeutic group home,
36 emergency shelter, residential treatment facility, (as defined by 20-A
37 M.R.S.A. §1(24-A), state-operated institution, skilled nursing facility or
38 intermediate care facility.

39 The costs for such services shall be paid directly by the Department of
40 Education at 100 percent of the cost during the year in which the services
41 were provided upon receipt of appropriate statements from the
42 administrative unit and subject to 20-A M.R.S.A. §15613.

1 The regional administrator of the responsible state agency or the member
2 of the agency's staff identified as responsible for case management of the
3 state agency client, the foster parent or administrator of the residence and
4 the parents of the state agency client are entitled to participate in any
5 Pupil Evaluation Team meeting for the state-agency client.

6 The placement of a state agency client for educational reasons in a
7 residential treatment center shall be the responsibility of the school
8 administrative unit in which the state agency client's parents reside.
9 These responsibilities include the development of the student's
10 Individualized Education Program (I.E.P.), the determination of the least
11 restrictive educational alternative, the annual review of the I.E.P., program
12 monitoring, and the determination of future educational programs and/or
13 placements.

14 When a state agency client is placed in such a residential treatment
15 center by an administrative unit, the student loses his/her state agency
16 client status and the student becomes the financial and programmatic
17 responsibility of the administrative unit in which the student's parent or
18 legal guardian resides.

19 4.5 Institutional Residents

20 A school unit shall provide special education services to eligible students
21 with disabilities who are residents of any state-operated institution within
22 the unit's boundaries.

23 The administrator of the institution or another designated staff person
24 shall be entitled to participate in the Pupil Evaluation Team meetings.

25 Tuition for students who are institutional residents and who receive
26 special education services from an administrative unit or a special
27 purpose private school shall be paid directly by the Department of
28 Education at 100 percent of tuition costs during the year in which the
29 services are provided upon receipt of appropriate statements from the
30 administrative unit or the special purpose private school and subject to 20-
31 A M.R.S.A. §15613.

32 4.6 Other Students

33 Students other than state wards, state agency clients, or institutional
34 residents who are living with persons other than their parents or legal
35 guardians, are eligible to attend school where they reside if the
36 superintendent determines it is in the best interest of the student (in
37 accordance with 20-A M.R.S.A. §5205(2) or the student transfers
38 residence (in accordance with 20-A M.R.S.A. §5205(6)).

1 4.7 Responsibility for Students with Disabilities Enrolled by Their Parents in
2 Private Schools or Receiving Home-Schooling

3 A. Child Find Responsibilities For Private School/Home Schooled
4 Students - Each school administrative unit must locate, identify and
5 evaluate all private school students, including religiously-affiliated school
6 students, and home schooled students who have disabilities residing in
7 the jurisdiction of the unit in accordance with §4.2, Resident Students.

8 B. Basic requirement - services - To the extent consistent with their
9 number and location in the State, provision must be made for the
10 participation of private school students/home schooled students who have
11 disabilities in the program assisted or carried out under Part B of the IDEA
12 by providing them with special education and supportive services in
13 accordance with these rules.

14 C. Expenditures - To meet the requirement of these rules, each school
15 administrative unit must spend on providing special education and
16 supportive services to private school students/home schooled students
17 with disabilities, an amount that is the same proportion of the S.A.U.'s
18 total subgrant under §1411(g) of the IDEA as the number of private school
19 students/home schooled students with disabilities aged 5 through 20
20 residing in its jurisdiction is to the total number of students with disabilities
21 in its jurisdiction aged 5 through 20.

22 S.A.U.s are not prohibited from providing services to private school
23 students/home schooled students with disabilities in excess of those
24 required by these rules, consistent with State law or local policy.

25 D. Services determined - No individual right to special education and
26 supportive services. No private school student/home schooled student
27 with a disability has an individual right to receive some or all of the special
28 education and supportive services that the student would receive if
29 enrolled in a public school. Decisions about the services that will be
30 provided to private school students/home schooled students with
31 disabilities under these rules, must be made in accordance with this
32 section.

33 Consultation with representatives of private school students/home
34 schooled students with disabilities. Each S.A.U. shall consult, in a timely
35 and meaningful way, with appropriate representatives of private school
36 students/home schooled students with disabilities in light of the funding
37 under this section, the number of private school students/home schooled
38 students with disabilities, the needs of private school students/home
39 schooled students with disabilities, and their location to decide which
40 students will receive services under this section, what services will be
41 provided, how the services will be provided, and how the services
42 provided will be evaluated.

1 Genuine opportunity. – Each S.A.U. shall give appropriate representatives
2 of private school students/home schooled students with disabilities a
3 genuine opportunity to express their views regarding each matter that is
4 subject to the consultation requirements in this section.

5 Timing. – The consultation required by this section must occur before the
6 S.A.U. makes any decision that affects the opportunities of private school
7 students/home schooled students with disabilities to participate in services
8 under these rules.

9 Decisions. – The S.A.U. shall make the final decisions with respect to the
10 services to be provided to eligible private school students/home schooled
11 students with disabilities.

12 E. Services provided - General. The services provided to private school
13 students with disabilities must be provided by personnel meeting the
14 same standards as personnel providing services in the public schools.
15 Private school students with disabilities may receive a different amount of
16 services than students with disabilities in public schools. No private school
17 student with a disability is entitled to any service or to any amount of a
18 service the student would receive if enrolled in a public school.

19 Services provided in accordance with a services plan. - Each private
20 school student with a disability who has been designated to receive
21 services under these rules must have a services plan that describes the
22 specific special education and related services that the S.A.U. will provide
23 to the student in light of the services that the S.A.U. has determined,
24 through the process described in §§C and D above, it will make available
25 to private school students with disabilities.

26 The services plan must, to the extent appropriate meet the requirements
27 of §10.2, Individualized Education Program Components, with respect to
28 the services provided; and be developed, reviewed, and revised
29 consistent with Part 8, Pupil Evaluation Team Process, and Part 10,
30 Individualized Education Program (I.E.P.).

31 F. Location of services - On-site. Services provided to private school
32 students/home schooled students with disabilities may be provided on-site
33 at a student's private school/home school, including a religiously-affiliated
34 school, to the extent consistent with law.

35 Transportation. Transportation of private school students/home schooled
36 students with disabilities to a site other than a student's private
37 school/home school must be provided if necessary for a student to benefit
38 from or participate in the other services offered. The cost of that
39 transportation may be included in calculating whether the S.A.U. has met
40 the requirement of these rules. School administrative units are not
41 required to provide transportation from the student's home to the private
42 school / home school, but only to the site where the services are offered,

1 and either return the student to the private school or to the student's
2 home, depending on the timing of the services.

3 G. Complaints - Due process hearing inapplicable. - The due process
4 hearing procedures in Part 13, Dispute Resolution Procedures, of these
5 rules do not apply to allegations that an S.A.U. has failed to meet the
6 requirements of this section, including the provision of services indicated
7 on the student's I.E.P.

8 State complaints and mediations. - Complaints that an S.A.U. has failed
9 to meet the requirements of this section may be filed under the complaint
10 procedures in §13.5. Parents and schools may also use the mediation
11 procedures in §13.4 to resolve a dispute.

12 H. Separate classes prohibited - An S.A.U. may not use funds available
13 under §§1411 or 1419 of the IDEA for classes that are organized
14 separately on the basis of school enrollment or religion of the students if
15 the classes are at the same site; and the classes include students
16 enrolled in public schools and students enrolled in private schools / home
17 schools.

18 I. Requirement that funds not benefit a private school / home school. - An
19 S.A.U. may not use funds provided under §§1411 or 1419 of the IDEA to
20 finance the existing level of instruction in a private school / home school or
21 to otherwise benefit the private school / home school. The S.A.U. shall
22 use funds provided under Part B of the IDEA to meet the special
23 educational needs of students enrolled in private schools / home schools,
24 but not for the needs of a private school / home school; or the general
25 needs of the students enrolled in the private school / home school.

26 J. Use of public school personnel - An S.A.U. may use funds available
27 under §§1411 and 1419 of the IDEA to make public personnel available in
28 other than public facilities to the extent necessary to provide services
29 under this section for private school students/home schooled students
30 with disabilities and if those services are not normally provided by the
31 private school/home school.

32 K. Use of private school/home school personnel - An S.A.U. may use
33 funds available under §§1411 or 1419 of the IDEA to pay for the services
34 of an employee of a private school/home schools if the employee
35 performs the services outside of his or her regular hours of duty and the
36 employee performs the services under public supervision and control.

37 L. Requirements concerning property, equipment and supplies for the
38 benefit of private school students/home schooled students with disabilities
39 - A public agency must keep title to and exercise continuing administrative
40 control of all property, equipment, and supplies that the public agency
41 acquires with funds under §§1411 or 1419 of the IDEA for the benefit of
42 private school students/home schooled students with disabilities. The

1 public agency may place equipment and supplies in a private school for
2 the period of time needed for the program. The public agency shall ensure
3 that the equipment and supplies placed in a private school are used only
4 for Part B purposes; and can be removed from the private school without
5 remodeling the private school facility. The public agency shall remove
6 equipment and supplies from a private school if the equipment and
7 supplies are no longer needed for Part B purposes; or removal is
8 necessary to avoid unauthorized use of the equipment and supplies for
9 other than Part B purposes. No funds under Part B of the Act may be
10 used for repairs, minor remodeling, or construction of private school
11 facilities.

12 4.8 Determination of Educational Responsibility

13 Any interested person may request that the Commissioner determine
14 which administrative unit has educational responsibility for a particular
15 student.

16 4.9 Educational Responsibility for Incarcerated Students With Disabilities

17 A. Responsibility for Students with Disabilities Incarcerated in County
18 Jails – Educational responsibility, including child find activities, for
19 students with disabilities incarcerated in county jails shall rest with the
20 school administrative unit in which the student resided prior to the
21 incarceration.

22 B. Responsibility for Students with Disabilities Incarcerated in State
23 Prisons – The Department of Corrections is responsible for the education
24 of eligible residents of facilities operated under their jurisdiction. This
25 responsibility includes the responsibility for child find activities.

27 5. SPECIAL EDUCATION SERVICES

28 5.1 Continuum of Special Education Services

29 Each administrative unit shall ensure that a continuum of special
30 education services is available to meet the needs of students with
31 disabilities and shall ensure that special education services (such as
32 consultation, monitoring, and direct instructional services) are available in
33 conjunction with regular class placements, self-contained placements, and
34 tutorial services, including hospital and homebound instruction.

35 Special education services may be provided directly by a school
36 administrative unit, provided through a tuition arrangement with another
37 school unit or private school with approved special education services, or
38 provided in a regional center through a cooperative agreement between
39 two or more school units. All such services must be approved by the

1 Commissioner. This section describes a variety of special education
2 services and standards for approval.

3 5.2 Student-Teacher Ratios

4 The student-teacher ratios or caseloads contained within these
5 regulations specify the maximum number of students who may be served
6 by each full-time, certified special education teacher. A school
7 administrative unit may, as a matter of local policy and in consideration of
8 additional responsibilities assigned, specify a lower number of students to
9 be served by each full-time, certified special education teacher.

10 5.3 Monitoring Services

11 Monitoring services shall be provided to students with disabilities who
12 have been transitioned from a special education program into a regular
13 education program. The purpose of monitoring services is to assist the
14 student to effectively transition into a less restrictive educational
15 alternative.

16 Monitoring services shall include regular observations and meetings
17 between a certified special education teacher or certified special
18 education consultant, the student and the student's teacher(s) to discuss
19 the student's program and progress. The frequency of these meetings
20 shall be determined by the P.E.T. but will be no less than quarterly.
21 Monitoring services shall be included in the student's Individualized
22 Education Program and the student shall be counted as part of the special
23 education teacher's caseload. Monitoring services shall be limited to no
24 more than one year.

25 When a special education teacher responsible for special education
26 services also provides regularly scheduled consultation or monitoring
27 services, the maximum caseload permitted shall be no greater than 35
28 students for each full-time equivalent, certified special education teacher.

29 5.4 Consultation Services

30 Consultation services may be provided to regular education teachers to
31 assist them in modifying and/or adapting their regular education
32 curriculum to serve students with disabilities. Consultation services shall
33 be provided by a certified special education consultant or a certified
34 special education teacher employed by the unit.

35 When consultation services are provided to assist a regular education
36 teacher with a student with a disability, such consultation services shall be
37 included in the student's Individualized Education Program.

38 Student-teacher ratio -The ratio of students to teacher shall be no greater
39 than 35 students for each full-time equivalent, certified special education
40 teacher providing consultation services.

1 5.5 Direct Instructional Services

2 A. Definition - Direct instructional services is instruction provided by an
3 appropriately certified special education professional or an appropriately
4 supervised educational technician consistent with a student's Individual
5 Educational Program (I.E.P.).

6 B. Teacher qualifications -The teacher responsible for direct
7 instructional services shall be certified as a special education teacher as
8 required by Chapter 115 as amended (Certification Endorsements for
9 Teachers).

10 C. Student-teacher ratio - Regular class and resource placements. -
11 The ratio of students to each full-time equivalent certified special
12 education teacher providing direct instructional services shall not exceed
13 a total of 35 students for each special education teacher providing direct
14 instructional services. No more than eight (8) students may be served at
15 any one time.

16 During the time that auxiliary personnel work under the supervision of the
17 certified special education teacher providing the direct instructional
18 services, thirteen (13) students may be served, but the total caseload ratio
19 shall not change (see §5.7, Supervision of Educational Technicians).

20 D. Student-teacher ratio - Self contained placements. - The following
21 student-teacher ratios shall not be exceeded for self-contained services.
22 The figures in parentheses represent the number of additional students
23 who may be provided self-contained services during the time that one or
24 more educational technicians work under the supervision of the certified
25 special education teacher responsible for the program (see §5.7,
26 Supervision of Educational Technicians).

27 Ages 5-9	6:1 (5)
28 Ages 10-14	8:1 (5)
29 Ages 15-20	10:1 (5)

30 NOTE: Classes for students with a severe to profound degree of
31 impairment shall be staffed with a minimum of two (2) providers (i.e., one
32 teacher and one educational technician) at all times to ensure the safety
33 and well being of the students.

34 5.6 Qualified Staff

35 Any special education or supportive services provided to a student with a
36 disability shall be considered as a part of the student's special education
37 program, shall be specified in the student's I.E.P. and shall be provided by
38 an appropriately certified special education teacher or licensed supportive
39 services provider. An Educational Technician approved by the Office of
40 Certification of the Department may provide special education services

1 when supervised by the certified special education teacher responsible for
2 the program.

3 If a school administrative unit is unable to hire qualified staff for the
4 provision of supportive services, the unit shall make an ongoing, good
5 faith effort to recruit and hire appropriately and adequately trained
6 personnel to provide supportive services to students with disabilities. In a
7 geographic area of the State where there is a shortage of qualified
8 personnel who meet the requirements of this section, the unit may hire the
9 most qualified individuals available who are making satisfactory progress
10 toward completing, within three years, the applicable course work
11 necessary to meet the licensing standards described in §18.3, Costs of
12 Qualified Personnel of these rules.

13 5.7 Supervision of Educational Technicians

14 An Educational Technician I, II, or III may not work with more than five
15 students at any one time.

16 Educational Technicians I, II, and III shall be supervised by a certified
17 special education teacher when providing special education services to
18 students with disabilities and supervised by the classroom teacher or
19 appropriate content specialist when assisting a student with a disability
20 during integrated activities. Such supervision shall be as required by
21 Maine Department of Education Regulations 115 with the following
22 exception:

23 Any Educational Technician working as an interpreter for the deaf or a
24 cued speech transliterator shall be supervised and monitored for progress
25 toward completion of the training requirements consistent with the
26 requirements of §6.7, Interpreter/Transliterator Services for Students with
27 Disabilities.

28 5.8 Tutorial Services

29 Tutorial services shall be provided to any student with a disability who is
30 unable to participate in an administrative unit's regular or special
31 education classes as determined by the Pupil Evaluation Team consistent
32 with the requirements of §11, Least Restrictive Educational Alternative.

33 Any tutorial services offered to a student with a disability shall be provided
34 by an appropriately certified special education teacher, or by a certified
35 regular education teacher, or by a substitute teacher for that
36 administrative unit who has been previously registered as a substitute with
37 the Office of Certification.

38 Tutorial services shall be determined on an individual basis by the Pupil
39 Evaluation Team and shall consist of services necessary to enable the
40 student to appropriately progress in the general curriculum and
41 appropriately advance toward achieving the goals set out in the student's

1 I.E.P. Home-based tutorial services are usually appropriate for only a
2 limited number of students, such as students who are medically fragile
3 and are not able to participate in a school setting with other students.

4 If the duration of the tutorial services is anticipated to exceed 10 school
5 days, a P.E.T. shall convene to develop a new Individualized Education
6 Program.

7 Tutorial services in excess of 60 calendar days shall be provided by a
8 certified special education teacher.

9 5.9 Extended School Year Services

10 Each school administrative unit shall ensure that extended school year
11 services are available to each student with a disability to the extent
12 necessary to ensure that a free appropriate public education is available
13 to the student. Pupil Evaluation Team determinations to provide extended
14 school year services, including special education and supportive services
15 beyond an administrative unit's normal school year, shall be made on an
16 individual basis and based on the probability that the student is at risk of
17 losing skills previously mastered and unable to recoup those skills within a
18 reasonable period of time.

19 Extended school year services shall be a part of the student's
20 Individualized Education Program, shall be provided at no cost to the
21 parents and meet the standards for provision of special education and
22 supportive services specified in these rules.

23 An S.A.U. may not limit extended school year services to particular
24 categories of disability nor unilaterally limit the type, amount or duration of
25 those services.

26 5.10 Speech and Language Services

27 A Speech-Language pathologist licensed by the Maine Board of
28 Examiners of Speech-Language Pathologists and Audiologists, or speech
29 clinician certified by the Department may provide speech and language
30 services if recommended by the Pupil Evaluation Team and included in
31 the student's Individualized Education Program. The maximum student-
32 therapist caseload, including both consultation and direct services, shall
33 not exceed 50 for each full-time equivalent speech-language pathologist
34 or speech clinician.

35 A certified speech clinician may provide speech and language services if
36 employed by an administrative unit. A certified speech clinician shall also
37 be licensed by the Maine Board of Examiners of Speech-Language
38 Pathologists and Audiologists in order to provide contracted speech and
39 language services (see §6.3, Contracted Special Education Services).

1 A speech-language pathology aide or assistant registered with the Board
2 of Speech-Language Pathology and Audiology may provide speech and
3 language services under the supervision of a licensed speech-language
4 pathologist as required by 32 M.R.S.A. Chapter 77 and accompanying
5 regulations relating to the practice of speech-language pathology.

6 5.11 Graduation

7 When the Pupil Evaluation Team is developing the Individualized
8 Education Program of a student with a disability between the ages of 15
9 and 20 inclusive, the P.E.T. may make reasonable and appropriate
10 adaptations of and accommodations to the state and local graduation
11 requirements to reflect the unique skills and abilities of the student and
12 shall specify in the student's Individualized Education Program the
13 projected date of graduation.

14 Students who have completed the graduation requirements specified in
15 their Individualized Education Program shall be eligible to receive a
16 regular high school diploma unless the local school board has adopted
17 specific, competency-based graduation requirements applicable to all
18 students.

19 The administrative unit shall inform, in writing, both the parent and, when
20 appropriate, the student that completion of the student's Individualized
21 Education Program and consequent graduation and receipt of a regular
22 high school diploma constitutes a termination of eligibility for special
23 education services (see §12.3, Prior Written Notice).

24 A student's eligibility for F.A.P.E. ceases upon graduation from high
25 school with a regular high school diploma. Graduation is considered to be
26 a change in placement, and would require that prior written notice, in
27 accordance with §12.3, be given to the parents and the student. The
28 notice would inform the parents and the student of the termination of
29 eligibility for special education services and of their right to challenge the
30 student's pending graduation if they believe that the student has not met
31 the requirements for graduation with a regular high school diploma.
32 Students who exit school without a regular high school diploma continue
33 to be eligible for special education services until they reach an age at
34 which their eligibility terminates or they receive a regular diploma.

35 5.12 Waivers

36 The superintendent of a school administrative unit or the director of a
37 private school serving students with disabilities may request a waiver of
38 certain regulations relating to student-teacher ratios, caseload ratios or
39 the location of special education programs in chronologically, age-
40 appropriate settings.

41 All such requests:

- 1 A. Shall be in writing;
- 2 B. Shall include documentation of the unit's or school's efforts to
3 achieve compliance;
- 4 C. Shall state the rationale for requesting the waiver;
- 5 D. Shall specify the corrective action to be taken to achieve
6 compliance by the beginning of the next school year;
- 7 E. Shall include documentation of notification and opportunity to
8 comment provided to the parents of all students with disabilities affected
9 by the waiver request; and
- 10 F. Shall include a signed statement from the superintendent assuring
11 that all students affected by the waiver are receiving a free, appropriate
12 public education (F.A.P.E.) consistent with their I.E.P.s.
- 13 The Commissioner shall review and approve, modify, or disapprove all
14 such requests for a waiver.

15 5.13 Transition Services

16 A. Content of Individualized Education Program - The Pupil Evaluation
17 Team shall include within the Individualized Education Program of a
18 student with a disability beginning no later than age 14 (or younger if
19 determined appropriate by the P.E.T.), and updated annually, a statement
20 of the transition service needs of the student under the applicable
21 components of the student's I.E.P. that focuses on the student's courses
22 of study (such as participation in advanced-placement courses or a
23 vocational education program).

24 For each student beginning at age 16 (or younger if determined
25 appropriate by the P.E.T.) a statement of the needed transition services
26 for the student including, when appropriate, a statement of the
27 interagency responsibilities or any needed linkages.

28 B. Agency responsibilities for transition services - In the case where
29 another agency other than the school administrative unit responsible for
30 the student's education, fails to provide agreed upon transition services
31 contained in the I.E.P. of a student with a disability, the school
32 administrative unit shall reconvene the Pupil Evaluation Team, identify
33 alternative strategies to meet the transition objectives and, if necessary,
34 revise the student's I.E.P.

35 Nothing in these rules relieves any other agency, including the Maine
36 Department of Human Services, the Maine Department of Mental Health,
37 Mental Retardation and Substance Abuse Services, the Maine
38 Department of Labor or the Bureau of Vocational Rehabilitation, of the
39 responsibility to provide or pay for any transition service that the agency

1 would otherwise provide to students with disabilities who meet the
2 eligibility criteria of that agency.

3 5.14 Physical Education

4 A. General - Physical education services, specially designed if
5 necessary, must be made available to every student with a disability
6 receiving a free appropriate public education. The term "physical
7 education" means the development of physical and motor fitness;
8 fundamental motor skills and patterns; and skills in aquatics, dance, and
9 individual and group games and sports (including intramural and lifetime
10 sports). The term includes special physical education, adaptive physical
11 education, movement education, and motor development.

12 B. Regular Physical Education - Each student with a disability must be
13 afforded the opportunity to participate in the regular physical education
14 program available to non-disabled students unless:

- 15 1. The student is enrolled full time in a separate facility; or
- 16 2. The student needs specially designed physical education, as
17 prescribed in the student's Individualized Education Program.

18 C. Special Physical Education - If specially designed physical
19 education is prescribed in a student's Individualized Education Program,
20 the school administrative unit responsible for the education of that student
21 shall provide the services directly, or make arrangements for them to be
22 provided through other public or private programs.

23 D. Education in Separate Facilities - The school administrative unit
24 responsible for the education of a student with a disability who is enrolled
25 in a separate facility shall ensure that the student receives appropriate
26 physical education services in compliance with paragraphs "A" and "C" of
27 this section.

28 6. SUPPORTIVE SERVICES

29 6.1 General Principles: Need of Supportive Services

30 Supportive services are those services required to assist a student with a
31 disability to benefit from special education services.

32 Supportive services must be identified in the student's Individualized
33 Education Program and shall meet the following standards:

34 A. The service is an integral part of an educational objective (the
35 service is required to assist the student with a disability to achieve the
36 goals and objectives specified in the student's Individualized Education
37 Program or the service is so intermixed with instruction that it has become
38 an integral part of the instructional methodology used with a student, i.e.,
39 interpreter services); and,

1 B. The definition of supportive services applies equally to any student
2 with a disability tuitioned by an administrative unit to a private special
3 purpose school.

4 6.2 Exclusions (Medical Services and Treatment)

5 A. Medical Service, Treatment - Services or treatment performed by
6 psychiatrists, physicians, optometrists, chiropractors, registered substance
7 abuse counselors, or other medical personnel are not an allowable special
8 education or supportive service.

9 B. Medical Evaluations - Medical evaluations that the Pupil Evaluation
10 Team or administrative unit have determined to be necessary for the
11 purpose of identifying a disability are an allowable supportive service and
12 may be funded through the use of the unit's Local Entitlement Funds or
13 through the use of third party payments with the consent of the parent.

14 6.3 Contracted Special Education Services

15 A. Use of independent contractors - If the P.E.T. determines that the
16 provision of special education or supportive services are necessary to
17 identify or provide for a student's special education needs and if the
18 provider of such special education or supportive services is not an
19 employee of the administrative unit, such services shall be provided in
20 accordance with the terms of a written contract approved by the
21 superintendent.

22 B. Contracts - School administrative units shall negotiate a written
23 contract with any individual or agency from which they wish to obtain
24 special education or supportive services.

25 The following data shall be included in each contract:

- 26 1. Total costs for services, listed in detail;
- 27 2. Nature and extent of consultation and/or evaluation services
28 to be provided;
- 29 3. The name, social security number, and certification/licensure
30 of the provider;
- 31 4. Provision for the pro-ration of charges and payments; and
- 32 5. Provisions for the timely exchange of essential information
33 and individual student reports between the provider and the
34 sending unit.

35 C. Credentials of independent contractors - When contracted special
36 education or supportive services are provided to students, the individual
37 providing the service shall be certified by the Department of Education as
38 a special education consultant, special education director, school
39 psychological service provider, or vocational education evaluator; or hold

1 a valid Maine license to practice in the areas of occupational therapy,
2 physical therapy, audiology, speech-language pathology, psychology,
3 counseling or social work.

4 Certification as a teacher of special education does not qualify the person
5 to provide contracted special education services.

6 Contracted consultants who do not possess either certification or
7 licensure as described in Paragraph C above, shall not provide special
8 education services without prior written approval from the Department of
9 Education Special Services Team. This waiver provision will be used only
10 in exceptional circumstances such as out-of-state evaluations when there
11 are no qualified providers available within the state and the individual has
12 training and experience comparable to Maine standards for certification or
13 licensure.

14 D. Annual report of contracted services - School units shall annually
15 report all contracted special education service providers on the
16 "Contracted Services Report" (EF-S-03 form) in the manner required by
17 the Commissioner.

18 6.4 Audiology

19 Audiology services includes:

20 A. The identification of students with hearing loss;

21 B. The determination of the range, nature, and degree of hearing loss,
22 including referral for medical or other professional attention for the
23 habilitation of hearing;

24 C. The provision of habilitative activities, such as language
25 habilitation, auditory training, speech reading (lip-reading), hearing
26 evaluation, and speech conservation;

27 D. The creation and administration of programs for prevention of
28 hearing loss;

29 E. Counseling and guidance of students, parents, and teachers
30 regarding hearing loss; and

31 F. Determination of a student's needs for group and individual
32 amplification, selecting and fitting an appropriate aid, and evaluating the
33 effectiveness of amplification.

34 6.5 Counseling Services

35 A licensed clinical professional counselor (L.C.P.C.) licensed by the State
36 Board of Counseling Professional Licensure may provide assessment,
37 consultation, counseling and referral services to students with disabilities
38 and their parents consistent with the laws and regulations governing the
39 practice of professional counseling (32 M.R.S.A. Chap. 119).

1 6.6 Hearing Aids

2 Each school unit and private special purpose school shall identify all
3 students using hearing aids and auditory trainers and establish
4 procedures to ensure that the aids will be checked periodically to verify
5 that they are functioning properly. Hearing aids will be checked no less
6 than weekly by an individual assigned the responsibility and trained to
7 identify typical malfunctions in hearing aids.

8 6.7 Interpreter/Transliterators Services for Students with Disabilities

9 A. An interpreter for a student who is disabled shall be registered with
10 the Office of Licensing and Registration, Department of Professional and
11 Financial Regulation, (32 M.R.S.A. Chap. 22 and accompanying
12 regulations).

13 B. A cued speech transliterator shall be registered with the Office of
14 Licensing and Registration, Department of Professional and Financial
15 Regulation, (32 M.R.S.A. Chap. 22 and accompanying regulations).

16 6.8 Occupational Therapy, Physical Therapy Services

17 A licensed occupational therapist and licensed physical therapist may
18 provide occupational or physical therapy services, respectively, if
19 determined by the Pupil Evaluation Team and included in the student's
20 Individualized Education Program. Such supportive services shall be
21 required in order that the student may benefit from his/her special
22 education program. The maximum student-therapist caseload, including
23 both consultation and direct services, shall not exceed 50 students per
24 each full-time equivalent provider.

25 Occupational therapy assistants and physical therapist assistants may
26 provide services under the professional supervision of an appropriately
27 licensed therapist as required by the laws and regulations regarding the
28 practice of occupational therapy and physical therapy (32 M.R.S.A.
29 Chapters 32 and 45-A and accompanying regulations).

30 Occupational therapy includes improving, developing or restoring
31 functions impaired or lost through illness, injury, or deprivation; improving
32 ability to perform tasks for independent functioning if functions are
33 impaired or lost; and preventing, through early intervention, initial or
34 further impairment or loss of function.

35 Physical therapy means services provided by a qualified physical
36 therapist.

37 6.9 Orientation And Mobility Services

38 Orientation and mobility services means services provided to students
39 who are blind or visually impaired by qualified personnel to enable those
40 students to attain systematic orientation to and safe movement within their

1 environments in school, home, and community; and includes teaching
2 students the following, as appropriate:

3 A. Spatial and environmental concepts and use of information
4 received by the senses (such as sound, temperature and vibrations) to
5 establish, maintain, or regain orientation and line of travel (e.g., using
6 sound at a traffic light to cross the street);

7 B. To use the long cane to supplement visual travel skills or as a tool
8 for safely negotiating the environment for students with no available travel
9 vision;

10 C. To understand and use remaining vision and distance low vision
11 aids; and

12 D. Other concepts, techniques, and tools.

13 6.10 Parent Counseling And Training Means

14 Parent counseling and training means assisting parents in understanding
15 the special needs of their child; providing parents with information about
16 child development; and helping parents to acquire the necessary skills
17 that will allow them to support the implementation of their child's I.E.P.

18 6.11 Psychological Services

19 A certified school psychological service provider or psychologist licensed
20 by the Board of Examiners of Psychologists may provide consultation
21 services to students, school staff members and parents; evaluation
22 services for students; behavior management including assisting in
23 developing positive behavioral intervention strategies; and social skills
24 training (including individual or group counseling for students).
25 Psychologists may provide psychotherapy if required by a student with a
26 disability and specified in the student's I.E.P.

27 6.12 Recreation Services

28 Recreation includes assessment of leisure function; therapeutic recreation
29 services; recreation programs in schools and community agencies; and
30 leisure education.

31 6.13 Rehabilitation Counseling Services

32 Rehabilitation counseling services means services provided by qualified
33 personnel in individual or group sessions that focus specifically on career
34 development, employment preparation, achieving independence, and
35 integration in the workplace and community of a student with a disability.
36 The term also includes vocational rehabilitation services provided to a
37 student with disabilities by vocational rehabilitation programs funded
38 under the Rehabilitation Act of 1973, as amended.

1 **6.14 School Health Services**

2 School health services means services provided to a student with a
3 disability by a certified school nurse or other qualified person as required
4 by a student with a disability and specified in the student's I.E.P.

5 **6.15 Social Work Service**

6 A social worker licensed by the State Board of Social Work Licensure may
7 provide social work services including preparing a social or developmental
8 history of a student with a disability; group and individual counseling with
9 the student and family; working with those problems in a student's living
10 situation (home, school, and community) that affect the student's
11 adjustment in school; and mobilizing school and community resources to
12 enable the student to learn as effectively as possible in his or her
13 educational program and assisting in developing positive behavioral
14 interventions and strategies.

15 A social worker licensed by the State Board of Social Work Licensure may
16 provide social work services to students, school staff members, and
17 parents consistent with the laws and regulations governing the practice of
18 social work (32 M.R.S.A. Chap. 83 and accompanying regulations). The
19 maximum student-therapist caseload shall not exceed 50 students per
20 each full-time equivalent licensed social worker.

21 **6.16 Special Education Equipment**

22 Schools shall purchase and maintain educational, instructional or
23 transportation equipment which is required by a student with a disability in
24 order to participate in his or her educational program. Such equipment
25 may include, but is not limited to, auditory trainers, communication aids
26 and systems, computers, wheelchairs, ramps and lifts. Such purchases
27 may be made with federal monies or as a local operating cost.

28 If the Pupil Evaluation Team determines that an assistive technology
29 device or service is necessary for the provision of a Free, Appropriate
30 Public Education and specifies the assistive technology device or service
31 within the student's I.E.P., the school administrative unit is responsible for
32 ensuring the provision of the assistive technology device or service at no
33 cost to the parents.

34 On a case-by-case basis, the use of school purchased assistive
35 technology devices in a student's home or in other settings is required if
36 the student's Pupil Evaluation Team determines that the student needs
37 access to those devices in order to receive a free appropriate public
38 education.

39 The purchase or provision of personal hearing aids, eyeglasses, other
40 corrective devices, specially trained service animals or supplies of a

1 personal or medical nature shall not be the responsibility of the
2 administrative unit.

3 6.17 Transportation - Special Education

4 Special education transportation includes travel to and from school and
5 between schools; travel in and around school buildings; and specialized
6 equipment (such as special or adapted buses, lifts, and ramps), if required
7 to provide special transportation for a student with a disability.

8 Special education transportation shall be specified by the Pupil Evaluation
9 Team in the student's Individualized Education Program when the Team
10 determines that the transportation is necessary in order for the student
11 with a disability to benefit from an education program. The Pupil
12 Evaluation Team shall determine any modifications and/or adaptations,
13 including the employment of a "transportation aide," that need to be made
14 to the unit's regular transportation services in order to ensure appropriate
15 and accessible transportation services.

16 Special education transportation shall be provided consistent with Part 11,
17 Least Restrictive Educational Alternative, of these rules; and 20-A
18 M.R.S.A. §5401(4). Students with disabilities shall be provided
19 transportation to and from classes or as specified in their Individualized
20 Education Program. Carrying students into buildings or vehicles is not an
21 acceptable method of achieving accessibility.

22 If the parent with whom a student with a disability is living has been asked
23 and has agreed to transport the student to and/or from school, or to
24 and/or from a contracted special education service provider, the
25 administrative unit shall reimburse the parent for mileage and necessary
26 travel expenses in accordance with school district employee
27 reimbursement policies and provide such transportation at no cost to the
28 parent. Reimbursement shall be made within 45 days of each trip, unless
29 otherwise mutually agreed.

30 If a student with a disability is tuitioned to another public or private school
31 for special education services, the sending unit shall provide
32 transportation consistent with the calendar of the receiving school.

33 Any special education transportation services shall be described in a
34 written contract or memorandum of agreement and approved by the
35 Transportation/Construction Specialist in the Department of Education.

36 6.18 Transportation - Residential School

37 School administrative units which have placed students with disabilities in
38 residential schools shall provide transportation to these students at the
39 beginning and the end of the school year, on weekends if the school does
40 not provide weekend residential services, and on regularly scheduled
41 vacations and holidays that correspond to the calendar of the residential

1 school. Local administrative units shall provide for additional trips when
2 determined by the Pupil Evaluation Team to be part of the student's
3 Individualized Education Program.

4 In cases where the parents or guardian and the Pupil Evaluation Team
5 determine that there is reason to transport the parents or guardian to the
6 school during the holiday or vacation periods, this arrangement may be
7 made in lieu of transporting the student to his residence.

8 If the parents of a student with a disability have been asked and agreed to
9 transport the student to and/or from a residential school, the
10 administrative unit shall reimburse the parents for mileage and necessary
11 travel expenses in accordance with school district employee
12 reimbursement policies and providing that such transportation is at no
13 cost to the parent. Reimbursement to the parents shall be made within 45
14 days of each trip. If another means of transportation is procured, such as
15 air or bus, the allowable rate shall be the actual cost.

16 Necessary travel expenses (such as tolls, parking, food and lodging) for
17 the student and/or any required adult escort shall also be reimbursed in
18 accordance with school district employee reimbursement policies.

19 20 7. CHILD FIND, REFERRALS

21 7.1 General Principles: Child Find Responsibilities

22 Each school unit has the responsibility for identifying, locating and
23 evaluating all students within its jurisdiction who are in need of special
24 education and supportive services including students with disabilities
25 attending private schools and home schools, regardless of the severity of
26 their disabilities. This child find responsibility shall be accomplished
27 through a unit-wide process which, while not a definitive or final judgment
28 of a student's capabilities or disability, is a possible indicator of special
29 education needs. Final identification of students with disabilities and
30 programming for such students occurs only after an appropriate
31 evaluation and a determination by the Pupil Evaluation Team (see Part 9,
32 Evaluation and Identification of Students with Disabilities).

33 7.2 Responsibility For Child Find

34 Each administrative unit shall ensure that all resident and other eligible
35 students, including students who are enrolled in private schools or home
36 schools, highly mobile students (migrant or homeless), students
37 incarcerated in county jails and students who are suspected of being a
38 student with a disability and in need of special education, even though
39 they are advancing from grade to grade, are identified, located and
40 evaluated.

1 All students enrolled in the public schools of the unit or educated at public
2 expense of the unit shall be identified, located and evaluated. A unit
3 which tuitions (on a tuition or contract basis) some or all of its students is
4 responsible for child find either through appropriate arrangements with the
5 receiving unit or school or through direct child find services by unit
6 personnel or contracted personnel.

7 Students who attend or will attend private schools at private expense or
8 home schools shall be identified, located and evaluated at public
9 expense.

10 7.3 Students Subject To Child Find

11 Each school unit shall identify, locate and evaluate all students enrolled in
12 public school, private schools, or home schools during the first 30 days of
13 the school year or during the first 30 days of enrollment for transfer
14 students. This duty shall include all entering kindergarten students and
15 transfer students of all ages and grade levels. If evidence of prior child
16 find activities and a statement of the results can be found in the student's
17 cumulative record, or the unit has reason to believe that the student has
18 previously been identified as a student with a disability by another in-state
19 or out-of-state school administrative unit, by Child Development Services
20 or by an out-of state preschool special education service system, child
21 find is not necessary.

22 NOTE: A unit may schedule child find in the spring prior to kindergarten
23 enrollment to assist in planning for necessary special education and
24 supportive services at the start of the school year. Child find for school
25 aged students is an on-going requirement of each S.A.U.

26 7.4 Elements Of Child Find Activities

27 The child find process in each school unit shall include obtaining data on
28 each student, through direct assessment or by indirect means of the
29 student's academic performance, gross and fine motor skills, receptive
30 and expressive language skills, vision, hearing and cognitive skills.

31 If appropriate, other areas of assessment may include: self-help, self-
32 concept, social-emotional development and personal histories.

33 7.5 Responsible Staff

34 Staff assigned by an administrative unit to child find activities may include
35 a variety of school personnel including classroom teachers, school
36 nurses, and educational specialists.

37 7.6 Referral After Child Find; Notice Of Referral

38 If the child find process indicates that a student may require special
39 education and supportive services in order to benefit from regular

1 education, the student shall be referred to the Pupil Evaluation Team to
2 determine the student's eligibility for special educational services.

3 A student's failure of an auditory screening, as confirmed by auditory
4 testing performed by a licensed physician or licensed audiologist, shall be
5 referred to the Pupil Evaluation Team. The purpose of this referral is to
6 determine if a program of auditory enrichment and/or special education is
7 required to enable the student to benefit from his/her educational
8 program.

9 If any referral is made to the Pupil Evaluation Team, including a referral
10 requesting evaluation of existing data on the student, the parents of the
11 student shall be sent written notice of the referral, as described in §12.3,
12 Prior Written Notice, and shall provide informed prior written consent as
13 required by §12.4, Parental Consent, before any action is taken on the
14 referral.

15 7.7 Local Policy on Referral to Pupil Evaluation Team

16 Each unit shall develop a written policy, consistent with this rule, regarding
17 referral to the Pupil Evaluation Team. All referrals to the Pupil Evaluation
18 Team will be acted upon in a timely manner and a Pupil Evaluation Team
19 shall convene within 15 school days of the receipt of the referral to review
20 existing evaluation data and determine the need for additional evaluations
21 (see §9.8, Determination of Needed Evaluation Data, and §9.9,
22 Requirements if Additional Data Are Not Needed).

23 A. School staff referrals - Local policy on the referral of a student to
24 the Pupil Evaluation Team shall include a means whereby any
25 professional employee of the administrative unit may make such a referral
26 regardless of the results of the initial child find activities.

27 B. Referral by parent - Parents may, at any time, refer their child to
28 the Pupil Evaluation Team if they have reason to believe that the student
29 may require special education and supportive services. Each such referral
30 to the P.E.T. shall be acted upon in a timely manner. An S.A.U. may not
31 require a parent to utilize a "pre-referral" or "Student Assistance Team"
32 process prior to convening a P.E.T. meeting to review the parent's
33 referral.

34 C. Referrals by others - Local policy shall establish a process whereby
35 P.E.T. referrals may be initiated by individuals or agency representatives
36 (including representatives from the Department of Human Services) with
37 knowledge of a student. Such referrals shall be made by contacting a
38 designated school official or employee, in accordance with local policy.

39 D. At risk students - Local policy shall establish a process whereby
40 students "at risk" are identified, evaluated, and referred as appropriate to
41 the P.E.T. Such students may include individuals who have accumulated

1 45 absences during a school year, have been suspended or removed in
2 excess of 10 days during a school year, students who have experienced
3 an illness or accident likely to cause neurological or emotional impairment,
4 etc.

5 7.8 Records of Child Find Activities

6 For any student who is referred to the Pupil Evaluation Team as the result
7 of child find activities, documentation in that student's cumulative record
8 file shall specify:

9 A. The date, administrative unit, and the person who coordinated the
10 child find activities;

11 B. A description or example of the child find activities procedures,
12 forms, or instruments used; and

13 C. The results of the child find activities including any
14 recommendations and/or referrals to the Pupil Evaluation Team.

15 When the results of a student's child find activities do not indicate a
16 possible need for special education services, a notation shall be entered
17 in his/her cumulative record file to the effect that he/she was reviewed for
18 special education child find activities purposes, the date, and the
19 administrative unit where the child find activities were conducted.

20 7.9 "Child Find"

21 Each school unit shall maintain procedures to ensure that all students
22 between the ages of 3 and 20 years, including state wards, state agency
23 clients, students attending private schools and home schools, and
24 institutional residents who reside within its geographic jurisdiction and who
25 are in need of special education and supportive assistance, are identified,
26 located and evaluated. These procedures shall include a practical
27 method of documenting which students with disabilities are currently
28 receiving needed special education and supportive services, and
29 identifying any unmet needs.

30 8. PUPIL EVALUATION TEAM PROCESS

31 8.1 Identification, Evaluation Process General Principles

32 The Pupil Evaluation Team, which includes the parent as an integral part
33 of the team, is responsible for determining a student's eligibility for special
34 education and supportive services; the development of an Individualized
35 Education Program appropriate for the student; and the determination of
36 the least restrictive educational alternative in which the Individualized
37 Education Program may be implemented.

38 The Pupil Evaluation Team shall determine the need for evaluations and
39 recommend such evaluations to the parent. Each administrative unit shall

1 develop local policies and procedures concerning the Pupil Evaluation
2 Team process.

3 8.2 Pupil Evaluation Team (P.E.T.)

4 Each administrative unit with eligible students shall establish at least one
5 Pupil Evaluation Team (P.E.T.) for the purpose of identifying the special
6 needs of students and developing an appropriate Individualized Education
7 Program for such students.

8 The superintendent of each unit shall designate one or more persons to
9 receive and coordinate referrals to the unit's Pupil Evaluation Team, in
10 accordance with the unit's policy for referrals to the Pupil Evaluation
11 Team. All such referrals shall be transmitted in a timely fashion to the
12 P.E.T. for consideration.

13 8.3 Major P.E.T. Responsibilities

14 The major responsibilities of a Pupil Evaluation Team are:

15 A. To review, as part of an initial evaluation (if appropriate) and as
16 part of any reevaluation of a student, existing evaluation data including
17 evaluations and information provided by the parents of the child, current
18 classroom-based assessments and observations, and teacher and
19 supportive services providers observation to determine, with input from
20 the student's parents, what additional data, if any, are needed to
21 determine whether a student is a student with a disability as defined in
22 Part 3, Students With Disabilities, of these rules.

23 B. To determine the present levels of performance and educational
24 needs of the student in all affected academic and non-academic areas.

25 C. To determine any necessary modifications and/or adaptations in
26 the student's regular education program if existing data is insufficient to
27 identify the student as eligible for special education services.

28 D. To develop or revise an Individualized Education Program (I.E.P.)
29 to provide each identified student with a disability a free appropriate public
30 education.

31 E. To review, at least annually, the Individualized Education Program
32 of each student with a disability to:

33 1. determine whether the annual goals for the student are
34 being achieved;

35 2. revise the I.E.P. as appropriate to address any lack of
36 expected progress toward the annual goals and in the general
37 curriculum, where appropriate;

38 3. consider the results of any reevaluation;

- 1 4. consider any information about the student provided to, or
- 2 by, the parents;
- 3 5. consider the student's anticipated needs; or
- 4 6. consider any other matters.

5 This review may be conducted on the anniversary of the previous I.E.P.
6 meeting or at the end of each school year.

7 F. To determine the least restrictive educational alternative in which to
8 implement the student's I.E.P.

9 8.4 Scheduling of P.E.T. Meetings

10 Meetings of the Pupil Evaluation Team shall be scheduled at a time and
11 place mutually agreed upon by the parents and the school to ensure that
12 one or both parents of a student with a disability are present. If the parent
13 is unable to attend a meeting, schools may use a conference call or
14 individual telephone call to ensure parent participation.

15 The school unit shall take whatever action is necessary to ensure that the
16 parent understands the proceedings of the meeting, including arranging
17 for an interpreter for parents who are hearing impaired or whose native
18 language is other than English.

19 A P.E.T. meeting may be conducted without a parent in attendance if the
20 school is unable to convince the parents that they should attend. In such
21 cases, the unit shall maintain a record of its efforts to arrange a mutually
22 agreed upon time and place. Such records may include detailed records
23 of telephone calls, correspondence, home visits, etc.

24 8.5 Parental Notice of P.E.T. Meetings

25 The school unit shall provide at least 7 days prior notice of each P.E.T.
26 meeting to the parents of each student with a disability. Such notice shall
27 be early enough to ensure that the parents will have an opportunity to
28 attend. The notice shall indicate the purpose, time, location of the
29 meeting, who will be in attendance, a notice of the procedural safeguards
30 specified in this rule, the parent's right to be a member of the P.E.T. and
31 the parent's right to invite other individuals who have knowledge or special
32 expertise regarding the student, including related services personnel as
33 appropriate.

34 A copy of the notice of the Pupil Evaluation Team meeting shall be placed
35 in the student's cumulative file.

36 Parents shall be notified and provided copies of evaluations or other
37 reports to be discussed at the P.E.T.

38 If the purpose of the P.E.T. meeting is consideration of transition services
39 for a student, the notice must also indicate this purpose, indicate that the

1 agency will invite the student, and identify any other agency that will be
2 invited to send a representative.

3 This parental notice of P.E.T. meetings is required by federal regulations
4 at 34 C.F.R. 300.345, "Parent participation". This is NOT the prior written
5 notice required by regulation 12.3, "Prior Written Notice" and 34 C.F.R.
6 300.503, "Parent notice by the public agency".

7 8.6 P.E.T. Membership

8 Each Pupil Evaluation Team shall include the following members:

9 A. The student's parents;

10 B. At least one regular education teacher for the student (if the
11 student is, or may be, participating in the regular education environment);

12 C. The student's special education teacher or a teacher qualified to
13 provide the special education services for which the student has been
14 referred;

15 D. A representative of the school administrative unit who can ensure
16 the provision of the special education and supportive services specified in
17 the student's Individualized Education Program and who:

18 1. is qualified to provide, or supervise the provision of, specially
19 designed instruction to meet the unique needs of students with
20 disabilities;

21 2. is knowledgeable about the general curriculum;

22 3. is knowledgeable about the availability of resources of the
23 local educational agency; and

24 4. has written authorization to obligate the unit's human and
25 fiscal resources.

26 E. At the discretion of the parent or the agency, other individuals who
27 have knowledge or special expertise regarding the student, including
28 supportive services personnel as appropriate;

29 F. An individual who can interpret the instructional implications of
30 evaluation results, who may be a member of the team described in
31 clauses (B) through (E);

32 G. Whenever appropriate, the student; and

33 H. The student's caseworker from the Department of Human Services;
34 Department of Mental Health, Mental Retardation and Substance Abuse
35 Services; or Department of Labor, Bureau of Rehabilitation when the
36 caseworker is known to the administrative unit.

1 The determination of knowledge or special expertise of an individual
2 described in §8.6(E) shall be made by the party (parent or public agency)
3 who invited the individual to be a member of the P.E.T.

4 **8.7 Requirement With Respect To Regular Education Teacher**

5 The regular education teacher of the student, as a member of the P.E.T.,
6 shall, to the extent appropriate, participate in the development, review and
7 revision of the I.E.P. of the student, including the determination of
8 appropriate positive behavioral interventions and strategies and the
9 determination of supplementary aids and services, program modifications,
10 and support for school personnel.

11 **8.8 P.E.T. Meetings – Transition Services**

12 A. If a purpose of the meeting is the consideration of transition
13 services for a student, the public agency shall invite the student; and a
14 representative of any other agency that is likely to be responsible for
15 providing or paying for transition services.

16 B. If the student does not attend, the public agency shall take other
17 steps to ensure that the student's preferences and interests are
18 considered.

19 C. If an agency invited to send a representative to a meeting does not
20 do so, the public agency shall take other steps to obtain the participation
21 of the other agency in the planning of any transition services.

22 **8.9 Minutes of P.E.T. Meeting**

23 Each unit shall maintain minutes of all P.E.T. meetings concerning the
24 referral, evaluation, identification, programming and placement of a
25 student with a disability. The minutes shall include the purpose of the
26 meeting, the name and title of each member, a summary of the
27 discussions, and the determinations of the P.E.T. Any dissenting opinions
28 may be included within the minutes or attached to the minutes. A copy of
29 the P.E.T. minutes will be provided within 21 school days of the date of
30 the meeting to the parents and any member who requests a copy. A copy
31 will be placed in the student's cumulative file.

32 **8.10 Audio Recording of P.E.T. Meetings**

33 Parents shall be permitted to audio record any P.E.T. meeting regarding
34 their child at their own expense. Schools may also audio record P.E.T.
35 meetings in which case the recording becomes an educational record
36 subject to the provisions of Part 15, Education Records, of these rules.

37 **8.11 P.E.T. Decision-Making Process**

38 The P.E.T. meeting serves as a communication vehicle between parents
39 and school personnel, and enables them, as equal participants, to make
40 joint, informed decisions regarding:

- 1 A. the student's needs and appropriate goals;
- 2 B. the extent to which the student will be involved in the
- 3 general curriculum and participate in the regular education
- 4 environment and State and district-wide assessments; and
- 5 C. the services needed to support that involvement and
- 6 participation and to achieve agreed-upon goals. Parents are
- 7 considered equal partners with school personnel in making these
- 8 decisions, and the Pupil Evaluation Team must consider the
- 9 parents' concerns and the information that they provide regarding
- 10 their child in determining eligibility; developing, reviewing, and
- 11 revising I.E.P.s; and determining placement.

12 The Pupil Evaluation Team should work toward consensus, but the S.A.U.

13 has ultimate responsibility to ensure that a student is appropriately

14 evaluated; that the I.E.P. includes the services that the student needs in

15 order to receive F.A.P.E.; and that the student's placement is in the least

16 restrictive educational alternative. It is not appropriate to make evaluation,

17 eligibility, I.E.P. or placement decisions based upon a majority "vote." If

18 the team cannot reach consensus, the S.A.U. must provide the parents

19 with prior written notice of the school's proposals or refusals, or both,

20 regarding their child's educational program, and the parents have the right

21 to seek resolution of any disagreements by initiating an impartial due

22 process hearing.

23 Every effort should be made to resolve differences between parents and

24 school staff through voluntary mediation or some other informal step,

25 without resort to a due process hearing. However a mediation or other

26 informal procedure may not be used to deny or delay a parent's right to a

27 due process hearing or to deny any other rights afforded under these

28 rules.

29

30 9. EVALUATION AND IDENTIFICATION OF STUDENTS WITH DISABILITIES

31 9.1 Identification, Evaluation Process

32 The development of an Individualized Education Program, the placement

33 of each student with a disability within a special education program, and

34 the provision of a free appropriate public education shall be preceded by

35 an identification and evaluation procedure which focuses on the student's

36 individual needs and determines if the student qualifies as a student with

37 a disability. This process is managed by the Pupil Evaluation Team within

38 each school administrative unit.

1 9.2 Basis for Identification

2 When identifying the special education needs of students, the Pupil
3 Evaluation Team shall make its determinations based on a full and
4 individual evaluation of the student.

5 The Pupil Evaluation Team shall ensure that the student is assessed in all
6 areas related to the suspected disability including, when appropriate,
7 health, vision, hearing, social and emotional status, behavior, general
8 intelligence, academic performance, communicative status, and motor
9 abilities.

10 The P.E.T. may decide on further evaluations, modifications and/or
11 adaptations in the regular education program if the existing data or
12 information does not support the student's identification as a student with
13 a disability.

14 No single evaluation, diagnostic procedure, or source of data shall be
15 used as the sole criterion to determine a student's need for special
16 education. Both measured evidence (as from testing) and evidence
17 based on classroom observations and classroom-based performance
18 shall be used in making this determination.

19 Valid and reliable evaluative instruments and techniques that yield a
20 description of the student as a learner shall be used. The focus of
21 evaluations shall be on observable and measurable performance rather
22 than causality or etiology. The assessment of functional skills and the
23 development of chronologically age-appropriate skills in a normalized,
24 integrated setting shall be the basis for evaluation recommendations. Any
25 modification and/or adaptation of the regular education program and
26 support for the regular classroom teachers should be specified in the
27 evaluation recommendations.

28 9.3 Consent for Initial Evaluation

29 If an evaluation is recommended by the Pupil Evaluation Team and
30 precedes the student's initial provision of special education and supportive
31 services, then written consent, as defined in §12.4, Parental Consent,
32 shall be obtained from the parent or legal guardian of the student before
33 the evaluation is conducted.

34 9.4 Determination of Eligibility

35 Upon completion of administration of tests and other evaluation materials
36 the determination of whether the student is a student with a disability as
37 defined in Part 3, Students with Disabilities, shall be made by the Pupil
38 Evaluation Team. If the P.E.T. has determined that there is no need for
39 additional evaluations to determine eligibility consistent with §9.9,
40 Requirements if Additional Data are Not Needed, the P.E.T. shall make a
41 determination of eligibility. In making a determination of eligibility under

1 this section, a student shall not be determined to be a student with a
2 disability if the determining factor for such a finding is a lack of instruction
3 in reading or math or due to limited English proficiency.

4 A copy of any evaluation report used in this determination and the
5 documentation of determination of eligibility shall be provided to the
6 parents.

7 A school administrative unit shall evaluate a student with a disability in
8 accordance with these rules before determining that the student is no
9 longer a student with a disability.

10 9.5 Evaluation Procedures

11 In conducting an evaluation, the school administrative unit shall:

12 A. Use a variety of assessment tools and strategies to gather relevant
13 functional and developmental information, including information provided
14 by the parent, that may assist in determining whether the student is a
15 student with a disability and the content of the student's individualized
16 education program, including information related to enabling the student
17 to be involved in and progress in the general curriculum;

18 B. Not use any single procedure as the sole criterion for determining
19 whether a student is a student with a disability or determining an
20 appropriate educational program for the student; and

21 C. Use technically sound instruments that may assess the relative
22 contribution of cognitive and behavioral factors, in addition to physical or
23 developmental factors.

24 Additional evaluation requirements:

25 A. Each school administrative unit shall ensure that tests and other
26 evaluation materials used to assess a student under this section are
27 selected and administered so as not to be discriminatory on a racial or
28 cultural basis; and are provided and administered in the student's native
29 language or other mode of communication, unless it is clearly not feasible
30 to do so.

31 B. Any standardized tests that are given to the student shall have
32 been validated for the specific purpose for which they are used, are
33 administered by trained and knowledgeable personnel who meet state
34 licensure or certification standards, and are administered in accordance
35 with any instructions provided by the producer of such tests.

36 C. The student shall be assessed in all areas of suspected disability or
37 disabilities.

38 D. Each school administrative unit shall ensure that only those
39 assessment tools and strategies are used that provide relevant

1 information that directly assists the pupil evaluation team in determining
2 the educational needs of the student.

3 9.6 Classroom Observation

4 Any initial evaluation or reevaluation of a student shall include an
5 observation of the student's educational performance in the regular
6 classroom setting or other area as identified by the P.E.T. or
7 administrative unit by an evaluator other than the student's regular
8 teacher.

9 The student observation shall compare the student's educational
10 performance with other students of comparable age and identify those
11 issues that are adversely affecting the student's ability to benefit from the
12 regular education program.

13 In the case of a student of less than school age, out of school or not in a
14 regular education placement, the observation shall be made in a
15 chronologically age-appropriate environment.

16 9.7 Qualifications of Evaluators

17 Any person who provides an assessment or evaluation recommended by
18 the Pupil Evaluation Team shall meet the professional qualifications of the
19 publisher of the evaluation or assessment. Each evaluation or
20 assessment shall be administered by trained personnel in conformance
21 with the instructions provided by the publisher.

22 Qualified evaluators include certified school psychological service
23 providers, special education teachers, special education consultants,
24 speech clinicians, vocational evaluators and licensed audiologists,
25 occupational therapists, physical therapists, psychologists, social workers,
26 clinical professional counselors and speech-language pathologists. Aides,
27 assistants or technicians are not considered qualified evaluators and may
28 not administer, score, or interpret evaluations unless they hold appropriate
29 certification or licensure.

30 The administration, scoring and interpretation of tests of academic,
31 cognitive, behavioral and personality functioning, including, but not limited
32 to, the Woodcock-Johnson Psycho-Educational Battery, the Kaufman
33 Assessment Battery for Children, norm-referenced behavior rating or
34 adaptive behavior scales, the Wechsler Intelligence Scales, the Stanford-
35 Binet, the Thematic Apperception Test, MMPI, and the Rorschach, shall
36 be conducted by qualified evaluators. Qualified evaluators shall have
37 successfully completed appropriate training in each assessment area in
38 which they conduct evaluations.

1 9.8 Determination of Needed Evaluation Data

2 As part of an initial evaluation (if appropriate) and as part of any
3 reevaluation, the Pupil Evaluation Team and other qualified professionals,
4 as appropriate, shall--

5 A. review existing evaluation data on the student, including
6 evaluations and information provided by the parents of the student,
7 current classroom-based assessments and observations, and teacher and
8 supportive services provider's observations; and

9 B. on the basis of that review, and input from the student's parents,
10 identify what additional data, if any, are needed to determine:

11 1. whether the student has a disability, as described in Part 3,
12 Students With Disabilities, or, in case of a reevaluation of a
13 student, whether the student continues to have such a disability;

14 2. the present levels of performance and educational needs of
15 the student;

16 3. whether the student needs special education and supportive
17 services, or in the case of a reevaluation of a student, whether the
18 student continues to need special education and supportive
19 services; and

20 4. whether any additions or modifications to the special
21 education and supportive services are needed to enable the
22 student to meet the measurable annual goals set out in the
23 individualized education program of the student and to participate,
24 as appropriate, in the general curriculum.

25 Source of data – The school administrative unit shall administer such tests
26 and other evaluation materials as may be needed to produce the data
27 identified by the Pupil Evaluation Team under paragraph (B)(1).

28 9.9 Requirements If Additional Data Are Not Needed

29 If the members of the P.E.T. and other qualified professionals, as
30 appropriate, determine that no additional data are needed to determine
31 whether the student continues to be a student with a disability, the school
32 administrative unit shall notify the student's parents of the determination
33 that additional evaluation data are not needed, the reasons for the
34 determination; and the right of the parents to request an assessment to
35 determine whether the student continues to be a student with a disability.
36 If the parents request such an assessment, the school administrative unit
37 shall conduct the assessment as required by §9.17, Time Limits for
38 Evaluations.

1 9.10 Evaluation; Notice of Proposed Evaluation

2 If at any time the Pupil Evaluation Team determines that additional
3 professional evaluation of a student will better enable the P.E.T. to
4 develop or revise a student's Individualized Education Program, it may
5 recommend such evaluation to the parent.

6 Parental notice – The parent shall be provided prior written notice of the
7 proposed evaluation, as described and defined in §12.3. This notice shall
8 identify and describe, whenever possible, the specific evaluations or
9 diagnostic procedures intended to be used. An evaluator may, based on
10 clinical judgment, administer additional assessments or evaluations in
11 addition to those specified in the notice.

12 9.11 Re-evaluation

13 A re-evaluation of each student who receives special education and
14 supportive services shall be conducted at least once every three years, or
15 more frequently if conditions warrant or if the student's parent or teacher
16 requests an evaluation.

17 The purpose of such re-evaluation is to determine if the student continues
18 to be a student with a disability in need of special education and to
19 determine if the student continues to demonstrate the original disability as
20 identified by the P.E.T.

21 Any such re-evaluation shall be subject to all the regulations and
22 professional standards of the initial pre-placement evaluation. Parental
23 notice and parental consent are required.

24 NOTE: This requirement for re-evaluation is not the same as the required
25 annual review of the student's Individual Education Program, described in
26 §8.3, Major P.E.T. Responsibilities.

27 9.12 Parental Consent for Reevaluation

28 Each school administrative unit shall obtain informed parental consent, in
29 accordance with §12.4, prior to conducting any initial evaluation or
30 reevaluation of a student with a disability, (see §9.3, Consent for Initial
31 Evaluation).

32 Parental consent – Each school administrative unit shall obtain informed
33 parental consent, in accordance with §12.4, prior to conducting any
34 reevaluation of a student with a disability, except that such informed
35 parental consent need not be obtained if the school administrative unit
36 can demonstrate that it has taken reasonable measures to obtain such
37 consent and the student's parent has failed to respond.

38 9.13 Reports of Evaluation

39 To aid in obtaining appropriate and helpful evaluation reports, the Pupil
40 Evaluation Team shall indicate when making a referral for evaluation:

- 1 A. The disability of concern;
- 2 B. How the disability is demonstrated within the school or classroom
- 3 setting;
- 4 C. The information the P.E.T. desires from the evaluator in order to
- 5 plan an appropriate program for the student; and
- 6 D. Any other information deemed relevant by the P.E.T.

7 The Pupil Evaluation Team shall require each person or agency

8 completing an evaluation or diagnostic service recommended by the

9 P.E.T. to submit a written evaluation report no later than 45 school days of

10 the decision to evaluate and prior to the P.E.T. meeting scheduled to

11 review the evaluation.

12 Each report shall:

- 13 A. Summarize the evaluation procedures employed;
- 14 B. Specify the results of each evaluation;
- 15 C. Summarize the evaluation results and diagnostic impressions; and
- 16 D. Specify the educational recommendations necessary to
- 17 accommodate the student's special education needs.

18 Evaluation reports shall not make either eligibility or placement

19 determinations since these deliberations are the responsibility of the Pupil

20 Evaluation Team.

21 This evaluation report shall be placed in the student's cumulative record

22 file.

23 The P.E.T. shall only accept evaluation reports that conform with the

24 above description and aid the P.E.T. in developing an appropriate

25 Individualized Education Program for the student.

26 A copy of the evaluation report will be provided to the parent a reasonable

27 time prior to the P.E.T. meeting at which the evaluation is discussed.

28 9.14 Vocational Evaluations

29 Every student with a disability between 12 and 20 years of age shall be

30 provided an opportunity for an interest and aptitude evaluation. Such

31 evaluations may include job sampling and practical experiences if

32 determined to be appropriate. Such vocational evaluations may be

33 provided by certified Vocational Education Evaluators or other qualified

34 evaluators. The purpose of the vocational evaluation is to assist the

35 P.E.T. to identify deficits in work skills and behaviors that would interfere

36 with appropriate educational programs and services that would be

37 reasonably expected to result in the gainful employment of the student.

1 Based on the results of such an evaluation, a component of the student's
2 Individualized Education Program shall be developed to include special
3 education, supportive services and vocational services necessary to
4 accomplish the identified vocational goals. A representative of the
5 appropriate regional vocational agency or program shall be involved in the
6 development of this component of the student's Individualized Education
7 Program.

8 9.15 Additional Procedures For Evaluating Students With Specific Learning
9 Disabilities

10 A. Additional team members - The determination of whether a student
11 suspected of having a specific learning disability is a student with a
12 disability as defined in §3.11, must be made by the student's parents and
13 a team of qualified professionals which must include the student's regular
14 teacher; or if the student does not have a regular teacher, a regular
15 classroom teacher qualified to teach a student of his or her age; or for a
16 student of less than school age, an individual qualified to teach a student
17 of his or her age; and at least one person qualified to conduct individual
18 diagnostic examinations of students. Special education teachers, special
19 education consultants, school psychological service providers, speech
20 clinicians, speech-language pathologists, or remedial reading teachers
21 etc., may be appropriate depending on their training and experience.

22 B. Criteria for determining the existence of a specific learning disability
23 - A team may determine that a student has a specific learning disability if
24 the student does not achieve commensurate with his or her age and
25 ability levels, in one or more of the areas listed in this section, if provided
26 with learning experiences appropriate for the student's age and ability
27 levels; and the team finds that a student has a severe discrepancy
28 between achievement and intellectual ability in one or more of the
29 following areas:

- 30 1. Oral expression.
- 31 2. Listening comprehension.
- 32 3. Written expression.
- 33 4. Basic reading skill.
- 34 5. Reading comprehension.
- 35 6. Mathematics calculation.
- 36 7. Mathematics reasoning.

37 The team may not identify a student as having a specific learning disability
38 if the severe discrepancy between ability and achievement is primarily the
39 result of

- 40 1. A visual, hearing, or motor impairment;
- 41 2. Mental retardation;
- 42 3. Emotional disability; or

1 4. Environmental, cultural or economic disadvantage.

2 C. Observation - At least one team member other than the student's
3 regular teacher shall observe the student's academic performance in the
4 regular classroom setting. In the case of a student of less than school age
5 or out-of-school, a team member shall observe the student in an
6 environment appropriate for a student of that age.

7 D. Written report - For a student suspected of having a specific
8 learning disability, the documentation of the team's determination of
9 eligibility, as required by §9.4, Determination of Eligibility, must include a
10 statement of:

- 11 1. Whether the student has a specific learning disability;
- 12 2. The basis for making the determination;
- 13 3. The relevant behavior noted during the observation of the
14 student;
- 15 4. The relationship of that behavior to the student's academic
16 functioning;
- 17 5. The educationally relevant medical findings, if any;
- 18 6. Whether there is a severe discrepancy between achievement
19 and ability that is not correctable without special education and
20 related services; and
- 21 7. The determination of the team concerning the effects of
22 environmental, cultural, or economic disadvantage.

23 Each team member shall certify in writing whether the report reflects his or
24 her conclusion. If it does not reflect his or her conclusion, the team
25 member must submit a separate statement presenting his or her
26 conclusions.

27 9.16 Non-discriminatory Assessment

28 Tests and other evaluation materials used to assess a student shall be
29 selected and administered so as not to be culturally or racially
30 discriminatory. Tests and other evaluation materials shall be provided and
31 administered in the student's native language or other mode of
32 communication unless not feasible to do so. When evaluating a student
33 whose linguistic, economic or cultural background is different from that of
34 the population within which a particular test or diagnostic procedure was
35 developed or normed, the written summary of the evaluation described at
36 §9.13, Reports of Evaluation, shall show how these differences were
37 compensated for by the use of additional, more appropriate tests or
38 procedures or the interpretation of the results of the evaluation.

39 9.17 Time Limits for Evaluation

40 Each school administrative unit shall ensure that evaluations are
41 completed, an eligibility determination completed and an offer of services

1 in accordance with an I.E.P. is made to parents within 45 school days of
2 the agency's receipt of parental consent to an initial evaluation.

3 In meeting the timeline in the above paragraph, a meeting to develop an
4 I.E.P. for the student shall be conducted within 30 days of a determination
5 that the student needs special education and supportive services.

6 If a recommended evaluation precedes a student's initial identification as
7 a student with a disability, thereby requiring prior written parental consent,
8 the administrative unit shall provide the parent with a consent for initial
9 evaluation form after the members of the P.E.T. review existing evaluation
10 data, (see §9.8, Determination of Needed Evaluation Data) but no later
11 than 15 school days after the referral of the student for an evaluation.

12 Administrative units may use the hearing procedures to secure an
13 override of a parental refusal to consent to an initial evaluation. An
14 administrative unit may proceed with a reevaluation if the parents have
15 failed to respond to a good faith effort by the unit to secure parental
16 consent for reevaluation.

17 If a parent has requested an independent educational evaluation, such
18 evaluation shall be completed without unnecessary delay after the
19 determination of the administrative unit to provide an independent
20 educational evaluation (see §9.19, Independent Educational Evaluation).

21 9.18 Absence of Parental Consent

22 If it is not possible to obtain parental consent for an initial evaluation or a
23 reevaluation to determine eligibility for special education and supportive
24 services, an administrative unit may use the mediation or hearing
25 procedures described in Part 13, Dispute Resolution Procedures, to
26 determine if the student may be initially evaluated or reevaluated without
27 parental consent.

28 Informed parental consent need not be obtained for reevaluation if the
29 public agency can demonstrate that it has taken reasonable measures to
30 obtain that consent, and the student's parent has failed to respond.

31 9.19 Independent Educational Evaluation

32 The parents of a student with a disability have the right to obtain, at public
33 expense, an independent educational evaluation of their child when they
34 disagree with an evaluation obtained by the administrative unit, subject to
35 this rule (see §12.5, Evaluation Procedures).

36 If a parent requests an independent educational evaluation at public
37 expense, the public agency must, without unnecessary delay, either
38 initiate a hearing to show that its evaluation is appropriate; or ensure that
39 an independent educational evaluation is provided at public expense,

1 unless the agency demonstrates in a hearing that the evaluation obtained
2 by the parent did not meet agency criteria.

3 An independent educational evaluation means an evaluation conducted
4 by a qualified examiner who is not employed by the public agency
5 responsible for the education of the student in question.

6 Public expense means that the public agency either pays for the full cost
7 of the evaluation or ensures that the evaluation is otherwise provided at
8 no cost to the parent.

9 Each school administrative unit shall provide to parents, on request,
10 information about where an independent educational evaluation may be
11 obtained.

12 If a parent requests an independent educational evaluation, the S.A.U.
13 may ask for the parent's reason why he or she objects to the public
14 evaluation. However, the explanation by the parent may not be required
15 and the public agency may not unreasonably delay either providing the
16 independent educational evaluation at public expense or initiating a due
17 process hearing to defend the public evaluation.

18 An "independent educational evaluation," (regardless of whether it is
19 obtained at public expense), shall be performed by an appropriately
20 qualified evaluator, as defined by these rules (see §6.3, Contracted
21 Special Education Services and §9.7, Qualifications of Evaluators), who is
22 not an employee of the administrative unit and who is qualified to provide
23 such educational evaluations.

24 Qualified individuals in private practice under contract with an
25 administrative unit who have not previously evaluated, instructed or
26 provided consultation regarding a particular student are eligible to provide
27 an independent educational evaluation of the student.

28 9.20 Nondisabled Students

29 In cases where the Pupil Evaluation Team determines that a referred
30 student is not a student with a disability, as defined in this rule, they may
31 recommend appropriate programs or services other than special
32 education such as alternative education or modifications and adaptations
33 of the student's regular education program or curriculum.

34 35 10. INDIVIDUALIZED EDUCATION PROGRAM (I.E.P.)

36 10.1 General Principles; Necessity for an Individualized Education Program

37 Once a student has been identified as a student with a disability, the
38 education deemed appropriate for him/her must be defined in a written
39 Individualized Education Program (I.E.P.). The I.E.P. is the basis for
40 educational programming and placement of the student with a disability

1 and must be linked to the general education curriculum. It is not a
2 guarantee of a student's educational progress or a contractual
3 arrangement but does provide a statement of educational goals and
4 objectives which all school personnel shall make good faith efforts to
5 achieve.

6 10.2 Individualized Education Program Components

7 Each Individualized Education Program shall contain the following
8 components:

9 A. A statement of the student's present level of educational
10 performance including how the student's disability affects the student's
11 involvement and progress in the general curriculum;

12 B. A statement of measurable annual goals including benchmarks or
13 short-term objectives, relating to meeting the student's needs that result
14 from the student's disability to enable the student to be involved in and
15 progress in the general curriculum and meeting each of the student's
16 other educational needs that result from the student's disability; and

17 C. A section describing the specific special education and supportive
18 services and supplemental aids and services to be provided to the
19 student, or on behalf of the student, the amount of each service, and the
20 staff positions responsible for providing the services and a statement of
21 the program modifications or supports for school personnel that will be
22 provided to the student:

- 23 1. to advance appropriately toward attaining the annual goals;
- 24 2. to be involved and progress in the general curriculum and to
25 participate in extracurricular and other nonacademic activities; and
- 26 3. to be educated and participate with other students with
27 disabilities and students without disabilities.

28 D. The dates of initiation, frequency, location and duration of the
29 special education and supportive services, supplemental aids and
30 services and modifications (not to exceed 12 months);

31 E. An explanation of the extent, if any, to which the student will not
32 participate with nondisabled students in the regular class and in
33 extracurricular and other nonacademic activities (see §11.2, Criteria –
34 Least Restrictive Educational Alternative);

35 F. A summary of any necessary special education transportation;

36 G. A statement of how the student's progress toward the annual goals
37 described in (B) will be measured and how the student's parents will be
38 regularly informed (by such means as periodic report cards), at least as
39 often as parents of children without disabilities are informed, of their
40 child's progress toward their annual goals and the extent to which that

1 progress is sufficient to enable the student to achieve the goals by the
2 end of the year;

3 H. A statement of any individual accommodations or modifications in
4 the administration of the Maine Educational Assessment (MEA) and
5 district wide assessments determined by the P.E.T. that are needed in
6 order for the student to participate in the assessment. If the P.E.T.
7 determines that the student will not participate in the MEA, a statement of
8 why the MEA is not appropriate for the student and how the student will
9 be assessed will be specified within the student's I.E.P.;

10 I. Beginning at age 14 and updated annually, a statement of the
11 transition service needs of the student including a statement of any
12 interagency responsibilities and any needed linkages, (see §5.13,
13 Transition Services); and

14 J. Beginning at least one year before the student reaches age 18 (the
15 age of majority), a statement that the student has been informed of the
16 special education rights under State or Federal law that will transfer to the
17 student.

18 A complete copy of the Individualized Education Program shall be
19 provided to the parent within 21 school days of the P.E.T. Meeting at
20 which the I.E.P. was developed.

21 10.3 P.E.T. Considerations in Developing an I.E.P.

22 In developing or revising each student's I.E.P. the P.E.T. shall:

23 A. Consider the strengths of the student and the concerns of the parents
24 for enhancing the education of their student;

25 B. Consider the results of the initial or most recent evaluation of the
26 student;

27 C. As appropriate, the results of the student's performance on any
28 general state or district-wide assessment;

29 D. In the case of a student whose behavior impedes his or her learning or
30 that of others, consider, if appropriate, strategies, including positive
31 behavioral interventions, strategies, and supports to address that
32 behavior;

33 E. In the case of a student with limited English proficiency, consider the
34 language needs of the student as these needs relate to the student's
35 I.E.P.;

36 F. In the case of a student who is blind or visually impaired, provide for
37 instruction in Braille and the use of Braille unless the Pupil Evaluation
38 Team determines, after an evaluation of the student's reading and writing
39 skills, needs, and appropriate reading and writing media (including an
40 evaluation of the student's future needs for instruction in Braille or the use

1 of Braille), that instruction in Braille or the use of Braille is not appropriate
2 for the student;

3 G. Consider the communication needs of the student, and in the case of
4 a student who is deaf or hard-of-hearing, consider the student's language
5 and communication needs, opportunities for direct communications with
6 peers and professional personnel in the student's language and
7 communication mode, academic level, and full range of needs, including
8 opportunities for direct instruction in the student's language and
9 communication mode; and

10 H. Consider whether the student requires assistive technology devices
11 and services.

12 10.4 Notification of Change of Program

13 The parent of each student with a disability for whom an Individualized
14 Education Program is developed shall be sent prior written notice as
15 described and defined in §12.3 before the implementation of the student's
16 Individualized Education Program.

17 Notification shall be repeated in the event of a proposal that the
18 Individualized Education Program be terminated or significantly altered.
19 Changes that significantly alter an Individualized Education Program and
20 require a Pupil Evaluation Team meeting to develop a new Individualized
21 Education Program and prior written notice shall include:

22 A. The addition of new services to a student with a disability;

23 B. A significant change in the amount or frequency of services
24 provided which exceeds 10 school days;

25 C. The termination (including graduation) of previously provided
26 services; and

27 D. A change in the educational goals and/or objectives in the
28 Individualized Education Program.

29 10.5 Implementation of the Individualized Education Program

30 Each school administrative unit shall implement a student with a
31 disability's Individualized Education Program as soon as possible
32 following the P.E.T. meeting but no later than 30 days after the P.E.T.'s
33 initial identification of the student as a student with a disability in need of
34 special education and supportive services. All identified students with
35 disabilities shall have a current Individualized Education Program in effect
36 at the start of each school year.

37 If a school unit is unable to hire or contract with the professional staff
38 necessary to implement a student's Individualized Education Program, the
39 administrative unit shall reconvene a P.E.T. to identify alternative service
40 options. This P.E.T. meeting shall occur no later than 30 days after the

1 start of the school year or the date of the P.E.T.'s development of the
2 I.E.P. The P.E.T. shall determine the compensatory services, if any,
3 necessary to compensate for the lack of services and to ensure the
4 provision of a free appropriate public education.

5 10.6 Individualized Education Program Requirements in Private or Out-of-Unit
6 Placements

7 Before a Pupil Evaluation Team decides to place a student with a
8 disability in a private school or in another administrative unit, it shall
9 initiate and conduct a meeting to develop an Individualized Education
10 Program for the student. A representative of the receiving school shall be
11 involved in this meeting. If the representatives cannot attend the meeting,
12 the P.E.T. shall use other methods, such as individual or conference
13 telephone calls, to ensure participation by the receiving school.

14 Any out-of-unit placements shall be as close to the student's home as
15 possible.

16 10.7 Revision of Out-of-Unit Individualized Education Programs

17 The sending school is the school administrative unit which has
18 administrative responsibility for the education of a student with a disability
19 who has been placed by the sending school in an out-of-district
20 placement. The receiving school is the school administrative unit, private
21 special purpose school or private school which has accepted the tuition
22 placement of a student with a disability from another school administrative
23 unit.

24 The sending school is responsible for:

- 25 1. Initiating the required annual review of the student's I.E.P. and
26 placement;
- 27 2. Revising the student's Individualized Education Program; and
- 28 3. Ensuring compliance with these rules.

29 Nothing in this section shall relieve the receiving school of its obligation to
30 implement a student's I.E.P. or to comply with these rules or the
31 Individuals with Disabilities Education Act.

32 Once a student with a disability has been placed out-of-unit,
33 representatives of the receiving school shall request the sending school to
34 initiate a P.E.T. meeting when the receiving school proposes to revise the
35 student's Individualized Education Program. The sending school shall
36 schedule the P.E.T. at a mutually convenient time for all parties and shall
37 notify the receiving school and the parents of the meeting, as described
38 and defined in §8.5, Parental Notice of P.E.T. Meetings. A copy of each
39 such notification shall also be sent by the sending school to the receiving
40 school unit.

1 The sending school shall participate in any meetings related to proposed
2 changes in the student's Individualized Education Program, and shall
3 ensure the parent's involvement in the meetings. The parent must be
4 provided prior written notice of any proposed changes and both the
5 sending school and the parent must agree to any proposed changes prior
6 to the initiation of implementation of any changes in the student's
7 Individualized Education Program.

8 **10.8 Individualized Education Program Coordination Between Administrative**
9 **Units**

10 The same sequence of activities relating to Individualized Education
11 Program development and the same shared and separate responsibilities
12 described in the two immediately preceding sections shall apply in cases
13 where one administrative unit tuitions some or all of its students to schools
14 operated by another administrative unit, or to a private general purpose
15 school under contract with the school unit.

16 **10.9 Transfer Students**

17 Students who received special education and supportive services in
18 another school, Child Development Services, or Early Intervention Service
19 Provider (if transferring from another state's preschool early intervention
20 system) or school unit within or outside of the State shall, on transfer and
21 with prior written notice to the parent, be provided with special education
22 and supportive services consistent with the Individualized Education
23 Program (I.E.P.)/ Individual Family Service Plan (I.F.S.P.) developed at
24 the previous school, Child Development Services or Early Intervention
25 Service Provider and shall be referred to the receiving unit's Pupil
26 Evaluation Team.

27 Upon referral, the Pupil Evaluation Team shall convene as soon as
28 possible to review available evaluation information, determine the need for
29 additional evaluations, determine the student's disability and need for
30 special education and supportive services, and develop a revised
31 Individualized Education Program, if necessary, for the student.

32 **10.10 Transition From Child Development Services To Public School Service**

33 Students participating in the Child Development Services/Early-
34 Intervention Programs and who will participate in public school programs
35 shall experience a smooth and effective transition from those preschool
36 programs to the public school. Each such student transitioning from CDS
37 to a public school shall have an I.E.P. in effect at the start of the school
38 year. A school administrative unit may elect to implement the student's
39 I.F.S.P. upon entry into the public school and develop the student's I.E.P.
40 upon the anniversary date of the I.F.S.P. The school administrative unit
41 shall participate in transition planning conferences arranged by the Child
42 Development Services site responsible for the student.

1
2 **11. LEAST RESTRICTIVE EDUCATIONAL ALTERNATIVE**

3 **11.1 Least Restrictive Educational Alternative, Generally**

4 To the maximum extent appropriate, students with disabilities, including
5 students in public or private institutions or other care facilities, shall be
6 educated with students who are not disabled, and special classes,
7 separate schooling, or other removal of students with disabilities from the
8 regular educational environment shall occur only when the nature or
9 severity of the disability of a student is such that education in regular
10 classes with the use of supplementary aids and services cannot be
11 achieved satisfactorily.

12 **11.2 Criteria – Least Restrictive Educational Alternative**

13 Each Individualized Education Program shall be developed in accordance
14 with the principle of the least restrictive educational alternative. Criteria
15 for the determination of the least restrictive educational alternative shall
16 include the following:

17 A. A special education placement shall be based on the student's
18 Individualized Education Program and shall be reviewed at least annually;

19 B. A student with a disability shall be placed in the school the student
20 would normally attend unless the Individualized Education Program
21 requires a different placement. In such a case, the placement shall be as
22 close as possible to the student's residence;

23 C. A student with a disability shall be removed from the regular
24 educational environment only when the nature or severity of the disability
25 is such that education in regular classes with the use of supplementary
26 aids and services cannot be achieved satisfactorily;

27 D. The facilities and accommodations available at a proposed
28 placement shall be comparable to those available at the school the
29 student would typically attend;

30 E. A student with a disability shall be educated with nondisabled peers
31 and be provided an opportunity to participate in non-academic and
32 extracurricular activities to the maximum extent appropriate; and

33 F. In selecting the least restrictive educational alternative,
34 consideration will be given to the potential harmful effect on the student or
35 on the quality of services that he or she needs.

36 **11.3 Continuum of Special Education Placements**

37 Each administrative unit shall ensure that a continuum of special
38 education placements is available to meet the needs of students with
39 disabilities and shall ensure that special education services and

1 supportive services are available in conjunction with a continuum of
2 special education placements.

3 A continuum of special education placements shall include regular
4 classes, resource classes, self-contained classes, public separate day
5 school classes, private separate day school placements, public residential
6 placements, private residential placements, and homebound/hospital
7 placements.

8 Comparable Facilities – Facilities in which special education services are
9 provided to students with disabilities shall be comparable to those in
10 which regular education is provided to regular education students and
11 located in chronologically age appropriate settings.

12 11.4 Regular Class Placement

13 A Regular Class Placement is a placement where a student with a
14 disability receives a majority of their educational program with non-
15 disabled students, receiving special education and supportive services
16 OUTSIDE THAT CLASSROOM for less than 21 percent of the school day.
17 This may include students with disabilities placed in regular class with
18 special education/supportive services provided within the regular class, or
19 regular class with instruction within the regular class and with special
20 education/supportive services provided outside the regular class.
21 Students receiving monitoring services are included in this category.

22 11.5 Resource Class Placement

23 A Resource Class Placement is a placement where a student with a
24 disability receives special education and supportive services OUTSIDE
25 THE REGULAR CLASSROOM for 60 percent or less of the school day
26 and at least 21 percent of the school day. This may include students with
27 disabilities placed in resource rooms with special education/supportive
28 services provided within the resource room, or resource rooms with part-
29 time instruction in a regular class. Resource classes shall be located in
30 chronologically age appropriate settings and the facilities shall be
31 comparable to those in which regular education is provided to regular
32 education students.

33 11.6 Self-Contained Class Placement

34 A Self-Contained Class Placement is a placement where a student with a
35 disability receives special education and supportive services OUTSIDE
36 THE REGULAR CLASSROOM for more than 60 percent of the school day
37 in a self-contained program. This may include students with disabilities
38 placed in self-contained special classrooms with part-time instruction in a
39 regular class, or self-contained special classrooms full-time. Self-
40 contained classes shall be located in chronologically age appropriate

1 settings and the facilities shall be comparable to those in which regular
2 education is provided to regular education students.

3 11.7 Public Separate Day School Placement

4 A Public Separate Day School Placement is a placement where a student
5 with a disability receives special education and supportive services for
6 greater than 50 percent of the school day in public separate day school
7 facilities. Public separate day school facilities shall be comparable to
8 those in which regular education is provided to regular education students

9 11.8 Private Separate Day School Placement

10 A Private Separate Day School Placement is a placement where a
11 student with a disability receives special education and supportive
12 services for greater than 50 percent of the school day in private separate
13 day school facilities. Private separate day school facilities shall be
14 comparable to those in which regular education is provided to regular
15 education students

16 11.9 Public Residential Placement:

17 A Public Residential Placement is a placement where a student with a
18 disability resides and receives special education and supportive services
19 for greater than 50 percent of the school day in public residential facilities.

20 11.10 Private Residential Placement:

21 A Private Residential Placement is a placement where a student with a
22 disability resides and receives special education and supportive services
23 for greater than 50 percent of the school day in private residential
24 facilities.

25 11.11 Homebound/Hospital Placement:

26 A Homebound/Hospital Placement is a placement where a student with a
27 disability receives special education and supportive services at home or in
28 a medical treatment facility. Home instruction is usually appropriate for
29 only a limited number of students, such as students who are medically
30 fragile and are not able to participate in a school setting with other
31 students.

32 11.12 Placement of Students with Disabilities

33 Any proposal to change the placement of a student with a disability
34 including any proposal to transfer, discharge, or terminate special
35 education services shall be based on the student's Individualized
36 Education Program and documented as fully as the initial placement.

37 Parental consent shall not be required as a condition of any placement
38 except for the initial placement in special education of a student with a
39 disability. Notice of the proposed change of placement, as described

1 below in §11.13, Notification of Proposed Placement, shall be provided at
2 least seven days prior to the proposed placement.

3 11.13 Notification of Proposed Placement

4 The parent of each student with a disability for whom an Individualized
5 Education Program is developed shall be sent prior written notice as
6 described and defined in §12.3 prior to the implementation of a change of
7 the student's placement or the transfer for a period in excess of ten school
8 days of a student from one special education placement to another
9 placement.

10 11.14 Consent for Initial Placement

11 If the Individualized Education Program proposed for a student represents
12 the student's initial placement in special education, written consent, as
13 defined in §12.4, shall be obtained from a parent of the student before
14 placement occurs.

15 11.15 Absence of Consent

16 If it is not possible to obtain parental consent for an initial special
17 education placement, a school may initiate a mediation or due process
18 hearing, as described in Part 13, Dispute Resolution Procedures, to
19 determine if the student may be initially placed without parental consent.

20 11.16 Residential Treatment Center Placements

21 The placement of a student with a disability in a residential treatment
22 center shall be based, in part, on an evaluation by a certified school
23 psychological service provider, licensed psychologist or psychiatrist and
24 the documentation that the student's special education needs cannot be
25 met in a less restrictive setting.

26 11.17 State Approval of Placements

27 Placement of students with disabilities in a private special purpose school,
28 approved special education program in a general purpose private school
29 (other than one used as the regular school for students for the S.A.U.),
30 regional special education programs, approved educational programs
31 operated in hospital settings, or state-operated program must be
32 approved by the Department of Education, Special Services Team.

33 One copy of the "Request for Tuition Placement of Students with
34 Disabilities," (Form EF-S-01) must be submitted for review and approval
35 for each student proposed for such placements. No placement will be
36 counted as an allowable special education cost without this prior approval.
37 Prior approval is not required for EF-S-01s submitted for hospital
38 education programs, but must be submitted as soon as possible after the
39 service is instituted.

1 Copies of the Pupil Evaluation Team minutes, the prior written notice
2 (§12.3), supporting evaluation reports, and the student's Individualized
3 Education Program justifying the proposed placement shall be submitted
4 with each initial "Request for Tuition Placement of Students with
5 Disabilities" (Form EF-S-01). For EF-S-01s submitted for hospital
6 placements, no accompanying information is required for students not
7 previously identified as requiring special education. For those previously
8 identified students, the EF-S-01 must be accompanied by the P.E.T.
9 minutes recommending the service and the revised I.E.P., or a note
10 explaining why no P.E.T. meeting was held.

11 A school unit shall verify, prior to placement of a student with a disability,
12 that a special purpose private school has been approved by the
13 Department of Education for the student's age, type of disability, and
14 services determined by the Pupil Evaluation Team and included in the
15 student's Individualized Education Program.

16 Requests for tuition placement approval shall be renewed annually in the
17 manner specified by the Commissioner.

18 The "Request for Tuition Placement of Students with Disabilities" (EF-S-
19 01) shall be considered for approval only if the above conditions on the
20 part of the sending and receiving schools are met. The Department shall
21 respond within a reasonable period of the receipt of any such request for
22 placement approval.

23 NOTE: Copies of the form and answers to any questions concerning its
24 use may be obtained from the Special Services Team, Maine Department
25 of Education.

26 11.18 Out-of-State Placements

27 Because an out-of-state placement is usually more restrictive than an in-
28 state placement, justification for such requests is particularly critical.
29 Accompanying the EF-S-01 form and other required materials submitted
30 to the Special Services Team, Maine Department of Education for
31 approval, in such cases, should be a written explanation of:

- 32 A. Why in-state placement of the student is not possible;
- 33 B. What efforts were made to locate an appropriate in-state
34 placement; and
- 35 C. The reasons why these in-state placement efforts were not
36 successful or why an in-state placement was not considered appropriate
37 for the student.
- 38

1 12. DUE PROCESS REQUIREMENTS

2 12.1 General Requirements

3 Each school administrative unit must implement the procedural
4 safeguards required by this rule and by applicable federal law to protect
5 the rights of students with disabilities.

6 12.2 Parent and Student Access to Records, Information

7 Parents of a student with a disability, adult students and an authorized
8 representative of the parent or adult student shall be permitted to have
9 access to and to examine all records with respect to the identification,
10 evaluation, placement or the provision of a free appropriate public
11 education to the student with a disability. The procedures for accessing
12 educational records shall meet with the requirements of Part 15,
13 Education Records.

14 12.3 Prior Written Notice

15 A. Notice Required - The parents of a student shall receive written
16 notice at least seven days prior to the date upon which the school unit
17 proposes or refuses to initiate or change the identification, evaluation,
18 educational program, placement or the provision of a free appropriate
19 public education to a student. The notice shall be written in language
20 understandable to the general public.

21 B. Content of Notice - The notice shall include the following:

22 1. A description of the action proposed or refused by the
23 school;

24 2. An explanation of why the school proposes or refuses the
25 action;

26 3. A description of any other options that the school considered
27 and the reasons those options were rejected;

28 4. A description of each evaluation procedure, test, record, or
29 report the school used as a basis for the proposed or refused
30 action;

31 5. A description of any other factors that are relevant to the
32 proposed or refused action;

33 6. A statement that the parents of a student with a disability
34 have protections under the procedural safeguards of these
35 regulations and, if this notice is not an initial referral for evaluation,
36 the means by which a copy of a description of the procedural
37 safeguards can be obtained; and

38 7. Sources for parents to contact to obtain assistance in
39 understanding the provisions of these regulations.

1 C. Language of Notice - The notice must be provided in the language
2 commonly used in the home of the parents. If the school has reason to
3 believe the parent is not literate or if the native language is not a written
4 language, the school unit shall take appropriate steps to ensure that:

- 5 1. The notice is translated orally or by other means to the
6 parent in his or her native language or other mode of
7 communication;
- 8 2. The parent understands the content of the notice; and
- 9 3. There is documentation that these notice requirements have
10 been met.

11 12.4 Parental Consent

12 Written consent is required from the parent of a student or an adult
13 student prior to an initial special education evaluation, an initial placement
14 in a special education program, a reevaluation, accessing private
15 insurance and the release of an education record to non-authorized
16 parties. Consent is intended to assure that the parent or adult student:

- 17 A. Has been fully informed of all information relevant to the activity for
18 which consent is sought;
- 19 B. Understands and agrees in writing to the implementation of the
20 activity or the releasing of a record to an identified third party; and
- 21 C. Understands that the granting of consent is voluntary and may be
22 revoked at any time.

23 Refusal to grant consent – If the parents of a student with a disability
24 refuse consent for initial evaluation or reevaluation, the school
25 administrative unit may use the mediation or hearing procedures under
26 Part 13, Dispute Resolution Procedures, of these rules to secure parental
27 consent.

28 Withdrawal of Parental Consent - A withdrawal of parental consent after
29 the initial evaluation or initial placement in special education shall be
30 considered a request to change the student's program and placement. As
31 such the P.E.T. shall convene and consider the parent's request. If the
32 P.E.T. disagrees with the parent's request, the S.A.U. may use the
33 mediation process or initiate a hearing to override the parent's withdrawal
34 of consent.

35 Failure to respond to request for reevaluation – Informed parental consent
36 need not be obtained if the school administrative unit can demonstrate
37 that it has taken reasonable measure to obtain such consent and the
38 student's parents have failed to respond.

1 Limitation – A school administrative unit may not require parental consent
2 as a condition for the receipt of special education services except for the
3 initial evaluation, initial placement in special education and reevaluation.

4 12.5 Evaluation Procedures

5 A. General requirements - Each school administrative unit shall
6 establish and implement evaluation procedures which meet the
7 requirements of this rule.

8 B. Pre-placement evaluation - Before any action is taken with respect
9 to the initial placement of a student with a disability in a special education
10 program, a full and individual evaluation of the student's educational
11 needs must be conducted.

12 C. Independent educational evaluation - If the parent of a student
13 disagrees with the results of an evaluation conducted or obtained by the
14 administrative unit, they have the right to obtain an independent
15 educational evaluation of their child at public expense. However, the
16 school administrative unit may initiate a hearing to show that its evaluation
17 is appropriate. If the final decision is that the evaluation is appropriate,
18 the parent still has the right to an independent evaluation, but not at public
19 expense.

20 Each public agency shall provide to parents, upon request, information
21 about where an independent evaluation may be obtained. Qualified
22 evaluators who provide contracted services on a regular and on-going
23 basis to an administrative unit may not be considered "independent" for
24 purposes of this section. If the parent submits a written request that the
25 school administrative unit provide an independent educational evaluation,
26 the administrative unit shall provide the parent with a written response
27 within a reasonable period not to exceed 30 days of the receipt of the
28 request and provide the parent with information regarding allowable
29 providers and rates for independent educational evaluation services.
30 Parents are under no obligation to request an independent evaluation
31 from the administrative unit prior to exercising their right to obtain an
32 independent evaluation.

33 D. Hearing on independent evaluation - If the school unit refuses to grant
34 a parent's request for an independent evaluation or refuses to pay for an
35 independent evaluation obtained by a parent, the unit shall immediately
36 initiate a due process hearing to demonstrate that the evaluation
37 conducted by the unit is appropriate.

38 An administrative unit may initiate a due process hearing to challenge a
39 parent's right to obtain an independent evaluation at public expense
40 whenever the unit:

1. Believes that the providers of an independent evaluation are not qualified according to these rules;
2. Believes that the amounts charged for the evaluation services are excessive; or
3. Believes that the unit's evaluations are appropriate.

A parent may initiate, at any time, a due process hearing to challenge an administrative unit's evaluation and request that the administrative unit be ordered to provide an independent educational evaluation.

E. Hearing decision: result - If the final decision of such a hearing is that the original evaluation is appropriate, an independent educational evaluation may still be obtained, but not at the expense of the administrative unit. Units shall provide to parents, on request, information about where such an independent educational evaluation may be obtained. If the final decision of such a hearing, or any due process hearing on the student, is that the original evaluation is inappropriate, then an independent educational evaluation shall be conducted at the expense of the administrative unit.

F. Use of independent evaluation - An independent educational evaluation shall be considered by the Pupil Evaluation Team in developing an Individualized Education Program for the student and may be presented as evidence at any due process hearing.

12.6 Surrogate Parents

A. Appointment of surrogate parent - Whenever the natural parents or guardian of a student with a disability cannot be identified or located after reasonable efforts, the superintendent of the responsible administrative unit shall notify the Special Services Team, Maine Department of Education and request the appointment of a surrogate parent. The term "guardian" does not include the State if the student is a state ward.

Whenever a student with a disability is a state ward residing in a foster home licensed by the Department of Human Services, the foster parent shall be recognized as the surrogate parent for the student placed in his/her care and shall meet the criteria at 12.6 C for surrogate parents. There is no need for the Commissioner to appoint the foster parent of a state ward. The administrative unit in which the foster parent resides shall notify the foster parent of the rights and responsibilities of a surrogate parent.

If the school administrative unit or Department of Human Services has reason to believe that a foster parent does not meet the criteria at 12.6 C for appointment as a surrogate parent, the administrative unit or the Department of Human Services shall file with the Department of Education a written objection to the automatic appointment of the foster

1 parent as surrogate parent and a recommendation for the appointment of
2 another individual as the surrogate parent.

3 The foster parent has the right to challenge such an objection through a
4 due process hearing.

5 When a state ward is hospitalized, the foster parent who was serving as
6 surrogate parent shall continue in that position, until such time as the
7 student is discharged to a placement other than that foster home. If the
8 hospitalization is long-term, out-of-state psychiatric care, D.H.S. or the
9 S.A.U. shall request DOE to appoint a surrogate parent, if the previous
10 foster parent had been serving as surrogate parent under the automatic
11 appointment process.

12 Whenever a student with a disability is a state ward and is NOT residing in
13 a licensed foster home or is experiencing multiple placements within a
14 short period of time, the Department of Human Services or the school
15 administrative unit which has educational responsibility for the student
16 shall request the Department of Education to appoint a surrogate parent.

17 B. Duties of surrogate parents - The surrogate parent is the only
18 person authorized to represent the student in any matters relating to the
19 student's identification, evaluation, educational programming, placement,
20 or the provision of a free appropriate public education.

21 The representative from the Maine Department of Human Services for a
22 state ward may have access to records and participate in P.E.T. meetings
23 but may not exercise the procedural safeguards under this rule.

24 C. Criteria for surrogate parent selection - A surrogate parent shall
25 meet the following criteria:

- 26 1. Has no interests that conflict with the interests of the student
27 being represented;
- 28 2. Has sufficient knowledge and skill to ensure adequate
29 representation of the student; and
- 30 3. Is not an employee of a public agency involved in the
31 education or care of the student.

32 The term "public agency" includes, but is not limited to, the Department of
33 Education, the Department of Human Services, the Department of
34 Corrections, the Department of Mental Health, Mental Retardation, and
35 Substance Abuse Services, the school administrative unit responsible for
36 providing education to the student, an agency operated foster or group
37 home and the school unit of residence of the student's parents. A person
38 who otherwise qualifies to be a surrogate parent under these rules is not
39 an employee of the agency solely because he or she is paid by the
40 agency to serve as a foster parent.

1 12.7 Hearing Rights

2 A due process hearing conducted in accordance with Part 13, Dispute
3 Resolution Procedures shall be provided whenever:

4 A. A parent disagrees with a school unit's proposal to initiate or
5 change the identification, evaluation or educational placement or the
6 provision of a free appropriate public education to the student;

7 B. A parent disagrees with a school unit's refusal to initiate or change
8 the identification, evaluation or educational placement of the student or to
9 provide a free appropriate public education; or

10 C. A parent refuses written consent for the initial special education
11 evaluation or special education placement of a student with a disability.

12 12.8 Assistance to Parents

13 Each school unit shall allow the parents of a student to be represented or
14 assisted by an individual or individuals of their choosing. If the parents
15 request information regarding any free or low cost legal aid, parent
16 support groups, or other relevant services, or if a due process hearing has
17 been initiated by either party, the Department shall inform the parents of
18 any such free or low-cost legal aid, parent support groups or other
19 relevant services.

20 12.9 Dispute Resolution Procedures

21 Each school unit shall adopt procedures to resolve disagreements or
22 complaints concerning the identification, evaluation and/or educational
23 program or placement of the student through conferences, mediation, or a
24 third party investigation of the complaint. These procedures shall
25 encompass the safeguards listed in this rule and shall not interfere with
26 the parent's right to a due process hearing.

27 12.11 Communication of Procedural Safeguards

28 A procedural safeguard statement, in substantially the following form,
29 shall be given by the school administrative unit to the parent and adult
30 student upon initial referral for special education evaluation, upon each
31 notice of a P.E.T. meeting, upon request for parental consent for
32 reevaluation of a student with a disability and upon receipt of a request for
33 a due process hearing.

34 A. PARENTAL PARTICIPATION

35 As the parent of a child who has or may have a disability, you are entitled
36 to participate in meetings regarding your child's eligibility determination,
37 initial evaluation or reevaluation, educational placement or provision of a
38 free appropriate public education.

B. PRIOR NOTICE TO PARENTS

Your school district must provide you with a written notice a reasonable time before the school proposes or refuses to initiate or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education to the child.

If the school is also required to have your written permission (consent) for an action, the school may provide this notice to you at the same time it requests your consent.

The notice must include:

A description of the action proposed or refused by the school, an explanation of why the school proposes or refuses to take the action, and a description of any options the school considered and the reasons why those options were rejected;

A description of each evaluation procedure, test, record, or report the school uses as a basis for the proposal or refusal;

A description of any other factors which are relevant to the school's proposal or refusal; and

A statement that you have the rights contained within this notice and where you may obtain a copy of this notice.

Sources you may contact for assistance in understanding your rights include the Special Needs Parents Information Network (1-800-870-7746) and Southern Maine Parent Awareness (1-800-564-9696).

You may file a complaint with the Maine Department of Education if you believe the school has violated a requirement under the Maine Special Education Regulations. (see Department of Education Complaints in §H. below)

The notice must be written in language understandable to the general public. The notice must be provided in your native language or other mode of communication, unless it is clearly not feasible to do so. If your native language or other mode of communication is not a written language, your school must take steps to insure that the notice is translated orally or by other means to you in your native language or other mode of communication, that you understand the content of the notice, and that there is written evidence that these requirements have been met.

C. PARENT CONSENT

Your school must obtain your written permission (consent) before conducting an initial evaluation, before an initial placement of your child in a program providing special education and supportive services or before conducting any new test as part of a reevaluation of your child. Except for initial evaluation, reevaluation and initial placement, your permission may

1 not be required as a condition for providing any special education or
2 supportive services to you or your child.

3 If you refuse to provide your permission (consent) for an initial evaluation
4 or initial placement of your child in a program providing special education
5 and supportive services, your school may use the due process hearing or
6 mediation procedures to determine whether your child may be evaluated
7 or initially provided special education and supportive services without your
8 consent. If the hearing officer orders the school to evaluate or place your
9 child or if you and the school reach a mediated agreement, the school
10 may evaluate your child or provide special education and supportive
11 services to your child.

12 Generally, either parent may grant consent. In the case of divorced
13 parents with joint custody either parent may grant consent. However, in
14 the event that one parent grants consent and the other parent refuses,
15 then the school is obligated to initiate the action for which consent has
16 been granted.

17 D. EVALUATION / REEVALUATION

18 The Pupil Evaluation Team (P.E.T.), of which you are a member, may
19 decide that no additional information is needed to determine your child's
20 initial or continuing eligibility for special education. If you disagree with the
21 team's decision, you may request that the school conduct an assessment
22 of your child. If your child has a disability and has been receiving special
23 education services, the school district must evaluate your child before
24 determining that your child no longer requires special education services.

25 E. PARENTAL CONSENT FOR REEVALUATION

26 The school must obtain your written consent before conducting a
27 reevaluation of your child. However, if the school can show that it tried to
28 get your consent for the reevaluation of your child and you did not
29 respond then the school may reevaluate your child without your consent.
30 Your consent is not required to review existing evaluation information.

31 F. INDEPENDENT EDUCATIONAL EVALUATION

32 An independent evaluation is an evaluation conducted by a qualified
33 person who is not an employee of the school. You have the right to an
34 independent educational evaluation at no cost to you if you disagree with
35 an evaluation obtained by your school. However, your school may initiate
36 a due process hearing to show that its evaluation is appropriate. If the
37 hearing decision is that the school's evaluation is appropriate, you still
38 have the right to an independent educational evaluation, but at your
39 expense. If you obtain an independent educational evaluation at your
40 expense, the results of the evaluation must be considered by your school
41 in any decision made with respect to the provision of a free appropriate

1 public education to your child, and may be presented as evidence at a
2 due process hearing regarding your child.

3 If a hearing officer requests an independent educational evaluation as
4 part of a hearing, the cost of the evaluation must be at public expense.

5 Your school shall provide you, when you request it, information about
6 where an independent educational evaluation may be obtained.

7 Whenever an independent evaluation is at public expense, the criteria
8 under which the evaluation is obtained, including the location of the
9 evaluation and the qualifications of the examiner, must be the same as
10 the criteria which the school uses when it initiates an evaluation. A school
11 may not impose any additional criteria regarding an independent
12 educational evaluation.

13 G. SUPERINTENDENT COMPLAINTS

14 You have the right to file a written complaint with the superintendent of the
15 administrative unit responsible for the education of your son or daughter if
16 you have reason to believe that the administrative unit is not in
17 compliance with these special education regulations. The superintendent,
18 or a designee, shall then appoint a person to investigate your complaint
19 and to recommend to the superintendent, within 30 days of the receipt of
20 the written complaint, any corrective action necessary to resolve your
21 complaint.

22 H. DEPARTMENT OF EDUCATION COMPLAINTS

23 You have the right to file a signed, written complaint with the
24 Commissioner of the Department of Education if you have reason to
25 believe that the administrative unit responsible for the education of your
26 son or daughter is not in compliance with these special education
27 regulations or if you disagree with the results of a superintendent's
28 complaint investigation.

29 The Department shall initiate and complete, within 60 days of the receipt
30 of the written complaint, an investigation and a determination of whether
31 your school has complied with these special education regulations.

32 If your school is determined to be in non-compliance, the Department will
33 develop a corrective action plan to resolve the complaint.

34 I. MEDIATION

35 You or the school have the right to request the Department of Education
36 to provide mediation services if you and the school are unable to agree
37 upon the identification, evaluation, educational program, placement or the
38 provision of a free, appropriate public education of your son or daughter.

39 The mediation must be voluntary on the part of both you and the school
40 district. Mediation may not be used to delay or deny your right to a due

1 process hearing. The mediation must be conducted by a qualified and
2 impartial mediator at no cost to you or the school district. The mediation
3 will be held in a timely manner and at a location that is convenient to you
4 and the school. Any agreement reached in mediation will be put into
5 writing and becomes a part of your child's I.E.P. If the school fails to
6 implement the mediation agreement you may initiate a hearing or file a
7 complaint against the school. Mediation discussions are confidential and
8 may not be used as evidence in a hearing. You and the school may be
9 required to sign a confidentiality pledge prior to the start of the mediation.

10 If you chose not to participate in a mediation, the Maine Department of
11 Education may require you to meet with a third party who will explain the
12 benefits of the mediation process to you. If you would like to request a
13 mediation or would like more information about mediation, you may
14 contact the Maine Department of Education, Special Services Team at
15 287-5950.

16 J. IMPARTIAL DUE PROCESS HEARING

17 You or your school may initiate a hearing regarding the school's proposal
18 or refusal to initiate or change the identification, evaluation, or educational
19 placement of your child or the provision of a free appropriate public
20 education to your child.

21 You must send your written request for a due process hearing to the
22 Maine Department of Education. The request must contain the name of
23 the child, the child's residence, the school the child is attending, a
24 description of the problem and facts relating to the problem, and a
25 proposed solution to the problem.

26 A form is available from the Maine Department of Education, your local
27 school, or the Special Needs Parent Information Network (SPIN). Failure
28 to provide the required information may result in a reduction of the award
29 of any attorney fees if you win your case.

30 The hearing will be conducted by an impartial hearing officer appointed by
31 the Department and contracted to provide hearing officer services.

32 The Department must inform you of any free or low-cost legal and other
33 relevant services available in the area if you request the information or if
34 you or your school initiate a due process hearing.

35 A hearing may not be conducted by a person who is an employee of a
36 public agency which is involved in the education or care of your child, or
37 by any person having a personal or professional interest which would
38 conflict with his or her objectivity in the hearing. (A person who otherwise
39 qualifies to conduct a hearing is not an employee of the Department solely
40 because he or she is paid by the Department of Education to serve as a
41 hearing officer.)

1 The Department maintains a list of the persons who serve as hearing
 2 officers. The list includes a statement of the qualifications of each of
 3 those persons.

4 The Department shall ensure that a final hearing decision is reached and
 5 mailed to the parents and the school within 45 days after the receipt of a
 6 request for a hearing, unless the hearing officer grants a specific
 7 extension at the request of either party.

8 The decision made in a due process hearing is final, unless you or the
 9 school brings a civil action under the procedures described below.

10 K. DUE PROCESS HEARING RIGHTS

11 Any party to a hearing has the right to:

- 12 1. Be accompanied and advised by counsel and by individuals with
 13 special knowledge or training with respect to the problems of
 14 students with disabilities;
- 15 2. Present evidence and confront, cross-examine, and compel the
 16 attendance of witnesses;
- 17 3. Prohibit the introduction of any evidence at the hearing that has
 18 not been disclosed to that party at least five business days before
 19 the hearing;
- 20 4. Obtain a written or electronic verbatim record of the hearing; and
- 21 5. Obtain written findings of fact and decisions. (After deleting any
 22 personally identifiable information, the Department shall transmit
 23 those findings and decisions to the State advisory panel and make
 24 them available to the public.)

25 As the parent, you have the following additional rights:

26 You may have your child present at the hearing;

27 You may open the hearing to the public; and

28 You may obtain the findings of fact, decision and record of the
 29 hearing at no cost to you.

30 Each hearing must be conducted at a time and place which is
 31 reasonably convenient to you and your child.

32 L. CIVIL ACTION

33 Any party aggrieved by the findings and decision made in a hearing has
 34 the right to appeal the decision in State or Federal Court.

35 M. CHILD'S STATUS DURING DUE PROCESS PROCEEDINGS

36 During the pendency of any complaint investigation, mediation, or due
 37 process hearing or appeal of a hearing, unless you and your school agree

1 otherwise, your child must remain in his or her present educational
2 placement and program.

3 If the hearing involves an application for initial admission to public school,
4 your child, with your consent, must be placed in the public school program
5 until the completion of all the proceedings.

6 N. AWARD OF ATTORNEYS' FEES

7 You may request either a state or federal court to award reasonable
8 attorney fees and costs if you win your hearing either through a settlement
9 or a hearing decision.

10 Attorney fees may not be awarded relating to any meeting of the Pupil
11 Evaluation Team unless the meeting occurs as a result of an order of a
12 hearing officer or a judge. Attorney fees may not be awarded for a
13 mediation.

14 The award of attorney fees may be reduced if you unreasonably delayed
15 the settlement or decision in the case, the time spent and services
16 furnished were excessive or the fees charged by your attorney exceed
17 reasonable rates.

18 O. SURROGATE PARENTS

19 Each school shall ensure that an individual is assigned to act as a
20 surrogate for the parents of a child when no parent can be identified, the
21 school, after reasonable efforts, cannot discover the whereabouts of a
22 parent, or the child is a ward of the State. The Department must have a
23 method for determining whether a child needs a surrogate parent, and for
24 assigning a surrogate parent to the child.

25 The Department may select a surrogate parent in any way permitted
26 under State law, but must ensure that a person selected as a surrogate is
27 not an employee of an agency which is involved in the education or care
28 of the child, has no interest that conflicts with the interest of the child he or
29 she represents, and has knowledge and skills that ensure adequate
30 representation of the child. (An individual is not disqualified as an agency
31 employee from appointment as a surrogate solely because he or she is
32 paid by the Department to serve as a surrogate parent.)

33 The surrogate parent may represent the child in all matters relating to the
34 identification, evaluation, and educational placement of the child, and the
35 provision of a free appropriate public education to the child.

36 P. TRANSFER OF RIGHTS

37 In general, when your child reaches age 18 (or has been emancipated),
38 these procedural safeguards will transfer to your child. A court may
39 appoint a legal guardian for your child if your child has been determined,

1 consistent with state procedures, to be unable to provide informed
2 consent.

3 At least one year before your child turns 18, the school district will inform
4 your child of the rights, if any, that will be transferred to your child. The
5 school will inform both you and your child when these rights are
6 transferred to your child.

7 As the parent of an adult child with a disability, both you and your child will
8 continue to receive notice of P.E.T. meetings, prior written notice and the
9 notice of procedural safeguards.

10 Q. DISCIPLINARY PROCEDURES

11 If your child has violated the school's disciplinary standards, the school
12 may remove your child from his or her current educational setting for not
13 more than 10 consecutive school-days or 10 days cumulatively within a
14 school year, to the extent removal would be applied to students without
15 disabilities.

16 After a child with a disability has been removed from his or her current
17 placement for more than 10 school days in the same school year, during
18 any subsequent days of removal the public agency must provide services
19 to the extent necessary to enable the child to appropriately progress in the
20 general curriculum and appropriately advance toward achieving the goals
21 set out in the child's I.E.P.

22 The school district may place your child in an interim alternative education
23 setting for up to 45 days if your child possesses or uses illegal drugs or
24 carries a weapon to school or a school function.

25 If the school district wants to change your child's placement for more than
26 10 school days, you have the right to participate in the manifestation
27 determination meeting. This meeting determines whether the behavior
28 was or was not related to your child's disability.

29 If the determination is made that the behavior is related to your child's
30 disability then your child may not be suspended, expelled or removed
31 from his or her current educational placement for more than ten school
32 days (except in the case of weapons or drugs) unless the Pupil Evaluation
33 Team develops a new I.E.P. and decides upon a new placement. If there
34 is no relationship between your child's disability and the behavior, then
35 your child may be disciplined as any other child. During any removal in
36 excess of 10 days, the school district shall provide your child with special
37 education and supportive services to the extent necessary to enable your
38 child to appropriately progress in the general curriculum and appropriately
39 advance toward achieving the goals set out in your child's I.E.P.

40 If you disagree with the manifestation determination, the decision to place
41 your child in an interim alternative education setting or any other

1 disciplinary placement, you have the right to request a hearing or an
2 expedited due process hearing.

3 **R. CHILD'S PLACEMENT DURING THE PENDENCY OF DUE**
4 **PROCESS PROCEDURES -- DISCIPLINARY ACTION**

5 Generally, if you initiate a due process hearing, your child will remain in
6 his or her current educational placement until a final decision has been
7 reached or you and the school agree upon another placement. However,
8 in cases where your child has been placed in an interim alternative
9 education setting because of a disciplinary action, your child may remain
10 in the interim alternative education setting for a period not to exceed 10
11 days (or 45 days if a weapon or drug related offence). Thereafter, your
12 child will return to the previously agreed upon educational placement
13 unless either a hearing officer orders another placement or you and the
14 school agree to another placement.

15 **S. PRIVATE SCHOOL PLACEMENTS BY PARENTS**

16 The school district may be required to reimburse the costs of a private
17 school placement if you can prove at a due process hearing that the
18 school district has failed or is unable to provide your child with a free
19 appropriate public education and that the private placement is
20 appropriate.

21 If you plan to place your child with a disability in a private school and seek
22 reimbursement from the school district, you must inform the school district
23 at a Pupil Evaluation Team meeting or provide the school district with
24 written notice at least 10 business days (excluding weekends) prior to the
25 enrollment of your child in the private school. You must inform the school
26 about your disagreement with the school's I.E.P., the placement proposed
27 by the school, your intention to enroll your child in a private school and
28 your intention to request reimbursement.

29 If the school has provided you with a written notice that the school intends
30 to evaluate your child before you remove your child from the public
31 school, you must make your child available to the school for evaluation.

32 A court or hearing officer could decide to reduce or deny reimbursement
33 for your private school placement if you fail to inform the school of your
34 intention to make a private school placement at public expense, fail to
35 make your child available for evaluation, or take other unreasonable
36 actions.

37 **T. ACCESS TO RECORDS**

38 Your school must permit you to inspect and review all education records
39 relating to your child with respect to the identification, evaluation, and
40 educational placement of your child, and the provision of a free
41 appropriate public education to your child, which are collected,

1 maintained, or used by the school. The school must comply with a request
2 without unnecessary delay and before any meeting regarding an
3 individualized education program or hearing relating to the identification,
4 evaluation, placement or provision of appropriate services to your child,
5 and in no case more than 45 days after the request has been made.

6 Your right to inspect and review education records under this section
7 includes:

8 A. The right to a response from the participating school to reasonable
9 requests for explanations and interpretations of the records;

10 B. Your right to have your representative inspect and review the records;
11 and

12 C. Your right to request that the school provide copies of the records
13 containing the information if failure to provide those copies would
14 effectively prevent you from exercising your right to inspect and review the
15 records.

16 The school may presume that you have authority to inspect and review
17 records relating to your child unless the school has been advised that you
18 do not have the authority under applicable Maine law governing such
19 matters as guardianship, separation, and divorce.

20 The school must keep a record of who (other than authorized employees
21 of the school and the parent) has had access to your child's records,
22 including the person's name, date, and purpose for the access.

23 If any education record includes information on more than one child, you
24 have the right to inspect and review only the information relating to your
25 child or to be informed of that specific information.

26 The school must provide you on request a list of the types and locations of
27 education records collected, maintained, or used by the school.

28 U. FEES FOR SEARCHING, RETRIEVING, AND COPYING RECORDS

29 The school may not charge a fee to search for or to retrieve information
30 under this section, but may charge you a fee for copies of records which
31 are made for you under this rule if the fee does not effectively prevent you
32 from exercising your right to inspect and review those records.

33 V. RECORD OF ACCESS

34 The school must keep a record of parties obtaining access to education
35 records collected, maintained, or used under these rules (except access
36 by parents and authorized employees of the participating school),
37 including the name of the party, the date access was given, and the
38 purpose for which the party is authorized to use the records.

1 W. AMENDMENT OF RECORDS AT PARENT'S REQUEST

2 If you believe that information in education records collected, maintained,
3 or used under these rules is inaccurate or misleading or violates the
4 privacy or other rights of your child, you may request the school that
5 maintains the information to amend the information.

6 The school must decide whether to amend the information in accordance
7 with your request within a reasonable period of time of receipt of the
8 request. If the school decides to refuse to amend the information in
9 accordance with the request, it must inform you of the refusal and of your
10 right to a hearing as set forth below.

11 The school shall, on request, provide an opportunity for a hearing to
12 challenge information in education records to insure that it is not
13 inaccurate, misleading, or otherwise in violation of the privacy or other
14 rights of your child.

15 If, as a result of the hearing, the school decides that the information is
16 inaccurate, misleading, or otherwise in violation of the privacy or other
17 rights of your child, it must amend the information accordingly and so
18 inform you in writing.

19 If, as a result of the hearing, the school decides that the information is not
20 inaccurate, misleading, or otherwise in violation of the privacy or other
21 rights of your child, it must inform you of the right to place in the records it
22 maintains on your child a statement commenting on the information or
23 setting forth any reasons you disagree with the decision of the school.
24 Any explanation placed in your child's records under this section must be
25 maintained by the school as part of the records of your child as long as
26 the record or contested portion is maintained by the school; if the records
27 of your child or the contested portion is disclosed by the school to any
28 party, the explanation must also be disclosed to the party.

29 X. DEFINITIONS

30 "Consent" means that: (a) You have been fully informed of all information
31 relevant to the activity for which consent is sought, in your native
32 language or other mode of communication; (b) You understand and agree
33 in writing to the carrying out of the activity for which your consent is
34 sought, and the consent describes that activity and lists the records (if
35 any) that will be released and to whom; and you understand that the
36 granting of consent is voluntary on your part and may be revoked at any
37 time.

38 "Evaluation" means procedures used in accordance with these rules to
39 determine whether a child has a disability and the nature and extent of the
40 special education and supportive services that the child needs. The term
41 means procedures used selectively with an individual child and does not

1 include basic tests administered to or procedures used with all students in
2 a school, grade, or class.

3 "Independent educational evaluation" means an evaluation conducted by
4 a qualified examiner who is not employed by the school responsible for
5 the education of the child in question. "Independent educational
6 evaluation at public expense" means that the school either pays for the
7 full cost of the evaluation or insures that the evaluation is otherwise
8 provided at no cost to you.

9 12.12 Student's Status during Pendency of Appeals

10 A. Present placement requirement - During the pendency of any due
11 process proceeding including mediations, complaints, hearings or any
12 judicial proceeding regarding the identification, evaluation, programming
13 or placement of a student with a disability, unless the public agency and
14 the parents agree otherwise or the student has been placed in an interim
15 alternative education setting consistent with Part 14, Discipline of
16 Students with Disabilities, the student involved in the proceeding shall
17 remain in his or her current educational placement, unless a court of
18 competent jurisdiction has granted an injunction to remove the student
19 from such a placement.

20 B. Initial admission - If the proceeding involves an application for initial
21 admission to public school, the student, with the consent of the parents,
22 shall be placed in the regular public school program until the completion of
23 all the proceedings.

24 C. Stay Put Pending Appeal of Hearing Decision - A decision by a due
25 process hearing officer which is favorable to the parents shall constitute
26 an agreement between the parents and the public agency. Pending any
27 judicial proceeding appealing that decision, the student's educational
28 placement shall be changed to conform to that decision.

29
30 13. DISPUTE RESOLUTION PROCEDURES: (Mediations, Complaints And
31 Hearings)

32 13.1 Right to Dispute Resolution, Generally

33 Any interested party may submit a written complaint to the superintendent
34 of the school administrative unit or the Department alleging that a unit has
35 failed to comply with these rules or when there is a disagreement
36 regarding the identification, evaluation, placement or the provision of a
37 free appropriate public education to a student (see §13.5).

38 A parent or school unit may submit a request for mediation to resolve a
39 dispute regarding a unit's compliance with these rules or the provision of a
40 free appropriate public education in the least restrictive educational

1 alternative to a student with a disability. Such requests shall be in writing
2 and submitted to the Department of Education (see §13.4).

3 A parent or school unit may submit a written request for a due process
4 hearing to the Department when there is a disagreement regarding the
5 identification, evaluation, placement or the provision of a free appropriate
6 public education to a student (see §13.6 - 13.16).

7 **13.2 Request for Dispute Resolution (Hearing, Complaint or Mediation)**

8 **A. Request by Parent -** A parent, a surrogate parent, an adult student,
9 the designated representative of the parent, surrogate parent or adult
10 student (hereafter referred to as the "parent"), who requests a due
11 process hearing, complaint or mediation shall notify, in writing, the Due
12 Process Coordinator in the Department of Education of the request for a
13 hearing, complaint or mediation and provide a copy of the request to the
14 superintendent.

15 **B. The request shall:**

16 1. Include the name of the student involved, the parent's name,
17 address and telephone number, the school administrative unit
18 which the student attends, a brief summary of the disagreement
19 and any facts relating to the disagreement;

20 2. Include a summary of how the school was informed of the
21 disagreement, any actions taken by the school to resolve the
22 problem and how the problem could be resolved.

23 3. Be in writing. An oral request shall be reduced to writing by
24 the superintendent or a designee of the school unit and signed by
25 the parents.

26 **C. Request by school unit -** If the school unit seeks a due process
27 hearing or mediation, the superintendent shall notify the parent prior to
28 forwarding the request to the Due Process Coordinator. The notice to the
29 parent and the request to the Due Process Coordinator shall:

30 1. Include the name of the student involved, the parent's name,
31 address and telephone number, the school administrative unit
32 which the student attends, a brief summary of the disagreement
33 and any facts relating to the disagreement;

34 2. Include a summary of how the parent was informed of the
35 disagreement, any actions taken by the school to resolve the
36 problem and how the problem could be resolved; and

37 3. Be in writing.

38 **D. Duties of the Department -** Upon receipt of the request for a due
39 process hearing, complaint, or mediation, the Due Process Coordinator
40 shall provide the parents with information pertaining to the availability of

1 free or low-cost legal aid and other related services, as specified in §12.8,
2 Assistance to Parents.

3 13.3 Mediation, Alternative Dispute Resolution

4 If either a parent or a school seeks a due process hearing, the
5 superintendent shall encourage the parents to resolve the disagreement
6 through mediation or other third-party assistance. Such attempts shall not
7 interfere with the parent's right to a due process hearing nor with the 30-
8 day time limit in which a due process hearing must be held.

9 13.4 Mediation Procedures

10 Mediation shall be voluntary on the part of the parties. Mediation may not
11 be used to deny or delay a parent's right to a due process hearing or to
12 deny any other rights afforded under these rules.

13 Mediation shall be conducted by a qualified and impartial mediator who is
14 trained in effective mediation techniques and knowledgeable in laws and
15 regulations relating to the provision of special education and supportive
16 services. A list of mediators and their qualifications is available from the
17 Department.

18 The cost of the mediation process shall be assumed by the Department.
19 The parties to a mediation are responsible for their personnel costs and
20 travel expenses.

21 Each session in the mediation process shall be scheduled in a timely
22 manner and shall be held in a location that is convenient to the parties to
23 the dispute.

24 An agreement reached by the parties to the dispute in the mediation
25 process shall be set forth in a written mediation agreement which will be
26 incorporated by reference into the student's I.E.P. and will be binding on
27 all parties to the agreement.

28 Discussions that occur during the mediation process shall be confidential
29 and may not be used as evidence in any subsequent due process
30 hearings or civil proceedings. The parties to the mediation process may
31 be required to sign a confidentiality pledge prior to the commencement of
32 such process.

33 An individual who serves as a mediator under these rules may not be an
34 employee of any school administrative unit or the Department of
35 Education and may not have a personal or professional conflict of interest.

36 Parents or schools who choose not to use the mediation process to
37 resolve a disagreement are encouraged to contact the Due Process Office
38 at the Department of Education or the Special Needs Parent Information
39 Network (SPIN) in order to have the procedures and benefits of the
40 mediation process explained.

1 Parents may be accompanied to the mediation by an advocate or other
2 person knowledgeable in providing special education services. School
3 personnel with authorization to commit resources and personnel involved
4 with the dispute shall attend any mediation. School administrative units
5 may be represented by counsel in a mediation only when the parents are
6 represented by counsel. An attorney representing a parent shall provide
7 the superintendent of the school administrative unit and the Due Process
8 Office of the Maine Department of Education with at least 7 days written
9 notice prior to the mediation that they will be representing the parent at
10 the mediation. Parties may consult with their attorneys prior to and after
11 engaging in mediation.

12 13.5 Complaint Procedures

13 An organization or individual may file a written complaint with the
14 Commissioner alleging that a school administrative unit, other responsible
15 public agency, contracted provider or private school, has failed to comply
16 with State or Federal law regarding the identification, evaluation,
17 placement or the provision of a free appropriate public education to a
18 student with a disability. A form is available from the Department, various
19 parent support groups and the school administrative unit for submitting
20 written complaints.

21 **Filing a Complaint**

22 The complaint must meet the requirements of §13.2, Request for Dispute
23 Resolution and include a statement that a public agency has violated a
24 requirement of these rules, the facts on which the statement is based, and
25 efforts to resolve the dispute with the school.

26 The complaint must allege a violation that occurred not more than one
27 year prior to the date that the complaint is received. A complaint seeking
28 compensatory services may be filed for violations that occurred not more
29 than three years prior to the date of receipt of the complaint.

30 The Department shall appoint a complaint investigator in a timely manner
31 to ensure that all complaints are investigated and resolved within 60
32 calendar days of the receipt of the complaint.

33 The complaint investigator shall:

34 Carry out an independent on-site investigation, if the investigator
35 determines that such an investigation is necessary;

36 Provide the complainant the opportunity to submit additional information,
37 either orally or in writing, about the allegations in the complaint;

38 Review all relevant information and make a preliminary independent
39 determination as to whether the public agency is violating a requirement
40 of these regulations;

1 Convene a complaint resolution meeting, if necessary, to discuss
2 preliminary findings and develop a proposed resolution to the complaint;
3 and

4 Transmit a written decision to the Department that addresses each
5 allegation in the complaint.

6 **Complaint Investigation Reports**

7 The Department shall review the written decision of the complaint
8 investigator and issue a final and binding decision to the complainant and
9 the respondent.

10 Each complaint investigation report issued by the Department shall
11 include:

12 Findings of fact and conclusions and the reasons for the Department's
13 final decision.

14 An explanation of any exceptional circumstances which justify an
15 extension of the 60 day time limit under this section.

16 Procedures for effective implementation of the Department's final
17 decision, if needed, including technical assistance activities, negotiations,
18 and corrective actions to achieve compliance.

19 **Other Complaint Procedures**

20 If a written complaint is received that is also the subject of a due process
21 hearing, the Department will set aside any part of the complaint that is
22 being addressed in the due process hearing. If a complaint is received
23 that had previously been decided in a due process hearing involving the
24 same parties, then the hearing decision is binding and the Department will
25 inform the complainant to that effect.

26 A parent or interested party may file a complaint alleging that a school
27 administrative unit has failed to implement a hearing decision or mediation
28 agreement.

29 A parent, interested party or School administrative unit may consult with
30 counsel regarding a complaint. Only when the parents are represented by
31 counsel in a complaint resolution meeting may the school administrative
32 unit be represented by counsel. An attorney representing a parent shall
33 provide the superintendent of the school administrative unit and the Due
34 Process Office of the Maine Department of Education with at least 7 days
35 written notice prior to any complaint resolution meeting that they will be
36 representing the parent at the complaint resolution meeting.

37 **13.6 Appointment of Hearing Officer**

38 The Commissioner shall appoint the impartial hearing officer in a timely
39 manner upon receiving a hearing request.

1 A. Impartiality - The hearing officer shall not be an employee of a
2 public agency involved in the education or care of the student nor of any
3 private school which provides education or care to the student. The term
4 "public agency" includes the Department, the school administrative unit
5 responsible for the education of the student, and the municipality of
6 residence of the student's parents.

7 A hearing may not be conducted by any person having a personal or
8 professional interest which would conflict with his or her objectivity in the
9 hearing.

10 A person who otherwise qualifies to conduct a hearing is not an employee
11 of the Department solely because he or she is paid by the Department to
12 serve as a hearing officer.

13 The Special Services Team, Maine Department of Education shall keep a
14 list of the persons who serve as hearing officers. The list must include a
15 statement of the qualifications of each of these persons.

16 The hearing officer shall not communicate directly or indirectly in
17 connection with any issue of fact, law or procedure, with any party or other
18 persons legally interested in the outcome of the proceeding, except upon
19 notice and opportunity for all parties to participate.

20 This section shall not prohibit the hearing officer from speaking with
21 counsel or from having the advice of agency staff or consultants retained
22 by the Department who have not participated and will not participate in the
23 proceeding.

24 B. Challenge - The appointment of the hearing officer may only be
25 challenged on the grounds of conflict of interest or bias. Upon the filing in
26 good faith by a party of a timely charge of conflict of interest or bias,
27 requesting that the hearing officer disqualify himself/herself, the hearing
28 officer shall determine the matter as part of the record.

29 C. Notice - Notice of the appointment and a copy of these rules
30 pertaining to Due Process Requirements (Part 12) and Dispute Resolution
31 Procedures (Part 13) shall be sent to the parties.

32 13.7 Notice of Hearing Time, Place

33 The hearing officer shall establish the time and place of the hearing,
34 which, so far as possible, must be convenient to the parties involved, and
35 shall notify both parties.

36 All hearings shall be scheduled so that the prehearing and hearing shall
37 occur within 30 days of the receipt of the request for a hearing. The
38 hearing officer may grant for just cause an extension of up to 10 days
39 upon written request of either party. Any such extensions shall not

1 postpone the hearing decision in excess of 60 days from the receipt of the
2 request for a hearing, except by mutual agreement of all parties.

3 13.8 Settlement Offer

4 The school may provide the parents with a written settlement offer prior to
5 the date of the hearing. If the parents accept the settlement offer, they
6 shall notify the administrative unit, the hearing officer, and the
7 Commissioner no later than the date of the prehearing conference. Under
8 no circumstances shall either party inform the hearing officer about the
9 settlement offer or introduce as evidence a settlement offer that has not
10 been accepted, in whole or in part, by the parents.

11 The Commissioner, or a designee, may advise and engage in settlement
12 discussions or further mediation efforts, although these may not postpone
13 the scheduled due process hearing.

14 The parties may at any time prior to, during, or after the due process
15 hearing engage in settlement discussions.

16 13.9 Pre-hearing Conference

17 The hearing officer shall convene a pre-hearing conference to consider
18 the simplification or clarification of issues, the limitation of the number of
19 witnesses, the possibility of agreement disposing of all or any of the
20 issues in dispute, and such other matters as may aid in the disposition of
21 the adjudicatory proceeding.

22 13.10 Hearing Participants

23 The hearing shall be closed to the public unless otherwise requested by
24 the parents. Participants at the hearing may include:

- 25 A. The parents and their representatives;
26 B. The student, at the option of the parents;
27 C. The superintendent of the school unit, or a designee, the special
28 education director and the unit's representative;
29 D. Witnesses called by the parties;
30 E. Witnesses called by the hearing officer; and
31 F. The custodian of the student, (as defined in 22 M.R.S.A. §4002(5))
32 where the student is a state ward.

33 13.11 Subpoenas

34 A. Issuance of subpoenas - The Commissioner may issue subpoenas
35 in the name of the Department to require the attendance and testimony of
36 any witness and the production of any evidence relating to any issue or
37 fact in the due process hearing upon the request of either party to the
38 hearing.

1 B. Fees, expenses - Any fees for attendance and travel required by
2 the witnesses shall be the responsibility of the party seeking the
3 subpoena.

4 Issuance of subpoenas shall conform in all other respects to the
5 requirement of the Maine Administrative Procedure Act, 5 M.R.S.A.
6 §9060.

7 C. Petition for modification of subpoena - Any witness subpoenaed
8 may petition the Commissioner to vacate or modify the subpoena issued.
9 The Commissioner shall give prompt notice to the party who requested
10 issuance of the subpoena. After such investigation as the Commissioner
11 deems appropriate, the petition may be granted in whole or in part upon a
12 finding that the testimony or the evidence requested does not relate with
13 reasonable directness to any matter in question, or that the subpoena for
14 attendance of a witness or the production of evidence is unreasonable or
15 oppressive or has not been issued a reasonable period in advance of the
16 time when evidence is requested.

17 13.12 Hearing Procedures

18 The due process hearing shall be conducted according to the procedures
19 established in this section.

20 A. Opening statement - The hearing officer shall open the hearing by
21 describing the procedures to be followed during the hearing, the facts and
22 issues to be determined in the hearing, any stipulations or agreements
23 between the parties, and a statement of the right to appeal the decision.

24 B. Testimony - Witnesses called by either party shall testify one at a
25 time. They shall be permitted to listen to one another's testimony only
26 with the consent of both parties and at the discretion of the hearing officer.

27 C. Recording - A written or electronic verbatim recording of all
28 testimony and other evidence presented at the hearing shall be made and
29 shall become part of the record of the hearing.

30 D. Evidence admitted - The hearing officer shall not be bound by the
31 rules of evidence applicable to the courts, but shall be bound by the rules
32 of privilege recognized by law. Evidence shall be admitted if it is the kind
33 of evidence upon which reasonable persons are accustomed to rely in the
34 conduct of serious affairs. The hearing officer may exclude irrelevant or
35 unduly repetitious evidence and shall exclude evidence not disclosed to
36 the other party at least five business days prior to the due process
37 hearing.

38 E. Persons presenting testimony or exhibits shall be sworn or
39 affirmed.

1 F. Official notice - The hearing officer may take official notice of any
2 facts on which judicial notice could be taken and in addition may take
3 official notice of statutes, regulations and similar non-confidential
4 Department or school documents. Parties shall be notified of the material
5 so noticed and they shall be afforded an opportunity to contest the
6 substance or materiality of the facts noticed.

7 G. Facts officially noticed shall be included and indicated as such in
8 the record.

9 H. Cross-examination - Both parties and the hearing officer have the
10 right to examine and cross-examine witnesses.

11 I. Order of presentation - The order of presentation of testimony and
12 exhibits shall be as follows unless otherwise agreed by the parties or
13 determined appropriate by the hearing officer.

- 14 1. Opening remarks by the hearing officer;
- 15 2. Opening statement by the party requesting the hearing;
- 16 3. Opening statement by the other party;
- 17 4. Presentation of evidence by the party (superintendent or
18 parents) requesting the hearing and any witnesses for that party;
- 19 5. Presentation of evidence by the other party and any
20 witnesses for that party;
- 21 6. Rebuttal witnesses for the party requesting the hearing;
- 22 7. Rebuttal witnesses for the other party;
- 23 8. Summation by the party requesting the hearing; and
- 24 9. Summation by the other party.

25 J. Concluding remarks by the hearing officer - Prior to adjournment,
26 the hearing officer shall advise all parties that the findings of fact and the
27 hearing officer's written decision shall be made within 15 days of the
28 conclusion of the hearing.

29 K. Conclusion of hearing; reopening of record - Upon conclusion of
30 the hearing, no other evidence or testimony shall be permitted unless the
31 record is held open by the hearing officer for the receipt of additional
32 material specifically designated. The hearing officer may reopen the
33 record for further proceedings at any time prior to the issuance of the final
34 decision upon provision of appropriate notice to the parties.

35 13.13 Expedited Due Process Hearings.

36 Expedited due process hearings shall:

1 A. Meet the hearing procedures specified in §13.12 except that the
2 hearing officer may elect to limit the hearing to a single day for
3 presentation of evidence, direct and cross-examination of witnesses, and
4 rebuttal.

5 B. Result in a hearing within 20 business days of the request for the
6 hearing, unless the parents and school officials otherwise agree;

7 C. Result in a decision being mailed to the parties no later than 45
8 days after the receipt of the request without exceptions or extensions.

9 D. The appointment of the hearing officer shall meet the requirements
10 of §13.6, Appointment of Hearing Officer, except that the time periods
11 identified in §13.12, Hearing Procedures for disclosure of evidence shall,
12 for purposes of expedited due process hearings, be not less than five
13 business days; and

14 E. Be conducted by a due process hearing officer who satisfies the
15 requirements of §13.6, Appointment of Hearing Officer.

16 The decision of an expedited due process hearing is appealable to state
17 or federal court.

18 13.14 Final Decision Notice

19 Every decision made at the conclusion of a proceeding subject to this rule
20 shall be in writing and shall include findings of fact sufficient to apprise the
21 parties and any interested member of the public of the basis for the
22 decision.

23 A. Findings of fact; final decision - The hearing officer shall issue the
24 findings of fact and the final decision to all parties within 15 days after the
25 conclusion of the hearing.

26 B. Transmittal of record of hearing - The hearing officer shall forward
27 the complete record of the hearing, the finding of facts, and the final
28 decision to the Due Process Coordinator within 15 days after the
29 conclusion of the hearing. The Department will transmit the findings of
30 fact and decision, after deleting personally identifiable information, to the
31 Maine Advisory Panel on the Education of Children with Disabilities.

32 C. Appeal - Any party to the hearing may appeal the decision of the
33 hearing officer to the Maine Superior Court or the Federal District Court.
34 Maine law requires that such appeals be brought in Maine Superior Court
35 within 30 days of the receipt of the decision of the hearing officer. The
36 Federal Court may elect to apply this 30 day statute of limitation to
37 appeals brought in Federal Court as well. An appeal may be filed in
38 Maine Superior Court for the county in which the student resides or the
39 county in which the administrative unit is located.

1 D. Compliance - The administrative unit shall submit to the
2 Commissioner, within 45 days of the date the unit receives the final
3 decision, documentation that the unit has complied with the decision or
4 that an appeal is pending.

5 E. Enforcement - If the administrative unit refuses to comply with a
6 hearing decision and neither party appeals the decision, the
7 Commissioner shall initiate enforcement action (see §16.6, Approval,
8 Enforcement and 20-A M.R.S.A. §§6801-A & 7206).

9 13.15 Hearing Record

10 In proceedings subject to this rule the hearing officer shall make a record
11 consisting of:

- 12 A. All papers filed and evidence received or considered;
13 B. A statement of facts officially noticed;
14 C. Offers of proof, objections and rulings thereon;
15 D. Findings of fact; and
16 E. The final decision.

17 The Commissioner shall retain the entire record of the hearing. Any party
18 to the hearing has a right to obtain a written or electronic verbatim record
19 of the hearing.

20 Parents are entitled to a written record or, at their option, an electronic
21 verbatim record of the hearing at no cost to the parents. The Department
22 of Education shall provide a record of the hearing to the parents including
23 a transcript upon receipt of notice of an appeal of the decision by the
24 parents.

25 13.16 Hearing Expenditures/Attorney Fees

26 A. School unit expenses - Personnel expenses incurred by an
27 administrative unit in the conduct of a hearing shall be considered
28 allowable special education costs. All expenditures (such as fees,
29 honoraria, and per diem expenses) by an administrative unit to personnel
30 involved in a hearing shall be supported by contractual agreements
31 between these personnel and the administrative unit. Attorneys fees and
32 expenses for qualified special education or related services providers may
33 be claimed as special education costs.

34 B. Private expenses of hearing - Reasonable attorney fees incurred
35 by a parent related to a special education hearing shall be the
36 responsibility of the administrative unit when the parent prevails in the
37 special education hearing and when ordered by a court of appropriate
38 jurisdiction, or when an out-of-court settlement has been agreed to by

1 both parties. Attorney fees shall be considered an allowable special
2 education expenses.

3 C. Public expenses of hearing - Impartial hearing officer expenses for
4 due process hearings will be paid directly by the Department.

5
6 14. DISCIPLINE OF STUDENTS WITH DISABILITIES

7 14.1 Change Of Placement For Disciplinary Removals.

8 For purposes of removal of a student with a disability from the student's
9 current educational placement under §§ 14.2 – 14.11, a change of
10 placement occurs if the removal is for more than 10 consecutive school
11 days; or the student is subjected to a series of removals that constitute a
12 pattern because they cumulate to more than 10 school days in a school
13 year, and because of factors such as the length of each removal, the total
14 amount of time the student is removed, and the proximity of the removals
15 to one another.

16 14.2 Authority Of School Personnel.

17 A. School personnel may order:

18 1(a). to the extent removal would be applied to students without
19 disabilities, the removal of a student with a disability from the
20 student's current placement for not more than 10 consecutive
21 school days for any violation of school rules, and additional
22 removals of not more than 10 consecutive school days in that same
23 school year for separate incidents of misconduct (as long as those
24 removals do not constitute a change of placement under §14.1,
25 Change Of Placement For Disciplinary Removals);

26 (b). After a student with a disability has been removed from his or
27 her current placement for more than 10 school days in the same
28 school year, during any subsequent days of removal the public
29 agency must provide services to the extent required under §14.3,
30 F.A.P.E. for Students Suspended or Expelled from School; and

31 2. A change in placement of a student with a disability to an
32 appropriate interim alternative educational setting for the same
33 amount of time that a student without a disability would be subject
34 to discipline, but for not more than 45 days, if:

35 (a). the student carries a weapon to or possesses a weapon at
36 school or a school function under the jurisdiction of a State or
37 school administrative unit; or

38 (b). the student knowingly possesses or uses illegal drugs or sells
39 or solicits the sale of a controlled substance while at school or a

1 school function under the jurisdiction of a State or school
2 administrative unit.

3 B 1. Either before or not later than 10 business days after either
4 first removing the student for more than 10 school days in a school year or
5 commencing a removal that constitutes a change of placement under
6 §14.1, Change Of Placement For Disciplinary Removals, including the
7 action described in paragraph (A)(2) of this section—

8 (a). If the S.A.U. did not conduct a functional behavioral
9 assessment and implement a behavioral intervention plan for the
10 student before the behavior that resulted in the removal described
11 in paragraph (A) of this section, the agency shall convene an I.E.P.
12 meeting to develop an assessment plan.

13 (b). If the student already has a behavioral intervention plan, the
14 Pupil Evaluation Team shall meet to review the plan and its
15 implementation, and, modify the plan and its implementation as
16 necessary, to address the behavior.

17 2. As soon as practicable after developing the plan described
18 in paragraph (B)(1)(a) of this section, and completing the
19 assessments required by the plan, the S.A.U. shall convene an
20 I.E.P. meeting to develop appropriate behavioral interventions to
21 address that behavior and shall implement those interventions.

22 C 1. If subsequently, a student with a disability who has a
23 behavioral intervention plan and who has been removed from the
24 student's current educational placement for more than 10 school days in a
25 school year is subjected to a removal that does not constitute a change of
26 placement under §14.1, the Pupil Evaluation Team members shall review
27 the behavioral intervention plan and its implementation to determine if
28 modifications are necessary.

29 2. If one or more of the team members believe that
30 modifications are needed, the team shall meet to modify the plan
31 and its implementation, to the extent the team determines
32 necessary.

33 D. For purposes of this section, the following definitions apply:

34 1. Controlled substance means a drug or other substance
35 identified under schedules I, II, III, IV, or V in §202(c) of the
36 Controlled Substances Act (21 U.S.C. 812(c)).

37 2. Illegal drug—

38 (a). Means a controlled substance; but

39 (b). Does not include a substance that is legally possessed or used
40 under the supervision of a licensed health-care professional or that

1 is legally possessed or used under any other authority under that
2 Act or under any other provision of Federal law.

3 3. Weapon has the meaning given the term "dangerous
4 weapon" under paragraph (2) of the first subsection (g) of Section
5 930 of Title 18, United States Code and 17-A M.R.S.A. §1(9).

6 14.3 F.A.P.E. For Students Suspended Or Expelled From School.

7 A. A public agency need not provide services during periods of
8 removal under §14.2(A)(1) to a student with a disability who has been
9 removed from his or her current placement for 10 school days or less in
10 that school year, if services are not provided to a student without
11 disabilities who has been similarly removed.

12 B. In the case of a student with a disability who has been removed
13 from his or her current placement for more than 10 school days in that
14 school year, the public agency, for the remainder of the removals, must:

15 1. Provide services to the extent necessary to enable the student
16 to appropriately progress in the general curriculum and
17 appropriately advance toward achieving the goals set out in the
18 student's I.E.P., if the removal is:

19 (a). Under the school personnel's authority to remove for not more
20 than 10 consecutive school days as long as that removal does not
21 constitute a change of placement under §§14.1 and 14.2; or

22 (b). For behavior that is not a manifestation of the student's
23 disability, consistent with §14.7; and

24 2. Provide services, consistent with §14.5, regarding the
25 determination of the appropriate interim alternative educational
26 setting, if the removal is—

27 (a). For drug or weapons offenses under §14.2(A)(2); or

28 (b). Based on a hearing officer determination that maintaining the
29 current placement of the student is substantially likely to result in
30 injury to the student or to others if he or she remains in the current
31 placement, consistent with §14.4.

32 C. School personnel, in consultation with the student's special
33 education teacher, determine the extent to which services are necessary
34 to enable the student to appropriately progress in the general curriculum
35 and appropriately advance toward achieving the goals set out in the
36 student's I.E.P. if the student is removed under the authority of school
37 personnel to remove for not more than 10 consecutive school days as
38 long as that removal does not constitute a change of placement under
39 §14.1.

1 The student's Pupil Evaluation Team determines the extent to which
 2 services are necessary to enable the student to appropriately progress in
 3 the general curriculum and appropriately advance toward achieving the
 4 goals set out in the student's I.E.P. if the student is removed because of
 5 behavior that has been determined not to be a manifestation of the
 6 student's disability, consistent with §14.7.

7 **14.4 Authority Of Hearing Officer.**

8 A hearing officer may order a change in the placement of a student with a
 9 disability to an appropriate interim alternative educational setting for not
 10 more than 45 days if the hearing officer, in an expedited due process
 11 hearing—

12 A. Determines that the public agency has demonstrated by substantial
 13 evidence that maintaining the current placement of the student is
 14 substantially likely to result in injury to the student or to others;

15 B. Considers the appropriateness of the student's current placement;

16 C. Considers whether the public agency has made reasonable efforts
 17 to minimize the risk of harm in the student's current placement, including
 18 the use of supplementary aids and services; and

19 D. Determines that the interim alternative educational setting that is
 20 proposed by school personnel who have consulted with the student's
 21 special education teacher, meets the requirements of §14.5.

22 E. As used in this section, the term substantial evidence means
 23 beyond a preponderance of the evidence.

24 **14.5 Determination Of Setting.**

25 A. General. The interim alternative educational setting referred to in
 26 §14.2(A)(2) must be determined by the Pupil Evaluation Team.

27 B. Additional requirements. Any interim alternative educational setting
 28 in which a student is placed under §§14.2(A)(2) or 14.4 must:

29 1. Be selected so as to enable the student to continue to progress in the
 30 general curriculum, although in another setting, and to continue to receive
 31 those services and modifications, including those described in the
 32 student's current I.E.P., that will enable the student to meet the goals set
 33 out in that I.E.P.; and

34 2. Include services and modifications to address the behavior described
 35 in §§14.2(A)(2) or 14.4, that are designed to prevent the behavior from
 36 recurring.

37 **14.6 Manifestation Determination Review.**

38 A. General. If an action is contemplated regarding behavior described
 39 in §§14.2(A)(2) or 14.4, or involving a removal that constitutes a change of

1 placement under §14.1 for a student with a disability who has engaged in
2 other behavior that violated any rule or code of conduct of the S.A.U. that
3 applies to all students—

4 1. Not later than the date on which the decision to take that action is
5 made, the parents must be notified of that decision and provided the
6 procedural safeguards notice described in §12.11; and

7 2. Immediately, if possible, but in no case later than 10 school days after
8 the date on which the decision to take that action is made, a review must
9 be conducted of the relationship between the student's disability and the
10 behavior subject to the disciplinary action.

11 B. Individuals to carry out review. A review described in paragraph (A)
12 of this section must be conducted by the P.E.T. and other qualified
13 personnel in a meeting.

14 C. Conduct of review. In carrying out a review described in paragraph
15 (A) of this section, the Pupil Evaluation Team and other qualified
16 personnel may determine that the behavior of the student was not a
17 manifestation of the student's disability only if the Pupil Evaluation Team
18 and other qualified personnel:

19 1. First consider, in terms of the behavior subject to disciplinary action, all
20 relevant information, including:

21 (a) Evaluation and diagnostic results, including the results or other
22 relevant information supplied by the parents of the student;

23 (b) Observations of the student; and

24 (c) The student's I.E.P. and placement; and

25 2. Then determine that—

26 (a) In relationship to the behavior subject to disciplinary action, the
27 student's I.E.P. and placement were appropriate and the special
28 education services, supplementary aids and services, and behavior
29 intervention strategies were provided consistent with the student's
30 I.E.P. and placement;

31 (b) The student's disability did not impair the ability of the student to
32 understand the impact and consequences of the behavior subject
33 to disciplinary action; and

34 (c) The student's disability did not impair the ability of the student to
35 control the behavior subject to disciplinary action.

36 D. Decision. If the Pupil Evaluation Team and other qualified
37 personnel determine that any of the standards in paragraph (C)(2) of this
38 section were not met, the behavior must be considered a manifestation of
39 the student's disability.

1 E. Meeting. The review described in paragraph (A) of this section may
2 be conducted at the same P.E.T. meeting that is convened under
3 §14.2(B).

4 F. Deficiencies in I.E.P. or placement. If, in the review in paragraphs
5 (B) and (C) of this section, a public agency identifies deficiencies in the
6 student's I.E.P. or placement or in their implementation, it must take
7 immediate steps to remedy those deficiencies.

8 14.7 Determination That Behavior Was Not Manifestation Of Disability.

9 A. General. If the result of the review described in §14.6 is a
10 determination, consistent with §14.6(D), that the behavior of the student
11 with a disability was not a manifestation of the student's disability, the
12 relevant disciplinary procedures applicable to students without disabilities
13 may be applied to the student in the same manner in which they would be
14 applied to students without disabilities, except as provided in §14.3.

15 B. Additional requirement. If the public agency initiates disciplinary
16 procedures applicable to all students, the agency shall ensure that the
17 special education and disciplinary records of the student with a disability
18 are transmitted for consideration by the person or persons making the
19 final determination regarding the disciplinary action.

20 C. Student's status during due process proceedings. Except as
21 provided in §14.9, §12.12, Student's Status During Pendency of Appeals
22 applies if a parent requests a hearing to challenge a determination made
23 through the review described in §14.6 that the behavior of the student was
24 not a manifestation of the student's disability.

25 14.8 Parent Appeal.

26 A. General. (1) If the student's parent disagrees with a determination
27 that the student's behavior was not a manifestation of the student's
28 disability or with any decision regarding placement under §§14.2 – 14.11,
29 the parent may request a hearing.

30 (2) The State or school administrative unit shall arrange for an expedited
31 hearing in any case described in paragraph (A)(1) of this section if a
32 hearing is requested by a parent.

33 B. Review of decision. (1) In reviewing a decision with respect to the
34 manifestation determination, the hearing officer shall determine whether
35 the public agency has demonstrated that the student's behavior was not a
36 manifestation of the student's disability consistent with the requirements of
37 §14.6(D).

38 (2) In reviewing a decision under §14.2(A)(2) to place the student in an
39 interim alternative educational setting, the hearing officer shall apply the
40 standards in §14.4.

1 14.9 Placement During Appeals.

2 A. General. If a parent requests a hearing or an appeal regarding a
3 disciplinary action described in §§14.2(A)(2) or 14.4 to challenge the
4 interim alternative educational setting or the manifestation determination,
5 the student must remain in the interim alternative educational setting
6 pending the decision of the hearing officer or until the expiration of the
7 time period provided for in §§14.2(A)(2) or 14.4, whichever occurs first,
8 unless the parent and the State agency or school administrative unit
9 agree otherwise.

10 B. Current placement. If a student is placed in an interim alternative
11 educational setting pursuant to §§14.2(A)(2) or 14.4 and school personnel
12 propose to change the student's placement after expiration of the interim
13 alternative placement, during the pendency of any proceeding to
14 challenge the proposed change in placement the student must remain in
15 the current placement (the student's placement prior to the interim
16 alternative educational setting), except as provided in paragraph (c) of this
17 section.

18 C. Expedited hearing.

19 1. If school personnel maintain that it is dangerous for the student to
20 be in the current placement (placement prior to removal to the interim
21 alternative education setting) during the pendency of the due process
22 proceedings, the S.A.U. may request an expedited due process hearing.

23 2. In determining whether the student may be placed in the alternative
24 educational setting or in another appropriate placement ordered by the
25 hearing officer, the hearing officer shall apply the standards in §14.4.

26 3. A placement ordered pursuant to paragraph (C)(2) of this section
27 may not be longer than 45 days.

28 4. The procedure in paragraph (C) of this section may be repeated, as
29 necessary.

30 14.10 Protections For Students Not Yet Eligible For Special Education And
31 Related Services.

32 A. General. A student who has not been determined to be eligible for
33 special education and related services under these rules and who has
34 engaged in behavior that violated any rule or code of conduct of the
35 school administrative unit, including any behavior described in §§14.2 or
36 14.4, may assert any of the protections provided for in these rules if the
37 S.A.U. had knowledge (as determined in accordance with Paragraph B,
38 Basis of Knowledge that the student was a student with a disability before
39 the behavior that precipitated the disciplinary action occurred.

1 B. Basis of knowledge. An S.A.U. must be deemed to have
2 knowledge that a student is a student with a disability if—

3 1. The parent of the student has expressed concern in writing (or orally if
4 the parent does not know how to write or has a disability that prevents a
5 written statement) to personnel of the appropriate educational agency that
6 the student is in need of special education and related services;

7 2. The behavior or performance of the student demonstrates the need for
8 these services, in accordance with Part 3, Students With Disabilities of
9 these rules;

10 3. The parent of the student has requested an evaluation of the student
11 pursuant to Part 9, Evaluation and Identification of Students with
12 Disabilities of these rules; or

13 4. The teacher of the student, or other personnel of the school
14 administrative unit, has expressed concern about the behavior or
15 performance of the student to the director of special education of the
16 agency or to other personnel in accordance with the agency's established
17 student find or special education referral system.

18 C. Exception. A school administrative unit would not be deemed to
19 have knowledge under paragraph (b) of this section if, as a result of
20 receiving the information specified in that paragraph, the agency—

21 1. Either—

22 (a) Conducted an evaluation under Part 9, Evaluation and
23 Identification of Students with Disabilities of these rules, and
24 determined that the student was not a student with a disability
25 under these rules; or

26 (b) Determined that an evaluation was not necessary; and

27 2. Provided notice to the student's parents of its determination under
28 paragraph (C)(1) of this section, consistent with §12.3, Prior Written
29 Notice.

30 D. Conditions that apply if no basis of knowledge. (1) General. If an
31 S.A.U. does not have knowledge that a student is a student with a
32 disability (in accordance with paragraphs (B) and (C) of this section) prior
33 to taking disciplinary measures against the student, the student may be
34 subjected to the same disciplinary measures as measures applied to
35 students without disabilities who engaged in comparable behaviors
36 consistent with paragraph (D)(2) of this section.

37 2. Limitations.

38 (a) If a request is made for an evaluation of a student during the
39 time period in which the student is subjected to disciplinary

1 measures under §§14.2 or 14.4, the evaluation must be conducted
2 in an expedited manner.

3 (b) Until the evaluation is completed, the student remains in the
4 educational placement determined by school authorities, which can
5 include suspension or expulsion without educational services.

6 (c) If the student is determined to be a student with a disability,
7 taking into consideration information from the evaluation conducted
8 by the agency and information provided by the parents, the agency
9 shall provide special education and related services in accordance
10 with the provisions of these rules, including the requirements of
11 §§14.2 – 14.9.

12 14.11 Expedited Due Process Hearings.

13 A. Expedited due process hearings under §§14.4 – 14.9 must—

- 14 1. Meet the requirements of §13.12, Hearing Procedures; and
15 2. Be conducted by a due process hearing officer who satisfies the
16 requirements of §13.6, Appointment of Hearing Officer.

17 B (1). Expedited hearings shall result in a written decision being
18 mailed to the parties within 45 days of the Department's receipt of the
19 request for the hearing, without exceptions or extensions.

20 2. The timeline established under paragraph (B)(1) of this section must be
21 the same for expedited hearings requested by parents or public agencies.

22 C. The decisions on expedited due process hearings are appealable
23 consistent with §13.14, Final Decision Notice.

24 14.12 Referral To And Action By Law Enforcement And Judicial Authorities.

25 A. Nothing in these rules prohibits an S.A.U. from reporting a crime
26 committed by a student with a disability to appropriate authorities or to
27 prevent State law enforcement and judicial authorities from exercising
28 their responsibilities with regard to the application of Federal and State
29 law to crimes committed by a student with a disability.

30 B (1) An S.A.U. reporting a crime committed by a student with a
31 disability shall ensure that copies of the special education and disciplinary
32 records of the student are transmitted for consideration by the appropriate
33 authorities to whom it reports the crime.

34 2. An S.A.U. reporting a crime under this section may transmit copies of
35 the student's special education and disciplinary records only to the extent
36 that the transmission is permitted by the Family Educational Rights and
37 Privacy Act.

38

1 15. EDUCATION RECORDS

2 15.1 General Principles: Confidentiality Requirements

3 Each school administrative unit shall adopt and implement procedures to
4 protect the confidentiality of student records, in accordance with the
5 federal Family Educational Rights and Privacy Act of 1974 and the
6 Individuals with Disabilities Education Act.

7 NOTE: Copies of the Family Educational Rights and Privacy Act and the
8 Individuals with Disabilities Education Act are available from the Special
9 Services Team, Maine Department of Education.

10 15.2 Definitions

11 The following terms shall have the definitions set forth here for purposes
12 of these rules:

13 Destruction - Physical destruction or removal of personal identifiers from
14 information so that the information is no longer personally identifiable.

15 Parent - Includes any of the following, unless otherwise specified: natural
16 or adoptive parent, legal guardian, non-custodial parent, or surrogate
17 parent.

18 Education records - Those records which are maintained by a school unit
19 or agency which are directly related to a student and any information
20 pertaining to an identifiable student. The type of records covered under
21 this term are further defined in the regulations implementing the Family
22 Educational Rights and Privacy Act of 1974.

23 School - The term "school" means any agency or institution which collects,
24 maintains, or uses personally identifiable information, or from which
25 information is obtained, under these rules.

26 15.3 Access Rights

27 Each school shall permit parents, adult students, or their authorized
28 representative to inspect and review any education records relating to
29 their student which are collected, maintained, or used by the school under
30 these regulations. The school shall comply with a request for access
31 without unnecessary delay and before any meeting regarding an
32 Individualized Education Program or any due process hearing relating to
33 the identification, evaluation, or placement of the student, and in no case
34 more than 45 days after the request has been made.

35 The right to inspect and review education records under this section
36 includes:

37 A. The right to a timely response from the school to reasonable
38 requests for explanations and interpretations of the records;

1 B. The right to copies of the records containing the information if
2 failure to provide those copies would effectively prevent the parent from
3 exercising the right to inspect and review the records;

4 C. The right to have a representative of the parent inspect and review
5 the records; and

6 D. The right to a list of the types and locations of education records
7 collected, maintained, or used by the school.

8 15.4 Consent

9 Consent of the parent shall be obtained in writing before personally
10 identifiable information is disclosed to anyone other than designated
11 officials or employees of the school, except as noted below.

12 The written consent required by this section shall be signed and dated by
13 the parent giving consent and shall include:

14 A. A specification of the records which may be disclosed;

15 B. The purpose(s) of the disclosures; and

16 C. The party or parties to whom the disclosures may be made.

17 A school shall disclose education records without parental consent upon
18 request from another school or school system in which the student is
19 enrolled or intends to enroll in accordance with the Family Educational
20 Rights and Privacy Act. An administrative unit shall disclose personally
21 identifiable information and education records to authorized staff of the
22 Department of Education and federal Department of Education upon
23 request.

24 In the event that a parent refuses to provide consent for the release of
25 information necessary to determine the need or to provide a free
26 appropriate public education to a student in need of special education and
27 supportive services, the responsible agency may seek to overrule the
28 parent's objections through the use of the due process hearing system.

29 15.5 Record of Access

30 Each school shall keep a record of parties who have obtained access to
31 education records (except for access by parents and authorized
32 employees of the school). The record shall include the name of the party,
33 the date access was given, and the purpose for which the party is
34 authorized to use the records and shall be maintained with the education
35 records.

36 15.6 Records on More Than One Student

37 If any education record includes information on more than one student,
38 the parents of a student shall have the right to inspect and review only the

1 information relating to their student or to be informed of that specific
2 information.

3 15.7 Fees

4 A school may, based on local policy, charge a reasonable fee for copies
5 of records provided to parents under this rule. The fee shall not prevent
6 the parents from effectively exercising their right to inspect and review
7 those records.

8 A school may not charge a fee to search for or to retrieve information
9 under these regulations.

10 15.8 Amendment of Records at Parental Request

11 A. Request to amend records - A parent may request a school to
12 amend education records that the parent believes to be inaccurate,
13 misleading or in violation of the privacy or other rights of a student.

14 The school shall, within 15 days of receipt of the request, either amend
15 the information in accordance with the parent's request or inform the
16 parents of its refusal to amend the information and advise the parent of
17 the opportunity for a hearing.

18 B. Opportunity for a hearing - The school shall, on request, provide a
19 hearing in which the parent may challenge information in education
20 records.

21 The hearing shall be conducted according to the procedures specified in
22 the regulations implementing the Family Educational Rights and Privacy
23 Act of 1974.

24 C. Result of hearing - If the hearing officer decides that the information
25 is inaccurate, misleading, or otherwise in violation of the privacy or other
26 rights of the student, the school shall amend the information accordingly
27 and so inform the parent in writing.

28 If the hearing officer decides that the information is NOT inaccurate,
29 misleading, or otherwise in violation of the privacy or other rights of the
30 student, the hearing officer shall inform the parent of the right to place a
31 statement commenting on the information or setting forth any reasons for
32 disagreeing with the decision of the school in the student's education
33 records.

34 D. Any explanation placed in the education record of the student
35 under this section shall:

- 36 1. Be maintained by the school as part of the records of the
37 student as long as the record or contested portion is maintained by
38 the school; and

1 2. Be disclosed to any party to whom the education record is
2 disclosed.

3 15.9 Safeguards

4 Each school shall protect the confidentiality of education records at
5 collection, storage, disclosure, and destruction stages.

6 The superintendent of each school unit and each school director shall
7 appoint an individual to be responsible for ensuring the confidentiality of
8 education records and training other staff.

9 All persons collecting or using personally identifiable information shall
10 receive training or instruction regarding the federal law, state and local
11 policies and procedures for ensuring confidentiality.

12 Each school shall maintain, for public inspection, a current listing of the
13 names and positions of those employees within the school who may have
14 access to education records.

15 15.10 Destruction of Information

16 The School Administrative Unit shall inform parents when the S.A.U. has
17 determined that education records are no longer needed to provide
18 educational services to the student or to demonstrate that the S.A.U. has
19 provided the student with a free appropriate public education as required
20 by these rules. Such records must be destroyed at the request of the
21 parents or may be turned over to parents upon their request. However, a
22 permanent record of a student's name, address, phone number, grades,
23 attendance record, classes attended, grade level completed, and year
24 completed shall be maintained without time limitations.

25 NOTE: Education records pertaining to students with disabilities may be
26 useful in the future to the student or their parents if application is made for
27 federal benefits.

28
29 16. SPECIAL EDUCATION REVIEWS

30 16.1 Departmental Approval Requirements; Special Education Reviews

31 Students with disabilities may be served only in schools which have been
32 approved by the Department for the provision of special education and
33 supportive services. To determine if schools meet all applicable
34 standards, a Special Education Review of each school administrative unit,
35 regional special education service, state-operated special education
36 service and special purpose private school (hereinafter "school") shall be
37 conducted or arranged by the Special Services Team, Maine Department
38 of Education on a 5-year schedule. More frequent site visits shall be
39 conducted when it is determined by the Commissioner that additional on-

1 site monitoring or technical assistance is necessary to assure compliance
2 with federal and state special education requirements.

3 **16.2 Special Education Review Activities**

4 The special education review process shall consist of both a "desk audit"
5 and an on-site visit.

6 The purpose of the desk audit is to review the special education
7 information on file at the Department. The desk audit shall include a
8 review of the reports filed by the school and any other information as may
9 be required by the Commissioner.

10 The purpose of the on-site visit is to review all aspects of the special
11 education services provided by the school. The on-site portion of each
12 special education review shall include an orientation, interviews with
13 administrative and instructional staff, examination of facilities, review of a
14 random sample of student records, and such other activities deemed
15 necessary to determine whether the school operates in compliance with
16 special education law and regulations.

17 **16.3 Letter of Findings**

18 Within a reasonable period of the completion of the on-site portion of a
19 program review, the Special Services Team shall provide the
20 superintendent of the administrative unit or the director of the school with
21 a written Letter of Findings concerning the special education services
22 provided by the school.

23 **16.4 Corrective Action Plan**

24 The Special Services Team shall assist the superintendent or director of
25 the school in the development of a Corrective Action Plan when areas of
26 non-compliance with federal or state law and regulations are identified.

27 If the negotiations on the Corrective Action Plan are not completed within
28 a reasonable period after the S.A.U.'s receipt of the Letter of Findings, the
29 Department reserves the right to develop and submit a final and binding
30 plan to the superintendent or director.

31 **16.5 Report of Compliance Activities**

32 Each school shall provide to the Special Services Team a written report
33 detailing implementation of the activities specified in the Corrective Action
34 Plan. Such written report shall be submitted within the schedule specified
35 in the Corrective Action Plan or upon completion of the Corrective Action
36 Plan, whichever occurs first.

1 **16.6 Approval, Enforcement**

2 The school shall be granted full approval when found to be in compliance
3 with federal and state law and regulations relating to the education of
4 students with disabilities.

5 If the school is unable to achieve compliance within the period specified in
6 the Corrective Action Plan, the school shall document all efforts to achieve
7 compliance and show just cause for failure to complete the activities
8 specified in the Corrective Action Plan. The school may be granted
9 conditional approval until such time as full compliance is achieved.

10 Failure to achieve program compliance through the completion of the
11 activities specified within the Corrective Action Plan or failure to submit
12 the Report of Compliance Activities as required above may, in the
13 judgment of the Commissioner and consistent with applicable law, result
14 in one or more of the following enforcement activities:

15 A. Withholding of state subsidy payments to eligible school
16 administrative units;

17 B. Withholding of special education or other federal grant funds to
18 schools which are sub-recipients; and/or

19 C. Referral to legal counsel for appropriate civil action (see 20-A
20 M.R.S.A. §§6801-A & 7206).

21 **16.7 Local Special Education Plan**

22 Completion of the review process shall constitute, in part, submission to
23 the Commissioner of that school's plan of services for the education of
24 students with disabilities, as required by 20-A M.R.S.A. §7204(4).

25 **16.8 Public Access**

26 Letters of Findings and Corrective Action Plans are public records and
27 shall be made available to parents and other members of the public upon
28 request in accordance with the Freedom of Access Act (1 M.R.S.A. §401
29 *et seq.*) Copies shall be available from the Department and the school
30 upon the receipt of such records by the school.

31
32 **17. PRIVATE SCHOOLS: STATE APPROVAL OF PROGRAMS**

33 **17.1 General Principle: Necessity of Approval**

34 No school unit may place a student with a disability in a private general
35 purpose or special purpose school unless that school has been approved
36 for such purposes by the Commissioner of Education.

1 17.2 Private General Purpose Schools

2 A private general purpose school which seeks to offer special education
3 services must have been approved as an elementary or secondary school
4 for tuition purposes pursuant to 20-A M.R.S.A. §2951. To accept special
5 education students, the school must also have special education
6 approval.

7 Notwithstanding any contract or tuition arrangements with a secondary
8 school approved for tuition purposes pursuant to 20-A M.R.S.A. §2951, no
9 student with a disability shall be placed in a private general purpose
10 school through the P.E.T./Individualized Education Program process
11 unless the school also has special education approval. If the
12 Individualized Education Program developed for the student requires
13 special education services which the private school is unable to deliver,
14 the responsible school unit shall make arrangements to provide the
15 services to the student.

16 17.3 Private Special Purpose Schools

17 A private special purpose school must meet all applicable components of
18 the basic school approval standards (Maine Dept. of Ed. Regs. 125) for
19 elementary or secondary private schools and shall be approved by the
20 Commissioner for the provision of special education and supportive
21 services.

22 17.4 Special Education Approval

23 Each private school that proposes to provide special education and
24 supportive services to students with disabilities shall submit an approval
25 request in the format prescribed by the Commissioner. Each such
26 request for approval shall include:

- 27 A. Written requirements for admission including the number of
28 students, the ages, and types of disabilities served;
- 29 B. Qualified staff appropriately registered, licensed or certified for their
30 positions and job titles;
- 31 C. Adequacy and appropriateness of the curriculum, extracurricular
32 activities and services to meet the needs of the students served by the
33 school;
- 34 D. Adequacy of the facilities to meet the needs of the students served
35 by the school;
- 36 E. Adequacy of employed and contracted supportive services to meet
37 the needs of the students served by the school;
- 38 F. Professional supervision by a certified administrator; and

1 G. Appropriate teacher-student ratio for the age of the students
2 served.

3 17.5 Private Special Purpose Schools Outside the State

4 If satisfied that the standards for special education/school approval in
5 another state are substantially similar to those administered by the
6 Department, and reasonably assured that the other state has adequate
7 supervision and monitoring capacity, the Commissioner may grant
8 approval to a school outside Maine based upon the actions of another
9 state education agency. If such a school is disapproved by the applicable
10 state education agency, the Commissioner shall similarly disapprove the
11 school unless a full special education review by the Department results in
12 a recommendation for direct approval.

13 17.7 Tuition Placement Approval

14 One copy of a "Request for Tuition Placement of Students with
15 Disabilities" (EF-S-01 Form) shall be submitted for review and approval by
16 the Department for each student placed by an administrative unit in a
17 special purpose private school (see §11.17, State Approval of
18 Placements).

19
20 18. SPECIAL EDUCATION FINANCES: STATE SUBSIDY AND DIRECT
21 PAYMENTS

22 18.1 General Principles; School Unit Responsibility

23 School administrative units are generally responsible for financing the
24 special education services to students with disabilities in the first instance,
25 with subsidy payments from the State made pursuant to the Maine School
26 Finance Act (20-A M.R.S.A. §15601 *et seq.*) and local property taxes. In
27 some instances, one or more state agencies may bear all or part of the
28 cost of special education services for students with disabilities although
29 Legislative appropriations may limit expenditures.

30 NOTE: Whether or not a school administrative unit qualifies for special
31 education subsidy under the School Finance Act depends upon the tax
32 base of the school unit and the level of special education costs.

33 References within this rule to special education subsidy apply to all school
34 administrative units.

35 18.2 State Subsidy: Allowable Special Education Costs

36 Special education costs for which subsidy is payable under the School
37 Finance Act include:

1 A. The salary and benefit costs of certified professional personnel,
2 educational technicians, clerical staff or qualified independent contractors
3 providing special education services or supportive services; and

4 B. The costs of tuition, board, and special education services paid to
5 other school units or private schools which have been approved by the
6 Commissioner for the provision of special education and supportive
7 services.

8 **18.3 Costs of Qualified Personnel**

9 The salary and benefit costs for qualified educational personnel shall be
10 subsidized by the Department to the extent that these personnel are
11 assigned to special education functions.

12 A. Certified educational personnel - These shall include
13 administrators, teachers and educational specialists assigned to provide
14 or administer special educational services:

DoE Certificate Title	
Administrator of Special Education	#030
Special Education Consultant	#079
School Psychological Service Provider	#093
Vocational Education Evaluator	#094
Speech & Hearing Clinician	#293
School Nurse	#524
Teacher of Students w/ Disabilities	#282
Teacher - Severe Impairments	#286
Teacher - Hearing Impairments	#292
Teacher - Visual Impairments	#291
Adapted Physical Education	#515

15
16 School units may not report as program costs the salaries or benefits (full
17 or prorated) of regular classroom teachers, administrators or educational
18 specialists (such as guidance counselors) who provide instruction and
19 services to students with disabilities in the same manner as to all other
20 students.

21 B. Licensed contractors - These shall include those persons licensed
22 by appropriate state agencies to provide supportive services to students
23 with disabilities.

Job Title	Licensing Authority
Audiologists	Maine Board of Examiners of Speech-Language Pathology and Audiology
Interpreter / Transliterator	Office of Licensing and Registration, Department of Professional and Financial Regulation
Licensed Clinical Professional Counselors	Maine Board of Professional Counselor Licensure
Occupational Therapists and Occupational Therapy Aides	Maine Board of Examiners of Occupational Therapists
Physical Therapists and Physical Therapist Assistants	Maine Board of Examiners of Physical Therapists
Psychologists	Maine Board of Examiners of Psychologists
Social Workers	Maine Board of Examiners of Social Workers
Speech-Language Pathologists, Speech-Language Pathology Aides and Assistants	Maine Board of Examiners of Speech-Language Pathology and Audiology
Attorneys	Licensed by the Maine Board of Bar Examiners and providing legal services to administrative units as required by these rules.

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C. Auxiliary Staff - These shall include those Educational Technicians I, II, and III approved by the Office of Certification and assigned full or part-time to provide special education services. Persons who are assigned as Educational Technicians in regular classrooms, and not providing direct services to students with disabilities within those classrooms, shall not be an allowable special education costs.

18.4 State Payment for State Agency Clients

Special education costs for state agency clients shall be paid by the Department in the year of allocation at 100 percent of actual costs subject to 20-A M.R.S.A. §15613. Administrative units seeking state payment for state agency clients shall submit Forms EF-S-04A and EF-S-04B in the manner required by the Commissioner.

1 18.5 Special Education Services Report (EF-S-02)

2 Annual claims for state subsidy of allowable special education expenses
3 shall be made following the close of each fiscal year using the Special
4 Education Services Report (EF-S-02 form) in accordance with the
5 accompanying instructions and with provisions of the School Finance Act.

6 18.6 Budgetary Hardship

7 A school unit's state share of subsidy may be increased in the event of
8 budgetary hardship caused by the unexpected costs of placement of a
9 student with a disability. The school unit must petition the Commissioner
10 by the date set for such petitions and demonstrate that the placement will
11 cause a budgetary hardship.

12 A budgetary hardship exists in an administrative unit when the unit's
13 budget for special education services provided by the administrative unit
14 and for special education tuition and board, as reported to the
15 Commissioner, is caused to exceed the state average percentage for
16 special education of the unit's total budget (excluding Adult Education) for
17 the current year by the initial placement of a student with a disability in an
18 approved school providing special education services.

19 The Commissioner may adjust the unit's allocation up to the amount of the
20 initial placement cost, if the unit expenditures and/or commitments for
21 special education exceed the state average percentage for special
22 education. Any adjustment granted shall reduce the local expenditure for
23 that purpose in the current year only and will not be the basis for special
24 education allocation in the future. Funds for this adjustment are limited to
25 the amount appropriated by the Legislature.

26 18.7 Reconciliation of Audit Findings

27 The annual audit of school units shall determine whether a school unit
28 which receives tuitioned students with disabilities has generated a surplus
29 of income over allowable costs or incurred a deficit. The Commissioner
30 may require a rebate to sending units or additional tuition payments from
31 sending units in such cases or require such other arrangements as are
32 deemed equitable where the audit reveals that reports were made in error.

33 18.8 Use of Third-Party Funding

34 A. Nothing in these regulations or the regulations implementing the
35 Individuals with Disabilities Education Act (20 U.S.C. §1400 *et seq.*) is
36 intended to relieve an insurer, Medicaid or other third party, from an
37 otherwise valid obligation to provide or pay for services to a student with a
38 disability.

39 B. Students with disabilities who are covered by public insurance.

1 (1) A public agency may use the Medicaid or other public insurance
2 benefits programs in which a student participates to provide or pay
3 for services required under these rules, as permitted under the
4 public insurance program, except as provided in paragraph (B)(2)
5 of this section.

6 (2) With regard to services required to provide F.A.P.E. to an
7 eligible student under these rules, a S.A.U. may not require parents
8 to sign up for or enroll in public insurance programs in order for
9 their child to receive special education services and may not
10 require parents to incur an out-of-pocket expense such as the
11 payment of a deductible or co-pay amount incurred in filing a claim
12 for services. A S.A.U. may not use a student's benefits under a
13 public insurance program if that use would decrease available
14 lifetime coverage or any other insured benefit; would result in the
15 family paying for services that would otherwise be covered by the
16 public insurance program and that are required for the student
17 outside of the time the student is in school; would increase
18 premiums or lead to the discontinuation of insurance; or would risk
19 loss of eligibility for home and community-based waivers, based on
20 aggregate health-related expenditures. A S.A.U. may pay the costs
21 for deductibles or co-payments that the parent otherwise would be
22 required to pay.

23 C. Students with disabilities who are covered by private insurance.

24 (1) With regard to services required to provide F.A.P.E. to an
25 eligible student under these rules, a S.A.U. may access a parent's
26 private insurance proceeds only if the parent provides informed
27 consent consistent with §12.4, Parental Consent.

28 (2) Each time the S.A.U. proposes to access the parent's private
29 insurance proceeds, it must obtain parental consent in accordance
30 with these rules; and inform the parents that their refusal to permit
31 the public agency to access their private insurance does not relieve
32 the S.A.U. of its responsibility to ensure that all required services
33 are provided at no cost to the parents.

34 18.9 Local Entitlement Funds

35 Each school unit providing special education services to students with
36 disabilities is eligible to receive federal "local entitlement" funds upon the
37 Department's approval of the unit's application (Form EF-S-08) for such
38 funding. Applications shall be submitted in the manner required by the
39 Commissioner. The Department shall respond within a reasonable period
40 of the receipt of each such application.

1 NOTE: The Special Services Team, Federal Programs Subteam, Maine
2 Department of Education should be contacted for more information
3 regarding Local Entitlement Funds.

4 18.10 Special Education Tuition And Costs For Out-Of-District Placement
5 Adjustment

6 A school administrative unit that places a student in an out-of-district
7 placement, in a regional program established consistent with 20-A
8 M.R.S.A. §7253, or a regional program recognized by the Department
9 prior to July 1, 1997, shall receive an adjustment equal to the amount, if
10 any, by which the tuition, treatment, and room and board costs for an
11 approved out-of district special education placement in the year of
12 allocation exceeds 3 times the secondary foundation per pupil operating
13 rate for that year, or a prorated amount if the placement is less than a full
14 year. State payments to school administrative units pursuant to this
15 section shall be made during the year of allocation. The funds for the
16 adjustment are limited to the amount appropriated by the legislature for
17 that purpose. The Department is authorized to prorate payments to units if
18 the amount appropriated is insufficient to make full payment to all units.

19 18.11 Other Agency Responsibility

20 The Department is responsible for ensuring that students with disabilities
21 who are eligible for special education services are provided a free
22 appropriate public education and that all educational programs for
23 students with disabilities in the State, including any such programs
24 administered by any other state or local agency, are under the general
25 supervision of the Department and meet the standards contained in these
26 regulations.

27 Nothing in these rules relieves any other public agency, including the
28 Maine Department of Human Services, the Maine Department of Mental
29 Health, Mental Retardation and Substance Abuse Services or the
30 Department of Labor, Bureau of Vocational Rehabilitation, of the
31 responsibility to provide or pay for any special education or supportive
32 service that the agency would otherwise provide to students with
33 disabilities who meet the eligibility criteria of that agency.

34 This requirement shall not limit the responsibilities of State Agencies other
35 than the Department of Education to provide or pay for some or all of the
36 costs of a free appropriate public education for any student with a
37 disability in the State under their jurisdiction.

38 Responsibility for services, dispute resolution, and any reimbursement of
39 cost to the Department or local agency shall be governed by Interagency
40 Agreements and the Interagency Dispute Resolution Process, 34 C.F.R.
41 §300.142(a)(3)).

1 If a public agency other than an educational agency fails to provide or pay
2 for the special education and related services, the S.A.U. shall provide or
3 pay for these services to the student in a timely manner. The S.A.U. may
4 then claim reimbursement for the services from the noneducational public
5 agency that failed to provide or pay for these services and that agency
6 shall reimburse the S.A.U. in accordance with the terms of the interagency
7 agreement.

8
9 19. SPECIAL EDUCATION FINANCES: PUBLIC SCHOOL TUITION
10 COMPUTATIONS

11 19.1 General Principles

12 School units may, in accordance with this rule, provide special education
13 services to its students by tuitioning them to another school unit. The
14 tuition rate charged by the receiving unit shall be based upon the
15 allowable costs of special education and supportive services and shall not
16 exceed the actual per pupil costs for these services.

17 19.2 Allowable Costs

18 The allowable costs for computation of tuition rates shall be the same as
19 those used in computation of tuition rates for regular students: all special
20 education costs except for costs of community services, capital outlay,
21 debt retirement, tuition and transportation.

22 19.3 Computation of Tuition Rates

23 The tuition rate for each school unit receiving tuitioned students with
24 disabilities shall be determined by dividing the sum of the allowable
25 expenditures by the average daily membership. Both the allowable
26 expenditures and the average daily membership used in computing tuition
27 of an on-going public school special education service shall be based on
28 the anticipated expenditures and actual number of students enrolled in the
29 service for the current school year.

30 19.4 Tuition Rates for New Programs

31 In the case of a new public special education service that receives tuition
32 students, the tuition shall be computed by dividing the estimated allowable
33 expenditures by the estimated average daily enrollment.

34
35 20. SPECIAL EDUCATION FINANCES: PRIVATE SCHOOL TUITION
36 COMPUTATIONS, APPROVAL PROCEDURES

37 20.1 General Principles

38 Private special purpose schools and private general purpose schools
39 may, in accordance with this rule, provide special education services to

1 students with disabilities and receive tuition payments for such services
2 from school administrative units or the Department.

3 **20.2 Annual Year-End Reports**

4 Each private special purpose school shall file an EF-S-10 Year-End
5 Report with the Department in the format required by the Commissioner.
6 All requested information pertaining to actual revenues, expenditures, and
7 enrollments and, where applicable, estimates shall be provided within the
8 specified time limits.

9 **20.3 Tuition Computation: Private Special Purpose Schools**

10 The tuition rate for each private special purpose school shall be
11 determined by dividing the sum of the allowable costs by the average
12 daily membership over the year. Tuition rates may not exceed the actual
13 per student cost of operation of the preceding school year and shall be
14 approved by the Commissioner. No payments shall be made or accepted
15 without prior approval of the tuition rate.

16 Increases in the tuition rate may not exceed 15 percent from one year to
17 the next unless the school presents sufficient evidence to the
18 Commissioner that a hardship will exist if a higher rate is not approved.

19 The Commissioner will calculate a tuition rate for new schools based upon
20 the estimated allowable costs of special education services.

21 **20.4 Private General Purpose Schools With Exclusive Contracts Or A Student
22 Enrollment With Greater Than 60% Public Tuition Students**

23 A private general purpose school that has a contract with a school
24 administrative unit for the provision of elementary and/or secondary
25 education or a student enrollment with greater than 60% public tuition
26 students shall establish a tuition rate based on actual per student costs.
27 The tuition rate for such private school special education services shall be
28 determined by dividing the sum of the allowable costs by the average
29 daily membership. Both the allowable expenditures and the average daily
30 membership used in computing tuition of an on-going special education
31 service in a general purpose private school shall be based on the
32 anticipated expenditures and actual number of pupils enrolled in the
33 service for the current school year.

34 **20.5 Private General Purpose Schools With Tuition Students**

35 A private general purpose school that does not have a contract with a
36 school administrative unit for the provision of elementary and/or
37 secondary education shall charge a tuition rate that does not exceed the
38 state elementary or secondary per student tuition rate as computed under
39 20-A M.R.S.A. §§ 5804 and 5806.

1 20.6 Residential Treatment Centers

2 The tuition, treatment, room and board rates for residential treatment
3 centers shall be developed by the Rate Setting Committee of the
4 Children's Residential Treatment Committee (C.R.T.C.).

5 20.7 Annual Audit Reports

6 Each private special purpose school shall annually file with the
7 Department, within the time limits set by the Commissioner, an audit
8 report completed by a qualified auditor. The audit of any special
9 education service operated by a private general purpose school shall be
10 incorporated in the audit report required pursuant to 20-A M.R.S.A. §2953.

11 Each audit report shall include:

12 A. Accountability of all revenues and expenditures;

13 B. A determination as to whether proper budgetary controls are in
14 place; and

15 C. A determination as to whether any financial report submitted to the
16 Department is correct.

17 20.8 Reconciliation of Audit Findings

18 The annual audit shall determine whether a school which received
19 students with disabilities has generated a surplus of income over
20 allowable costs or incurred a deficit. The Commissioner may require a
21 rebate to sending units or additional tuition payments from sending units
22 in such cases or require such other arrangements as are deemed
23 equitable where the audit reveals that reports were made in error.

24 STATUTORY AUTHORITY: 20-A M.R.S.A. §7003

25 EFFECTIVE DATE: November 1, 1999

26

1 APPENDIX 1

2
3 Title 17-A M.R.S.A. §1(9), Dangerous weapon.4 A. "Use of a dangerous weapon" means the use of a firearm or other
5 weapon, device, instrument, material or substance, whether animate or
6 inanimate, which, in the manner it is used or threatened to be used is
7 capable of producing death or serious bodily injury.8 B. "Armed with a dangerous weapon" means in actual possession,
9 regardless of whether the possession is visible or concealed, of:

10 (1) A firearm;

11 (2) Any device designed as a weapon and capable of producing
12 death or serious bodily injury; or13 (3) Any other device, instrument, material or substance, whether
14 animate or inanimate, which, in the manner it is intended to be
15 used by the actor, is capable of producing or threatening death or
16 serious bodily injury. For purposes of this definition, the intent may
17 be conditional.18 C. When used in any other context, "dangerous weapon" means a firearm
19 or any device designed as a weapon and capable of producing death or
20 serious bodily injury.21 D. For purposes of this subsection, a thing presented in a covered or open
22 manner as a dangerous weapon shall be presumed to be a dangerous
23 weapon.24
25
26 Title 18 United States Code, Section 930 Subsection g(2) - Dangerous Weapon27 The term "dangerous weapon" means a weapon, device, instrument,
28 material, or substance, animate or inanimate, that is used for, or is readily
29 capable of, causing death or serious bodily injury, except that such term
30 does not include a pocket knife with a blade of less than 2 1/2 inches in
31 length.



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