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**URGENT HIGH ALERT!**

**9 AM Wednesday, January 30, 2008  
ROOM 202 Cross Office Building in Augusta**

**OUR MAINE LEGISLATORS ARE WAITING TO HEAR FROM YOU**

**LET YOUR VOICE BE HEARD!**

**Public Hearing Scheduled for Major Bills Effecting Special Education**

**LD 2136: Legislative Review of Chapter 101 (Major Substantive Regulations for Special Education)**

**LD 1949: An Act to Change the 60 Calendar Day Timeline for Evaluations Back to 45 School Days**

**LD 2027: An Act to Provide Ombudsmen Services to Families of Children with Disabilities**

**LD 1973: An Act to Improve the Compliance and Accountability of the Child Development Services System**

Dear Friends of LDA of Maine,

Our Mission is to provide support, education, and advocacy. This means keeping you informed of activities throughout the state. Therefore I am forwarding you the e-mail and letter I received from Casco Bay Children's Alliance (CBCA). As you know the information we provide is non inclusive and does not imply an endorsement or recommendation from LDA. We encourage to you to do your own research, and make your own decisions regarding any information you may received (newspaper, radio, TV, etc.) including from LDA.

LDA like CBCA and others through out Maine, we are very concerned about the education of all our children especially those with disabilities. The educational decisions we make have a large impact our economy not only now but on our future work force, our mental health systems, and our criminal justice system. Therefore I am taking this opportunity to add the comments LDA made in December to the MDOE as well (directly below CBCA's letter).

I realized that this is all very lengthy but sometimes there is just no way to get around it. So after taking the time to read CBCA letter, I encourage you to go directly to the Maine Department of Education's (MDOE) web site (link below) for additional information. Again do your own research, become well informed, and let your voice be heard on Wednesday. Even if you do not testify your attendance will make a strong statement to our legislators that you

expect them to respect your wishes with their commitment to the success of all our children.

Sincerely,

Brenda

**Brenda M. Bennett, Executive Director  
Learning Disabilities Assoc. Maine (LDA-ME)**

Note: All Administrative and Informational Letters (with more formatting for ease of reading and printing) are available at the following address:

<http://www.maine.gov/education/edletters/index.shtml>

The current rule and the Proposed Rule Amendments for Chapter 101- Maine Unified Special Education Regulation at: <http://www.maine.gov/education/rulechanges.htm> .

Hard copies may be obtained from Jaci Holmes by phone at 207/624-6999

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-----Original Message-----

**From:** Casco Bay Childrens Alliance [<mailto:cascobaychildrensalliance@yahoo.com>]

**Sent:** Thursday, January 24, 2008 9:19 PM

**To:** [cascobaychildrensalliance@yahoo.com](mailto:cascobaychildrensalliance@yahoo.com)

**Subject:** URGENT LEGISLATIVE ALERT

Several bills affecting our children's eligibility for services are going to the legislature NEXT WEDNESDAY (JANUARY 30TH)!!!! Please read the attached memo describing the bills and what is at stake - and PLEASE, if at all possible, TAKE ACTION any way you can.

There are 2 bills of specific importance to families - LD 2136 and LD 2027.

LD 2136 is the Department of Education's revised regulations on Special Education for children age 0-20. It is this year's version of last years Special Ed bill and the Department is once again trying to cut off services to our children. Families and advocates won many decisive victories against this legislation last year - so the Dept. of Education is once again trying to overturn what we accomplished. If this bill goes through in its current form, many children with autism, learning disabilities, emotional disabilities, ADHD and the very young can have their services terminated - and there won't be much we can do about it for several years.

LD 2027 provides for a critical NEW service to families and service providers/agencies: Ombudsmen Services to Families of Children with Disabilities. This INDEPENDENT office would be responsible for giving families access to advocate and referral services, FREE OF CHARGE.

This office has the power of a state agency, but would not be controlled by the Department of Education or our local schools and has the ability to not only help parents and service providers understand and negotiate for special education services appropriately, but he/she would have the ability to recommend and advise legislators and the governor on public policies affecting our children.

Please take a moment to read the attached document. It provides greater detail on the 4 bills going to there ONE AND ONLY public hearing next week and gives you information on how you can have your voice heard. The decisions made NEXT WEEK by the Education Committee WILL affect our children one way or another. This may be one of our only chances to influence these decisions. PLEASE TAKE A MOMENT TO LEARN MORE ABOUT THESE IMPORTANT BILLS.

Thank you.

Karin Geiger

The Letter that was attached:

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**Dear Friends of the Casco Bay Children's Alliance:**

As you no doubt are aware, our state economy is in trouble. Our legislators are trying to balance our state's budget and fix a \$95 million deficit at the same time as they are trying to meet the demands of the public in providing some form of meaningful tax relief. As a result, many of the programs that are of interest and importance to our children and families are in jeopardy of either being drastically cut and/or eliminated altogether. As this is a shortened legislative session, bills are coming in fast and furious and are being scheduled for hearings with little advance notice or ability for families and advocates to organize and offer meaningful input into the process. As an individual or service provider that cares about services for children with disabilities, we wanted to alert you to some of the key bills and initiatives going forward so that you can have an opportunity to have your voice heard with respect to the services these children need and depend upon.

We apologize in advance for the length of this email - unfortunately, next Wednesday, January 30<sup>th</sup> the Education Committee has scheduled the public hearing for 4 major bills that effect children with disabilities. In order to give you some idea of what is at stake - this email has to be of some length. We have endeavored to be as concise as possible while still highlighting the major issues - if you would like additional information, please email us back.

**The 4 Major Bills scheduled for their Public Hearing on January 30th are:**

# LD 2136: Legislative Review of Chapter 101 (Major Substantive Regulations for Special Education)

This bill is basically this year's version of LD 1900 - usually referred to as the Special Education Bill. Last year, the Maine Department of Education proposed new rules regarding Special Education Services and Eligibility - which was required in order for Maine to comply with the reauthorized federal Individuals with Disabilities in Education (IDEIA 2004) law. Unfortunately, in the eyes of many Special Education advocates, attorneys, providers and families, the MDOE went beyond the boundaries of merely complying with the new Federal guidelines and proposed regulations that would greatly reduce eligibility for services for children from birth - age 20, and could potentially place Maine in jeopardy of losing our federal Special Education funding because our regulations could be found to fall below Federally mandated requirements. If you remember all the discussion last Spring around the Maine Department of Education's attempt to limit eligibility for services to only those children whose disability "**adversely affected**" their educational performance to the extent that the child is/was only capable of scoring in the bottom 2.3% in at least 3 areas of skill/educational assessment - then you remember this bill. *This bill has the potential of cutting ALL services to children with some forms of autism as well as other types emotional disabilities and for children with some forms of learning disabilities, as well as for children under the age of 5 with unspecific developmental delays.* It could drastically reduce services for children with other forms of disabilities. In addition, children who were able to perform above the 2.3% level **BECAUSE** of the services they are receiving in school or through CDS, **WOULD NO LONGER BE ELIGIBLE TO CONTINUE TO RECEIVE THEIR SERVICES** until they once again returned to functioning in the bottom 2.3% in one area (or in the bottom 7% in more than one area) for a "significant period" of time.

Families and advocates fought vigorously against this bill last year and won some significant victories against key pieces in this legislation. Most notably, our advocacy efforts led to a legislatively mandated Adverse Effect Stakeholder Task Force - a group comprised of 19 individuals representing all areas of the special education spectrum (family members, attorneys, CDS representatives, special education teachers and administrators, Department of Education officials, the Maine Developmental Disabilities Council, the Maine Children's Alliance, the Maine Learning Disabilities Assoc., and the Maine Autism Society) who were challenged by the Legislature to work together to develop a unified definition of "adverse effect" that would satisfy the needs and concerns of all parties. In fact, Representative Sean Faircloth, the Majority Whip, successfully introduced an amendment to the law that specifically instructed Sue Gendron, the Commissioner of the Maine Department of Education, to "expressly consider and address" the definition proposed by this task force. While the task force was unable to propose a unanimous definition, an overwhelming 16 of 19 voting members, were able to develop a definition of "adverse effect" - that would satisfy and protect the needs of children and families, provide sufficient guidance to special education administrators and teachers as well as provide a legal definition that would not transgress the federal floor of regulation. Only 3 individuals rejected this definition (all 3 were Administrators who are regulated by the Department of Education), even though, ironically, it was one of these Administrators who originally introduced the language for what became the basis for the final approved definition. These 3 individuals produced a "minority report" which again

called for the language families, providers and advocates fought against in the original rule. In reviewing both the majority and minority reports, the Commissioner chose to ignore, and/or refused to “expressly consider and address” the majority report and has instead rewritten the new Chapter 101 regulations to reflect language that would restrict eligibility - language that the Legislature overwhelmingly ***rejected*** months ago.

So, once again we find ourselves having to defend the rights of these children to the Legislature. The Maine Department of Education has made it clear that they intend to reduce educational costs by drastically cutting eligibility for the very services our children need in order to become successful, productive adults. Federal law does not require that our regulations define “adverse effect”, “educational performance” or “needs special education” - and in fact chose not to define the terms in the Federal Regulations specifically to allow IEP/ISFP teams the flexibility they needed in order to make important decisions regarding an individual’s eligibility for services. Only one other U.S. state (Vermont) has defined these terms for purposes of determining eligibility - NONE of the other 48 states have adopted such legislation. In order to protect the content ***and the intent*** of the federal IDEIA 2004 legislation, and to protect **OUR** rights to meaningful public input into the legislative process, ***we need to tell our individual legislators and members of the Education Committee*** that the Maine Department of Education needs to respect the process the Legislature ***itself*** prescribed last Spring and insist ***that the Department adopt the majority recommendation of the Adverse Effect Stakeholder Group***. Remind them that Representative Faircloth instructed the Commissioner to “expressly consider and address” the findings of the Task Force - and she failed to do so. Tell them that the Department of Education is proposing language that the House of Representatives ***unanimously rejected*** months ago and that ***over two-thirds of the Senate also rejected*** months ago. Families and service providers respected our Legislature and the process and we need to know that the Maine Department of Education will do so as well.

### ***LD 1949: An Act to Change the 60 Calendar Day Timeline for Evaluations Back to 45 School Days***

This is another bill aimed at reversing one of the provisions families and advocates won last spring in the fight to defeat LD 1900 (the Department’s Special Ed bill or LD 1900).

In LD 1900, the MDOE proposed giving school (and by extension CDS officials) 45 ***SCHOOL*** days in which to evaluate children for services. This meant that schools could delay evaluating children for services for several months if the referral came within 2 months of the summer break - which can significantly delay the start of much needed interventions. This is especially troublesome for children under the age of 5 - who would not be able to have their eligibility evaluations done over the summer, or any other school holiday, even though these children do not attend school. Since the regulations had already stated that children would have to fall below the 2.3% level for six school months before an eligibility evaluation could even be recommended, extending the time schools had to complete their eligibility evaluations to account for school holidays made timely interventions all but impossible. Keep in mind, Maine schools are only in business for 180 days per year - 45 school days in reality is much greater than a month and a half. Delaying needed interventions for any child is detrimental to their development and ultimate success - it can be disastrous for a young child where major developmental milestones occur and are measured in terms of months. Families and advocates were able to successfully move the legislature into striking this provision and instead replaced it with evaluations needing to be performed within 60

**CALENDAR DAYS** - a definite timeline that protected children from undue delays in receiving services.

Last fall and during the MDOE's December public hearing on the new Chapter 101 Special Education Regulations (the new LD 2136) - school district officials, specifically from Portland, were able to persuade some members of the Education Committee and other Committees into believing that requiring schools to perform their evaluations within 60 school days would result in dramatically increased special education costs. In fact, a Special Education person from Portland testified that this requirement alone would cost Portland Schools in excess of \$400,000 to comply with. Remember, this did come from a Portland school employee, and while Portland's fiscal management has been under intense public scrutiny this past year - some members of the Legislature did not feel it was necessary to request or review any materials to substantiate this claim and instead proposed this bill as a means to protect us from an unnecessary increase in Special Education costs. Since no actual data, other than an individual's personal testimony, was provided or requested - there is no real way to determine how these numbers were arrived at and to verify if in fact this is an accurate statement. However, looking at Portland's Child Count numbers - it is very hard to come up with a figure anywhere close to the amount stated. Either every child in Portland will have to be evaluated over the summer, or Portland has some extremely inflated IEP/IFSP costs that are difficult to accept as accurate.

If you wish to maintain the provisions families and advocates fought for and won last Spring, please ***contact your representative as well as the representatives of the Education Committee and request that they Reject LD 1949 and maintain the 60 Day Calendar Year timeline for Evaluations.***

LD 2027: An Act to Provide Ombudsmen Services to Families of Children with Disabilities

This bill would create a new Ombudsmen's Office - an office specifically charged with providing advocacy, training, and special education support and service referral to families of children with disabilities, their guardians and/or their local school district. The Ombudsmen would also be responsible for providing the Legislature and Governor's Office with the guidance, advice and policy recommendations needed to support children with disabilities. The office created by this good bill would have the power of a state government office but it wouldn't be controlled by the Department of Education or by any local schools. It would be designed to help provide the training and advocacy skills parents and guardians need and must have in order to navigate the world of special education successfully and to help guide public policy to support these children and adults. Such an independent office could be very valuable to families of children with disabilities.

Currently, school district officials and the Department of Education have unlimited access to legal opinions and knowledge of the resources available to serve children with disabilities - all paid for by our tax dollars. Unfortunately, many parents, guardians and private service providers/agencies do not have the same access to these services or information base and must pay significant fees in order to learn about and obtain them - money many families and agencies simply can't afford. Thus, many families and agencies do the best they can, but unfortunately, financial constraints limit their effectiveness. The few publicly funded agencies that do try to provide some of these services, simply do not have the adequate funding, resources and/or state level position to meet the demands of the many families currently in need. This bill is aimed at restoring equity and fairness in the system to help families,

guardians and agencies improve access to the services they need in order to improve the outcomes for the children they are responsible for.

If you believe this bill would be beneficial for children with disabilities, their families, guardians, service providers, and for local school districts, please contact the members *of the Education Committee AND your local Representative immediately and ask them to support LD 2027.* Since this bill establishes a new state funded office, it is imperative that you contact EVERY Legislator you can to show your support. Remember, the budget is incredibly tight this year, and legislators are looking to cut programs - not add new ones. Although the cost of supporting this office is small, supporters of this bill will need to speak loudly and clearly in order for Legislators to understand the importance of this bill to their constituents.

***LD 1973: An Act to Make the Maine Dept. of Education Report on CDS Sites Under Corrective Action Plans or Dept. of Education Takeover***

This bill would implement a recommendation of the Subcommittee to Study Early Childhood Special Education (the "CDS Subcommittee" that recommended saving CDS last year). One of the Subcommittees' recommendations was to require the Department of Education to report on progress toward achieving compliance and restoring local control on CDS sites that DOE has taken over. Even though state law only allows *temporary* takeovers by the state, the Dept. of Education currently has 3 of 16 CDS sites under direct state control (including Cumberland County), and the worst-performing of the has been under direct Dept. of Education control for *over three years.* Last year the Dept. of Education opposed the recommendation for them to report on progress on these sites. The Education Committee expressed support for the recommendation, but *the Department left the recommendation out of the bill that the Dept. of Education wrote up for the Education Committee's final vote.* This bill would restore this important recommendation and restore some accountability and oversight.

Again, all of these major bills are scheduled for their **ONE AND ONLY** Public Hearing *next Wednesday, January 30<sup>th</sup>* in ROOM 202 of the Cross Office Building in Augusta. Hearings are scheduled to begin at 9:00 am. Unfortunately, we do not know exactly what time any individual bill will be discussed, as that is determined at the discretion of the Committee Chairs. As parents and employees ourselves, we appreciate how difficult it is to rearrange our schedules to spend a day in Augusta - however, the Legislature is very interested, and very responsive to the concerns of individuals, families, business and community leaders when they consider and determine the fate of any legislation. Therefore, it is **IMPERATIVE** that as many individuals as possible attend these hearings on Wednesday - it is only one day and it could have a dramatic effect on what ultimately happens to our children's services going forward. These bills affect all children from age 0-20 in some form or fashion - so broad support from the community is necessary to ensure no population is left out.

If you are able to come to Augusta and testify next Wednesday on one, or multiple bills - that would be terrific. But if testifying is uncomfortable for you (as it is for many), you can still show your support by simply sitting in the hearing room with families, advocates and providers who will speak in defense of these children. There is no greater symbol of support for kids with disabilities than to pack the Hearing room with concerned citizens - whether you speak or not. It will send a powerful message to the Education Committee that a broad spectrum of Mainers care and support these children and their families and that we are

paying attention to this legislation (not just consolidation). Please, come if at all possible, and for whatever time you may have available.

If you cannot attend the hearings next week, you can still play a major role in the process by doing one, and preferably more of the following:

- (1) Contact members of the Education Committee AND your local Representative and tell them how you feel about these bills. It does not need to be a long commentary - just a short message or note will do. You can find your local representative at <http://janus.state.me.us/house/townlist.htm> and look for your town's name. From this site you can go directly to your legislators' home page and get all personal contact information - including their home telephone numbers, which you can use up to @ 9:30 at night. Their numbers are listed so constituents are able to reach them - it is not considered rude to contact them at home.

You can also leave messages for members of the legislature on the State House Message phone: (800) 423-2900.

- (2) Email your written testimony to the Education Committee and your local Representative. You can also write to your Maine Senator at <http://www.maine.gov/legis/senate/senators/writesen/write1.htm> and/or you can send a message directly to all the Senators on the Education Committee just by selecting at the bottom of the web page.
- (3) Send your written testimony with someone you know to be hand delivered to the Education Committee next Wednesday.

Anything you can do to show your support for any one of these bills can make a difference.

Contact information for the Education and Cultural Affairs Committee is:

Senator Peter Bowman (York), Chair: 439-6481 or [peterbowman@comcast.net](mailto:peterbowman@comcast.net)  
Senator Elizabeth Mitchell (Kennebec): 622-2629 or  
[SenLibby.Mitchell@legislature.maine.gov](mailto:SenLibby.Mitchell@legislature.maine.gov)

Senator Peter Mills (Somerset): (h) 474-3821 (b) 474-3324 or [pmills@mainelegal.net](mailto:pmills@mainelegal.net)  
Representative Jacqueline Norton (Bangor), Chair: 947-8873 or [jrnorton@prexar.com](mailto:jrnorton@prexar.com)  
Representative Edward Finch (Fairfield): 453-9476 or [edfinch@adelphia.net](mailto:edfinch@adelphia.net)  
Representative Elaine Makas (Lewiston): 784-5726 or [Elaine@makas.com](mailto:Elaine@makas.com)  
Representative David Farrington (Gorham): 839-7354 or [dwfarrington@maine.rr.com](mailto:dwfarrington@maine.rr.com)  
Representative Charles Harlow (Portland): 797-3775 or [charlow1@maine.rr.com](mailto:charlow1@maine.rr.com)  
Representative Patricia Sutherland (Chapman): 764-1490 or  
[psutherland@sutherlandweston.com](mailto:psutherland@sutherlandweston.com)

Representative Peter Edgecomb (Caribou): 496-3188 or [pedgecom@maine.rr.com](mailto:pedgecom@maine.rr.com)  
Representative Howard McFadden (Dennysville): 726-4676 or  
[RepHoward.McFadden@legislature.maine.gov](mailto:RepHoward.McFadden@legislature.maine.gov)

Representative Roberta Muse (Fryeburg): 935-3278 or [robertamuse@gmail.com](mailto:robertamuse@gmail.com)  
Representative Meredith Strang Burgess (Cumberland): (h) 829-624 or (b) 775-5227 or  
[Meredith@burgessadv.com](mailto:Meredith@burgessadv.com)

**Thank you**, for taking the time to read this long email, for caring about these kids and their families, and for anything you can possibly do to help.

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Comments sent MDOE in December by LDA

**To: Jaci Holmes/Maine Department of Education**  
**Re: Comments, Proposed Changes to Chapter 101 Rule**  
**Date: December 10, 2007**

This memorandum is to provide comments on the proposed changes to Chapter 101, Maine Unified Special Education Regulation, Ages Birth through twenty, as published for comment last month.

*The Learning Disabilities Association of Maine (LDA-ME) is a non-profit grassroots organization of individuals with specific learning & attention disabilities, parents, educators, professionals, and volunteers whose Mission is dedicated to assisting individuals with specific learning & attention disabilities through education, support, and advocacy.*

### **Support**

The LDA-ME supports the following proposed changes to the Chapter 101 Regulation, which reflect changes as directed in Chapter 138, Statutes of 2007, from the first session of the 123<sup>rd</sup> Legislature:

1. Changing the timeline for completion of evaluations and/or diagnostic services and associated reports to 55 calendar days from the receipt of parental consent to evaluate.
2. Changing the statute of limitations for the filing of a request for due process hearing from 2 to 4 years.
3. Clarifying that the "Stay Put" provision applies when any mediation, state complaint investigation request, or administrative or judicial proceeding is pending.

These changes will benefit children with disabilities and help to assure that they receive timely and effective educational services and supports.

### **Concerns**

We have concerns about the following areas of the regulations and proposed changes:

1. Addition of a definition for “Adverse Effect”: Several members of the Alliance were members of the Stakeholders’ Group that was convened in August, 2007, in accordance with the requirements of Chapter 138. This group addressed the issue of whether or not a definition for “adverse effect” should be added to Chapter 101 in a series of five meetings. The definition proposed by the Department of Education does not reflect any of the recommendations from the stakeholder group, and specifically does not utilize the proposed definition in the majority report from the Stakeholders’ Group, which was endorsed by 16 of the 19 members.

Instead, the definition in this proposed rule change is overly restrictive, will be difficult for students with particular types of disabilities to prove, and is applied as an additional eligibility hurdle in a way that is not supported by the federal Individuals with Disabilities Education Improvement Act (IDEA). The proposed definition of "adverse effect" also contains a definition of "Needs Special Education". Under federal law, “needs special education” is a completely separate eligibility requirement from the determination of whether or not a child has a disability that adversely affects the child’s educational performance. Congress and the U.S.D.O.E. have felt no need to define either “adverse effect” or “needs special education”, which are well defined in case law. In addition, there has been no stakeholder discussion of the term “needs special education” and whether or not a definition is needed in regulation, despite the fact that is likely the most important phrase used within the eligibility determination process.

2. Definition of Specific Learning Disability (SLD): Chapter 138, referenced earlier in this document, directed that the special education regulation be amended to delete the note that allows a school administrative unit to use a discrepancy model to determine if a child has a “specific learning disability.” This proposed rule change does not accomplish this required change.
3. Minutes of IEP Team meetings: Chapter 138, referenced above, also required that the special education regulation be amended to incorporate provisions that are equivalent to those contained in the former Chapter 101 rules pertaining to minutes of Pupil Evaluation Team meetings be incorporated in the “Prior Written Notice”. This was also not accomplished in the proposed package of regulation changes.

Thank you for the opportunity to comment on the proposed changes to the Chapter 101, Maine Unified Special Education Regulation.

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