

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

SECOND SPECIAL SESSION-2004

Legislative Document

No. 1960

S.P. 801

In Senate, April 8, 2004

**An Act Regarding the Continued Provision of Free and Appropriate
Public Education for Eligible Children of Kindergarten Age**

Reported by Senator DOUGLASS of Androscoggin for the Joint Standing Committee on
Education and Cultural Affairs pursuant to Joint Order 2003, S.P. 680

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Be it enacted by the People of the State of Maine as follows:

2
4 **Sec. 1. 20-A MRSA §7001, sub-§2**, as amended by PL 2003, c.
477, §6, is further amended by adding a new paragraph at the end
to read:

6
8 Notwithstanding paragraph A, "exceptional student" does not
10 include a child who reaches 5 years of age between September 1st
12 and October 15th who is already receiving free, appropriate
14 public education services through the Child Development Services
16 System and whose parent chooses, in accordance with rules adopted
18 by the commissioner, not to enroll the child in kindergarten
20 until the start of the following school year.

22 **Sec. 2. 20-A MRSA §7001, sub-§4, ¶B-1** is enacted to read:

24 B-1. Notwithstanding paragraph B, has reached 5 years of
26 age between September 1st and October 15th, is already
28 receiving free, appropriate public education services
30 through the Child Development Services System and whose
32 parent chooses, in accordance with rules adopted by the
34 commissioner, not to enroll the child in kindergarten until
36 the start of the following school year.

38 **Sec. 3. 20-A MRSA §7725, sub-§1**, as amended by PL 1993, c.
40 625, §3, is further amended to read:

42 **1. Child Development Services System.** "Child Development
44 Services System," or "CDS," means regional sites, or their
46 successor sites, a state-level intermediate educational unit, or
48 its successor, and the Interdepartmental Coordinating Council for
50 Early Intervention, or its successor, established to ensure the
provision of childfind activities, early intervention services
and free, appropriate and public education services to eligible
children.

52 **Sec. 4. 20-A MRSA §7727, sub-§3**, as amended by PL 2001, c.
54 510, §1, is further amended to read:

56 **3. Rule-making authority.** The commissioner may adopt rules
58 necessary to implement this chapter in accordance with the Maine
60 Administrative Procedure Act. Rules adopted pursuant to this
chapter that establish and maintain a statewide network that
ensures the provisions of ~~Childfind~~ childfind for families and
children from birth to ~~5-years-of-age~~ under 6 years of age and
rules governing the eligibility for and delivery of free,
appropriate public education services to children with
disabilities from birth to ~~5-years-of-age~~ under 6 years of age
and their families are major substantive rules as defined in
Title 5, chapter 375, subchapter ~~II-A~~ 2-A.

2 **Sec. 5. 20-A MRSA §7727, sub-§5, ¶¶B and C**, as renumbered by PL
4 2001, c. 471, Pt. C, §4 and affected by §10, are amended to read:

6 B. That preschool children with disabilities, from age 3 to
8 under age 6, including those children who reach 5 years of
10 age between September 1st and October 15th who are already
12 receiving free, appropriate public education services
14 through the Child Development Services System and whose
 parents choose, in accordance with rules adopted by the
 commissioner, not to enroll those children in kindergarten
 until the start of the following school year, have free,
 appropriate public education services available to them at
 no cost to the family;

16 C. That rules are developed, adopted and implemented
18 describing minimum standards for the following:

- 20 (1) Least restrictive environment;
- 22 (2) Nondiscrimination;
- 24 (3) Rights of parents, including, beginning in school
26 year 2004-2005, the right to choose to not enroll in
28 kindergarten until the start of the following school
30 year a child with disabilities who is already receiving
 free, appropriate public education services through the
 Child Development Services System and who will reach 5
 years of age between September 1st and October 15th;
- 32 (4) Free and, appropriate public education services;
- 34 (5) Eligibility criteria;
- 36 (6) The federal "childfind" program;
- 38 (7) Program development, service descriptors and
 service delivery;
- 40 (8) Early childhood team;
- 42 (9) Individualized family service plan;
- 44 (10) Statements of assurances;
- 46 (11) Procedural safeguards and appeals processes;
- 48 (12) Due process hearings;

2 (13) Confidentiality of information;

4 (14) Data collection, reporting and utilization;

6 (15) Surrogate parents;

8 (16) Standardized procedures and rates of payment for
early intervention and free appropriate public
education services; and

10 (17) Frequency and intensity of developmental therapy
12 and special instruction services;

14 **Sec. 6. Deappropriation from General Purpose Aid for Local Schools**
16 account to provide state funds for 5-year-old children who continue to
receive free, appropriate public education services through Child
Development Services System. Notwithstanding any provision of the
18 Maine Revised Statutes, Title 20-A, chapter 606 or 606-A, the
Commissioner of Education shall determine the adjustment
20 necessary to the statewide adjustment factor under section 15654,
subsection 1, paragraph B in order to adjust for the amount of
22 state funds that are deappropriated from the General Purpose Aid
for Local Schools account in fiscal year 2004-05 to reflect the
24 savings attributable to the delayed entry of the eligible
5-year-olds into kindergarten for the 2004-2005 school year.

26 **Sec. 7. Department of Education emergency rules; state and federal**
28 funding to provide free, appropriate public education services for eligible
children of kindergarten age. The Department of Education shall
30 engage in emergency rulemaking under the Maine Administrative
Procedure Act in order to implement the continued provision of
32 free, appropriate public education services authorized in this
Act on or before August 6, 2004. Emergency rules must also
34 include provisions regarding the continued payment and
apportionment of state funds provided for free, appropriate
36 public education services for eligible children, including the
state and federal MaineCare payment for providing free,
38 appropriate public education services to any child who is already
receiving these services through the Child Development Services
40 System or its successor system, and whose parent chooses not to
enroll the child in kindergarten until the start of the 2005-2006
42 school year. For the purposes of this section, "free,
appropriate public education services" means those services as
44 described under the Maine Revised Statutes, Title 20-A, section
7725, subsection 5, and it is the intent of the Legislature that
46 such services must continue to be provided to eligible children
at no cost to the family. The Department of Education shall take
48 steps to request and obtain any federal approval necessary to
amend the State's plan for meeting

2 requirements of the federal Individuals with Disabilities
Education Act, 20 United States Code, Section 1400, et seq. for
4 the state fiscal year 2004-05.

6 **Sec. 8. Department of Human Services emergency rules; MaineCare
reimbursement for free, appropriate public education services for eligible
children of kindergarten age.** The Department of Human Services
8 shall engage in emergency rulemaking under the Maine
Administrative Procedure Act in order to implement the continued
10 payment and apportionment of state and federal MaineCare funds
authorized in this Act on or before August 6, 2004. The
12 Department of Human Services shall obtain any federal approval
necessary to amend the state plan for the utilization of state
14 and federal Medicaid funds for the state fiscal year 2004-05.

16 **Sec. 9. Emergency major substantive rules; effective dates.** The
major substantive rules adopted pursuant to this Act must be
18 presented by the Department of Education and the Department of
Human Services for legislative review in the First Regular
20 Session of the 122nd Legislature, except that the Commissioner of
Education and the Commissioner of Human Services may adopt
22 emergency rules pursuant to the Maine Revised Statutes, Title 5,
section 8073 for fiscal year 2004-05. Notwithstanding Title 5,
24 section 8073 the emergency rules adopted in accordance with
section 8 and this section may be effective until the Legislature
26 has completed review of the provisionally adopted rules submitted
by the Department of Education and the Department of Human
28 Services in the manner provided by Title 5, section 8072.

30 **Sec. 10. Commissioner of Education plan to ensure greater equity of
education opportunities and efficiency in use of state and federal resources
32 for eligible children from 3 years of age to under 6 years of age who have
disabilities.** The Commissioner of Education shall develop and
34 present a plan to ensure greater equity of education
opportunities and greater efficiency in the use of early
36 childhood education and preschool handicapped program resources,
beginning no later than fiscal year 2005-06, for the continued
38 implementation of free, appropriate public education services
authorized in this Act for eligible children from 3 years of age
40 to under 6 years of age who have a disability, pursuant to the
Individuals with Disabilities Education Act, 20 United States
42 Code, section 1400, et seq. In examining equity and efficiency
in the use of state and federal resources for early childhood
44 education and preschool handicapped programs, the commissioner
shall take into consideration relevant factors, which may
46 include, but are not limited to, data related to 5-year-old
children in the general population who are eligible to enroll in
48 kindergarten, child count, Medicaid eligibility rate and the
reports of early childhood teams regarding the

2 eligibility status of children with disabilities who will reach 5
 3 years of age between September 1st and October 15th of each
 4 school year in the 2006-2007 state fiscal biennium. The
 5 commissioner shall present the plan described in this section to
 6 the joint standing committee of the Legislature having
 7 jurisdiction over education and cultural affairs during the 122nd
 8 Legislature on or before December 31, 2004. The joint standing
 9 committee of the Legislature having jurisdiction over education
 10 and cultural affairs is authorized to introduce legislation
 11 regarding the continued implementation of free, appropriate
 12 public education services authorized in this Act during the first
 regular session of the 122nd Legislature.

14 **Sec. 11. Appropriations and allocations.** The following
 15 appropriations and allocations are made.

16 **EDUCATION, DEPARTMENT OF**

17 **General Purpose Aid for Local Schools 0308**

18 Initiative: Deappropriates funds in fiscal year 2004-05 to
 19 recognize the savings to local schools as a result of parents
 20 choosing to delay the entry of children who are currently
 21 receiving free, appropriate public education services through the
 22 Child Development Services System into kindergarten until the
 23 start of the following school year.

24	General Fund	2003-04	2004-05
25	All Other	\$0	(\$791,955)
26			
27	General Fund Total	<u>\$0</u>	<u>(\$791,955)</u>

28 **Child Development Services 0449**

29 Initiative: Appropriates funds in fiscal year 2004-05 for the
 30 provision of services to children who are currently receiving
 31 free, appropriate public education services through the Child
 32 Development Services System and whose parents choose not to
 33 enroll them in kindergarten until the start of the following
 34 school year.

35	General Fund	2003-04	2004-05
36	All Other	\$0	\$475,519
37			
38	General Fund Total	<u>\$0</u>	<u>\$475,519</u>

39 **EDUCATION, DEPARTMENT OF**

40 **DEPARTMENT TOTALS**

41		2003-04	2004-05
42	General Fund	\$0	(\$316,436)

2	DEPARTMENT TOTAL - ALL FUNDS	\$0	(\$316,436)
4			
6	HUMAN SERVICES, DEPARTMENT OF		
8	Medical Care - Payments to Providers 0147		
10	Initiative: Appropriates funds in fiscal year 2004-05 for the		
12	provision of services to MaineCare-eligible children who are		
14	currently receiving free, appropriate public education services		
	through the Child Development Services System and whose parents		
	choose not to enroll them in kindergarten until the start of the		
	following school year.		
16	General Fund	2003-04	2004-05
18	All Other	\$0	\$223,119
20			
	General Fund Total	\$0	\$223,119
22	Federal Expenditures Fund	2003-04	2004-05
24	All Other	\$0	\$421,184
26			
	Federal Expenditures Fund Total	\$0	\$421,184
28	HUMAN SERVICES, DEPARTMENT OF		
30	DEPARTMENT TOTALS	2003-04	2004-05
32	General Fund	\$0	\$223,119
34	Federal Expenditures Fund	0	421,184
36			
	DEPARTMENT TOTAL - ALL FUNDS	\$0	\$644,303
38	SECTION TOTALS	2003-04	2004-05
40	General Fund	\$0	(\$93,317)
42	Federal Expenditures Fund	0	421,184
44			
	SECTION TOTAL - ALL FUNDS	\$0	\$327,867

SUMMARY

44 This bill is reported out by the Joint Standing Committee on
46 Education and Cultural Affairs pursuant to Joint Order 2003, S.P.
48 680. The bill amends applicable statutes and instructs the
50 Department of Human Services and the Department of Education to
amend rules to clarify that a child who is already receiving
free, appropriate public education services through the Child
Development Services System and who reaches 5 years of age

2 between September 1st and October 15th continues to be eligible
3 for those services should the child's parents decide not to
4 enroll the child in kindergarten until the child reaches 6 years
5 of age. To accomplish this purpose, the bill proposes the
6 following.

7 1. It amends provisions regarding exceptional students and
8 preschool handicapped children to establish the eligibility of a
9 child who is already receiving free, appropriate public education
10 services through the Child Development Services System and who
11 reaches 5 years of age between September 1st and October 15th to
12 continue to receive such services when the child's parent
13 chooses, in accordance with rules adopted by the Commissioner of
14 Education, not to enroll the child in kindergarten until the
15 start of the following school year.

16 2. It clarifies that the modification to the eligibility
17 criteria for certain children to continue to receive free,
18 appropriate public education services through the Child
19 Development Services System meets the requirements under the
20 federal Individuals with Disabilities Education Act, 20 United
21 States Code, Section 1400, et seq.

22 3. It directs the Commissioner of Education to determine
23 the adjustment to the statewide adjustment factor under the Maine
24 Revised Statutes, Title 20-A, section 15654, subsection 1,
25 paragraph B necessary for the amount of state funds that are
26 deappropriated from the General Purpose Aid for Local Schools
27 account in fiscal year 2004-05 to reflect the savings
28 attributable to the delayed entry of eligible 5-year-olds into
29 kindergarten for the 2004-05 school year.

30 4. It directs the Department of Education to adopt
31 emergency rules regarding the provision of free, appropriate
32 public education services through the Child Development Services
33 System to children who continue to be eligible to receive those
34 services for the state fiscal year 2004-05.

35 5. It directs the Department of Human Services to adopt
36 emergency rules regarding the payment and apportionment of state
37 and federal MaineCare funds to ensure the reimbursement for
38 services to children who continue to be eligible for those
39 services through the Child Development Services System for the
40 state fiscal year 2004-05.

41 6. It provides that the Commissioner of Education and the
42 Commissioner of Human Services adopt major substantive rules to
43 implement this Act and that provisionally adopted rules be
44

2 presented for legislative review during the First Regular Session
of the 122nd Legislature. It also provides that the emergency
4 rules be effective until the Legislature has completed review of
those rules.

6 7. It directs the Commissioner of Education to develop and
present a plan by December 31, 2004 to ensure greater equity of
8 education opportunities and efficiency in the use of state and
federal resources for early childhood education and preschool
10 handicapped programs beginning no later than fiscal year
2005-06. The commissioner shall present this plan to the joint
12 standing committee of the Legislature having jurisdiction over
education and cultural affairs, and the joint standing committee
14 may introduce legislation regarding this matter during the first
regular session of the 122nd Legislature.

16 8. It adds a fiscal note and an appropriations section to
provide for the appropriation and deappropriation of state funds
18 to the pre-school handicapped program and the MaineCare program
in the Department of Human Services in fiscal year 2004-05
20 necessary to continue to provide free and appropriate public
22 education services for these eligible 5 year olds whose parents
have chosen to have their children remain in the Child
24 Development Services system.

26
28

FISCAL NOTE REQUIRED
(See attached)



**121st Maine Legislature
Office of Fiscal and Program Review**

LD xxxx - New Draft

**An Act Regarding the Continued Provision of Free and Appropriate
Public Education for Eligible Children of Kindergarten Age**

LR 2872(01)

Fiscal Note for New Draft

Committee: Education and Cultural Affairs

Fiscal Note Required: Yes

Fiscal Note

	2003-04	2004-05	Projections 2005-06	Projections 2006-07
Net Cost (Savings)				
General Fund	\$0	(\$93,317)	\$754,529	\$814,892
Appropriations/Allocations				
General Fund	\$0	(\$93,317)	\$754,529	\$814,892
Federal Expenditures Fund	\$0	\$421,184	\$454,879	\$491,269
Revenue				
Federal Expenditures Fund	\$0	\$421,184	\$454,879	\$491,269

Fiscal Detail and Notes

Allowing a child who is already receiving free, appropriate public education services through the Child Development Services system, and who reaches age 5 between September 1st and October 15th to continue to receive those services if the child's parents choose not to enroll the child in kindergarten until the child reaches 6 years of age will result in a net General Fund savings of \$93,317 in fiscal year 2004-05. This fiscal note is based on a series of assumptions that are detailed below. The actual fiscal impact of this measure may be higher or lower depending on actual experience.

This bill includes General Fund appropriations totaling \$698,638 in fiscal year 2004-05 for the state's share of continuing to provide services to the estimated 154 children who would be eligible for delayed entry into kindergarten. Of that total, the Pre-School Handicapped program within the Department of Education will require \$475,519 to provide services to those children who are not MaineCare eligible and the MaineCare program within the Department of Human Services will require \$223,119 for the state's share of providing services to the MaineCare eligible children. The MaineCare program will also require a Federal Expenditures Fund allocation of \$421,184 in fiscal year 2004-05 for the federal match.

It is anticipated that local school units will experience savings of \$1,277,346 in fiscal year 2004-05 as a result of parents of eligible children choosing not to enroll their child in kindergarten until age 6. This bill includes a one-time General Fund deappropriation of \$791,955 in fiscal year 2004-05 to the General Purpose Aid for Local Schools

program within the Department of Education to recognize the state's share of the savings to local school units from delayed entry into kindergarten. The total savings to the local school units are projected to be \$1,371,290 in fiscal year 2005-06 and \$1,472,337 in fiscal year 2006-07. Because of the transition to the Essential Programs and Services model beginning in fiscal year 2005-06, the state's share of the savings can not be determined at this time.

The estimates in this fiscal note are based on the following assumptions:

>> The number of children estimated to be eligible for the delayed entry into kindergarten is 171. This estimate is provided by the Department of Education and is based on historical data on the actual number of exceptional students with birthdates between September 1 and October 15.

>> Ninety percent of the parents of the 171 eligible children are expected to choose to delay their child's entry into kindergarten.

>> Fifty percent of the children are assumed to be MaineCare eligible

>> The average cost to provide services to non-MaineCare eligible children is estimated to be \$6,264 with 75% of the cost being funded with State funds and 25% being funded with Federal funds.

>> The average cost to provide services to MaineCare eligible children is estimated to be \$7,200 with the State's share being approximately 35% and the Federal share being approximately 65%. However, this estimate is adjusted downward to reflect that a small percentage of the MaineCare services would be provided to these children outside of the school setting.

>> The savings associated with not providing special education services to children in the local schools is based on the total State and Local expenditures for special education in fiscal year 2002-03 adjusted to reflect the cost to the State of providing 100% of the funding for these services for State Wards and State Agency Clients.

>> The savings-per-child is calculated by dividing the adjusted State and Local expenditures for special education in FY 2002-03 by the number of children ages 5-21 from the December 2002 ChildCount report, which was also adjusted for State Wards and State Agency Clients.

>> The State's share of the adjusted State and Local special education expenditures is assumed to be 62%.

>> The savings are adjusted to reflect that approximately 15% of the costs of providing special education services to these students are fixed costs and will still be incurred even if the student does not attend the local school.

>> The estimate also includes savings associated with not providing non-special education services to these children

>> Special education costs are projected to grow 8% per year in fiscal years 2005-06 and 2006-07. Non-special education costs are projected to grow 5% per year.