

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 796

S.P. 263

In Senate, February 15, 2005

An Act To Implement the Recommendations of the Commission To Study Public Health That Concern Schools, Children and Nutrition

Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.

A handwritten signature in cursive script, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MARTIN of Aroostook.
Cosponsored by Representative: CRAVEN of Lewiston.

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

Sec. 1. 20-A MRSA §6209, first ¶, as amended by PL 2001, c. 454, §31, is further amended to read:

The department in consultation with the state board shall establish and implement a comprehensive, statewide system of learning results, referred to in this section as the "system," no later than the 2002-03 school year. The system, based broadly upon guiding principles set forth in this section, must establish high academic standards at all grade levels in the areas of math; English; science and technology; social studies, including history, economics and civics; career preparation; visual and performing arts; health, nutrition and physical education; and foreign languages. Only students in a public school or a private school approved for tuition that enrolls at least 60% publicly funded students, as determined by the previous school year's October and April average enrollment, are required to participate in the system of learning results. The commissioner shall develop accommodation provisions for instances where course content conflicts with sincerely held religious beliefs and practices of a student's parent or guardian. The system must be adopted to accommodate exceptional students as defined in section 7001, subsection 2.

Sec. 2. 20-A MRSA §6209, sub-§2, ¶D, as enacted by PL 1995, c. 649, §1, is amended to read:

D. Health, nutrition and physical education;

Sec. 3. 20-A MRSA c. 223, sub-cc. 9 and 10 are enacted to read:

SUBCHAPTER 9

**NUTRITION EDUCATION AND
HEALTHFUL PHYSICAL ACTIVITY**

§6661. Nutrition education

Public schools shall provide nutrition education for students, teachers and staff as part of coordinated school health programs, total school food service programs and in accordance with chapter 222. This nutrition education must include an outreach component for students' parents. The department may adopt rules to implement the purposes of this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

2 1. Nutritional information. After August 31, 2007, food
3 service programs must post nutritional information for menu
4 items. The information must include age-appropriate daily values
5 as established by the United States Food and Drug Administration,
6 total calories, saturated and total fat percentages, sodium
7 content, sugar content and total carbohydrate content. Food
8 service programs may limit nutritional information posted on menu
9 boards to calories only.

10 2. Food and beverages outside school lunch programs. After
11 September 30, 2006, food and beverages sold or distributed on
12 school grounds but outside of school meal programs must:

13 A. Adhere to healthy foods and beverages standards as
14 adopted by the Department of Health and Human Services,
15 Bureau of Health by rule;

16 B. Adhere to single-serving standards established by the
17 United States Food and Drug Administration, including the
18 following maximum portion sizes:

19 (1) For beverages other than water, 12 ounces;

20 (2) For frozen desserts and ice creams, 3 fluid ounces;

21 (3) For cookies and cereal bars, 2 ounces;

22 (4) For baked items other than cookies and cereal
23 bars, 3 ounces; and

24 (5) For prepackaged snacks, 1.25 ounces;

25 C. For other than low-fat dairy, fruits, vegetables, seeds
26 and nuts, contain no more than 10% of calories from
27 saturated and trans fatty acids, 30% of calories from total
28 fat and 35% of weight from refined sugars;

29 D. Not include carbonated soft drinks of any kind or candy;

30 E. For milk, be 1% fat or less; and

31 F. For juice, be 100% fruit juice or 100% vegetable juice.

32 The department may amend the requirements of paragraphs B and C
33 as necessary by adoption of routine technical rules as defined in
34 Title 5, chapter 375, subchapter 2-A.

35 3. Food and beverages not to be used as rewards. A school
36 board subject to this section shall prohibit the use of food and
37 beverages as rewards or incentives in the school setting.

2 4. Advertising on school grounds. After September 30, 2007,
4 a school board subject to this section shall prohibit advertising
6 on school grounds of foods and beverages other than healthy foods
 and beverages, as defined by the Department of Health and Human
 Services, Bureau of Health by rule.

8 **§6662. Body mass index assessment**

10 1. Assessment program; rules. An assessment program for body
12 mass index must be instituted in the public schools according to
 the following provisions.

14 A. A school board shall require that the height and weight
16 of students in kindergarten and grades 1, 3, 5, 7 and 9 in
 the public schools be measured and assessed. The
18 measurements must be obtained privately and confidentially
 by trained school nurses or physical education teachers.
20 The height and weight data for students in the school
 administrative unit must be submitted electronically to the
 department, disaggregated by age, gender and school.

22 B. The department shall consult with a Department of Health
24 and Human Services, Bureau of Health statistician or
 epidemiologist to analyze the data obtained under paragraph
26 A. The data analysis must include assessment of the data
 for body mass index percentile and must also aggregate the
28 data by grade level, school administrative unit and the
 State as a whole. The department shall report the
30 assessment data, by grade level aggregates, to school
 administrative units annually and to the Legislature every 3
32 years.

34 2. Report to parents. A school shall provide the parent of
36 a student who participates in an assessment under subsection 1 a
 confidential report on that student's weight, height and body
38 mass index. The report must also include: an explanation that
 body mass index is only a screening tool, not an evaluative tool
40 for diagnosing a person as overweight; the suggestion that the
 parent seek a primary care provider's evaluation; and the
42 implications of the report for nutrition and physical activity,
 together with references to local community health programs for
 nutrition and physical activity resources.

44 3. Funding. The State shall provide funding for the
46 assessment program under this section to the extent that federal
 funds do not cover the costs of the program. This funding must
48 include support to schools for measurement training for school
 nurses and physical education teachers and for measurement
50 equipment such as scales and stadiometers and to the department

2 and the Department of Health and Human Services, Bureau of Health
3 for central data analysis and reporting by a statistician or
4 epidemiologist.

6 **§6663. Healthful physical activity**

8 1. Healthful physical activity required. A school board
9 shall require that students within a school administrative unit
10 participate in healthful physical activity. A school board shall
11 require elementary and middle school students to participate in
12 150 minutes of physical activity per week in addition to recess
13 and high school students to participate in 220 minutes of
14 physical activity per week. The department and the Department of
15 Health and Human Services, Bureau of Health shall collaboratively
16 publish a list of free and accessible physical activity options.

18 2. Rules. The department shall adopt rules to implement
19 this section, including rules to encourage schools to require
20 daily recess for all elementary and middle school students before
21 lunch. Rules adopted pursuant to this section are routine
22 technical rules as defined in Title 5, chapter 375, subchapter
23 2-A.

24 **SUBCHAPTER 10**

26 **PHYSICAL EDUCATION CONSULTANT**

28 **§6671. Physical education consultant position**

30 1. Establishment. The position of physical education
31 consultant is established within the department.

32 2. Qualifications. The physical education consultant must
33 hold a valid professional teaching certificate with a
34 kindergarten to grade 12 physical education endorsement in the
35 State and must have a master's degree in physical education or a
36 related field and experience in teaching physical education in
37 kindergarten to grade 12.

38 3. Funding. The State shall provide funding for the
39 physical education consultant to the extent that federal funds do
40 not cover the costs of the consultant.

42 **§6672. Duties**

44 The physical education consultant established under section
45 6671 shall provide statewide leadership, consultation and
46 direction for physical education, physical fitness and healthful
47 physical activity.

2 physical activity programs in schools. The physical education
3 consultant shall:

4 1. Resource expert. Serve as a resource expert in physical
5 education, physical fitness and healthful physical activity
6 program areas for local, regional, state and national school
7 physical education and related policy-making groups;

8 2. Information. Monitor, interpret, synthesize and
9 disseminate relevant information related to physical education,
10 physical fitness and healthful physical activity trends,
11 practice, related policy changes, legal issues in program
12 implementation and professional development;

13 3. Staff development. Foster and promote professional
14 development for physical education teachers and other school
15 personnel by planning and providing orientation, educational
16 offerings and networking with universities and other providers of
17 continuing education to meet identified needs; and

18 4. Standards. Gather and analyze data relevant to the
19 physical education, physical fitness and healthful physical
20 activity programs and monitor standards to promote physical
21 education excellence and optimal physical fitness of
22 schoolchildren.

23 **Sec. 4. 20-A MRSA §13803 is enacted to read:**

24 **§13803. Lunch periods**

25 After December 31, 2005, upon expiration of a collective
26 bargaining agreement for a school administrative unit that
27 includes teachers, any new collective bargaining agreement for
28 that unit must include a provision allowing teachers and students
29 no less than 20 minutes to eat lunch each school day.

30 **Sec. 5. 22 MRSA c. 271, sub-c. 5 is enacted to read:**

31 **SUBCHAPTER 5**

32 **NUTRITIONAL STANDARDS FOR FOODS**
33 **AND BEVERAGES SOLD IN SCHOOLS**

34 **§1696-J. Nutritional standards program**

35 The department shall create a nutritional standards program
36 within the Bureau of Health to establish nutritional standards
37 for healthy foods and beverages that may be sold in schools.

2 1. Healthy food and beverage standards. The Bureau of
Health shall establish nutritional standards for healthy foods
4 and beverages that may be sold in schools pursuant to Title 20-A
section 6661, subsection 2, paragraph A and subsection 4. The
6 Bureau of Health shall consult with the school nurse consultant
under section 1971 in establishing these nutritional standards.

8 2. Rules. The Bureau of Health shall adopt rules pursuant
to the Maine Administrative Procedure Act establishing
10 requirements for nutritional standards for healthy foods and
beverages. Rules adopted by the Bureau of Health pursuant to
12 this subchapter are major substantive rules under Title 5,
chapter 375, subchapter 2-A.

14
16 **Sec. 6. Considering nutrition education during review of system of**
learning results. The Department of Education shall consider the
18 recommendations of the Commission to Study Public Health,
established in Resolve 2003, chapter 95, related to implications
20 for the system of learning results when the department reviews
the guiding principles, the performance standards and the content
22 indicators of the system of learning results during the 2005-2006
school year in accordance with the Maine Revised Statutes, Title
20-A, section 6209, subsection 4. The Department of Education's
24 review must specifically include the addition of "nutrition
education" within the learning results system content standards.

26
28 **Sec. 7. Dairy vending machines.** By January 31, 2006, the
Department of Education, in collaboration with the Maine Dairy
and Nutrition Council, shall implement a pilot program to install
30 dairy vending machines selling flavored or unflavored milk with
1% or less fat in schools.

32
34 **Sec. 8. Implementation of National Farm to School Program.** By
January 31, 2006, the Department of Education, in collaboration
with the Department of Agriculture, Food and Rural Resources,
36 shall implement the National Farm to School Program, funded by
the United States Department of Agriculture, as fully as is
38 practical to provide locally grown fruits and vegetables in
public schools.

40
42 **Sec. 9. Healthy foods and beverages.** By January 31, 2006, the
Department of Health and Human Services, Bureau of Health shall
define the term "healthy foods and beverages" by rule. In
44 developing this rule, the Bureau of Health shall consider the
following definition:

46
48 "Healthy foods and beverages" means fruits, vegetables,
whole grains, low-fat animal protein foods, low-fat dairy
products, legumes, soy products, nuts and seeds. "Healthy

2 foods and beverages" does not include any item that includes
3 more than 30% of its calories from total fat or more than
4 10% of its calories from saturated fat, excluding seeds and
5 nuts; any item for which 35% of its weight comes from
6 refined sugars, excluding fruits, vegetables and low-fat
7 dairy products; any item that contains more than 360
8 milligrams of sodium per serving; and any meal that includes
9 more than 480 milligrams of sodium per serving.

10 Rules adopted pursuant to this section are major substantive
11 rules as defined in the Maine Revised Statutes, Title 5, chapter
12 375, subchapter 2-A.

14 **Sec. 10. Attorney General review.** By January 31, 2006, the
15 Attorney General shall determine whether the State may legally
16 restrict, on Maine television stations, advertisements for foods
17 and beverages that do not fit within the definition of "healthy
18 foods and beverages" adopted by the Department of Health and
19 Human Services, Bureau of Health when those advertisements are
20 directed at children 12 years of age or younger. If the Attorney
21 General determines that these advertisements may be restricted,
22 the Bureau of Health shall evaluate whether these advertisements
23 should be restricted on Maine television stations and shall make
24 a recommendation to the Legislature based on this evaluation.

26

28 SUMMARY

28

29 This bill implements the recommendations of the Commission
30 to Study Public Health concerning schools, children and
31 nutrition. The bill:

32

33 1. Includes within the statewide system of learning results
34 a nutrition component;

36

35 2. Requires schools to provide nutrition education for
36 students, teachers and staff through coordinated school health
37 programs and in accordance with learning results guidelines and
38 requires a parent outreach component for nutrition education;

40

39 3. Directs school boards to require, after September 2006,
40 that food and beverages sold or distributed on school grounds but
41 outside of school meal programs, such as a la carte items,
42 fund-raisers and vending machines, adhere to "healthy foods and
43 beverages" standards, "single-serving standards" and other
44 health-related parameters;

46

45 4. Requires schools, after August 2007, to post nutritional
46 information for menu items, including age-appropriate daily

2 values, total calories, saturated and total fat percentages,
sodium content, sugar content and total carbohydrate content;

4 5. Directs school boards, after September 2007 to prohibit
advertising of foods and beverages other than "healthy foods and
6 beverages" on school grounds;

8 6. Directs the Department of Education, by January 2006, in
collaboration with the Maine Dairy and Nutrition Council, to
10 implement a pilot program to install dairy vending machines
selling flavored and unflavored milk with 1% or less fat in
12 schools;

14 7. Prohibits schools from using food and beverages as a
reward or incentive for learning or behavior in a school setting;
16

18 8. Requires that, after December 2005, at the termination of
an existing contractual agreement for teachers in a school
administrative unit, the new contractual agreement must provide
20 at least 20-minute lunch periods for students and teachers;

22 9. Directs the Department of Education and the Department of
Agriculture, Food and Rural Resources to collaborate to implement
24 the National Farm to School Program to provide local fruits and
vegetables in schools;
26

28 10. Requires confidential assessments of the height and
weight of all Maine schoolchildren in kindergarten and grades 1,
3, 5, 7 and 9 and compilation and reporting of this data. Each
30 school also is required to provide the parents of schoolchildren
who participate in this assessment with a confidential report on
32 their child's weight, height and body-mass index, as well as
accompanying information;
34

36 11. Directs schools to require elementary and middle school
students to participate in 150 minutes of physical activity per
week outside of recess and high school students to participate in
38 220 minutes of physical activity per week and establishes a
physical education consultant position within the Department of
40 Education; and

42 12. Directs the Department of Health and Human Services,
Bureau of Health and the Attorney General to determine by January
44 31, 2006 whether advertising of foods and beverages other than
"healthy foods and beverages," as defined by rule, directed at
46 children 12 years of age or younger legally can be and should be
restricted on Maine television stations. Additionally, the
48 Bureau of Health is directed to make a report of its findings to
the Legislature.