

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 651

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H.P. 472

House of Representatives, February 7, 2019

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### **An Act To Facilitate School Access to Federal Title I Funds and Improve the Delivery of Special Education Services**

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

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative FARNSWORTH of Portland.  
Cosponsored by Senator BELLOWS of Kennebec and  
Representatives: BABINE of Scarborough, FAY of Raymond, HANDY of Lewiston,  
HIGGINS of Dover-Foxcroft, McCREA of Fort Fairfield, RECKITT of South Portland,  
SAMPSON of Alfred, STEARNS of Guilford.

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

2 **Sec. 1. 20-A MRSA §2907**, as amended by PL 1989, c. 700, Pt. A, §47, is further  
3 amended to read:

4 **§2907. Nontraditional limited purpose school approval**

5 **1. Requirements.** A nonprofit institution, not otherwise approved under this  
6 subchapter, may operate as an approved nontraditional limited purpose school if it  
7 demonstrates a commitment to the educational process and to the State's youth by  
8 possessing the following:

9 A. An incorporated council, board of trustees, board of directors or other governing  
10 board composed of a cross section of the community served by the school;

11 B. An established educational plan;

12 C. A written curriculum with appropriate goals, objectives and instructional  
13 strategies;

14 D. Specific instructional time commensurate with the educational activities planned;

15 E. Facilities that comply with state health, safety and fire codes;

16 F. An instructional staff certified by the Department of Education where appropriate  
17 and endorsement by professional boards in areas where the State does not have  
18 certification standards or professional standards agreed upon by the department and  
19 the respective institution;

20 G. School health services that include a registered nurse in residence when students  
21 are in attendance or the appointment of a school or consulting physician;

22 H. Established written emergency and safety procedures, including periodic fire  
23 drills whenever appropriate;

24 I. The unique up-to-date equipment necessary to the services provided;

25 J. A demonstrated commitment to work cooperatively with state public schools in an  
26 effort to meet the specific aspiration needs of Maine students; and

27 K. Scholarship assistance to the State's youth.

28 If approved by the commissioner to provide a special education program, a nonprofit  
29 institution, not otherwise approved under this subchapter, may operate as an approved  
30 nontraditional limited purpose school if, in addition to meeting the other requirements of  
31 this subsection, it demonstrates compliance with all requirements of chapters 301, 303  
32 and 305 and applicable federal statutes and regulations prior to the enrollment of any  
33 special education student at public expense.

34 The commissioner shall ~~promulgate~~ adopt rules, pursuant to ~~the Maine Administrative~~  
35 ~~Procedure Act~~, Title 5, chapter 375, which shall must incorporate the requirements set  
36 forth in this subsection.

37 **2. Approval; report.** The commissioner shall base approval of a school under this  
38 section on the school's ability to meet the requirements set forth in subsection 1 and on an

1 annual on-site review by the department. A nonprofit institution may not operate as an  
2 approved school prior to approval by the commissioner pursuant to subsection 1. The  
3 school shall submit to the department an annual report on its activities and compliance  
4 with this section.

5 **3. Removal of basic approval.** Notwithstanding any other provision of law, the  
6 commissioner may remove approval from any nontraditional limited purpose school for  
7 failure to meet applicable approval requirements. Except as permitted under Title 5,  
8 section 10004, the commissioner shall give a school notice and opportunity for hearing  
9 before removing approval. The notice given and any hearing must conform to the  
10 requirements of Title 5, chapter 375, subchapter 4.

11 **4. Ineligible for state subsidy.** A school eligible for approval under this section  
12 ~~shall~~ is not be eligible for state subsidy.

13 **5. Credit.** High school credit for programs completed at a school approved under  
14 this section may be granted to students by the school in which they are enrolled full time.  
15 A school approved under this section may not award high school credit.

16 **6. Taxation.** Notwithstanding any other provision of law, the commissioner's  
17 approval of an institution as a nontraditional, limited purpose school ~~shall~~ does not alter  
18 that institution's current status for the purpose of state or local taxation.

19 **Sec. 2. 20-A MRSA §4502, sub-§5,** as amended by PL 2009, c. 313, §2, is  
20 further amended to read:

21 **5. Other requirements.** The state board and the commissioner shall jointly adopt  
22 basic school approval rules governing school administrative units and elementary and  
23 secondary schools. Beginning July 1, 2020, rules adopted by the state board and the  
24 commissioner pursuant to this subsection are major substantive rules as defined in Title 5,  
25 chapter 375, subchapter 2-A. These rules must set minimum requirements in the  
26 following areas, incorporating such requirements as are established by statute:

- 27 A. Instructional time, including a minimum school day and week;
- 28 B. Staffing, including student-teacher ratios that permit maximum student-teacher  
29 ratios of 25:1 school-wide for kindergarten to grade 8 and maximum student-teacher  
30 ratios of 30:1 school-wide for grades 9 to 12;
- 31 C. Physical facilities, incorporating the school construction rules of the state board;
- 32 D. Requirements for equipment and libraries;
- 33 E. Minimum school size, but including recognition of geographically isolated  
34 schools;
- 35 F. Grade and program organization;
- 36 G. Assessment and evaluation of student performance;
- 37 H. Student personnel services, including guidance and counseling and,  
38 notwithstanding any rules adopted by the department, comprehensive guidance plans  
39 to be approved by the commissioner;

- 1 I. Records, record keeping and reporting requirements;
- 2 J. Health, sanitation and safety requirements, including compliance with section  
3 6302;
- 4 K. School improvement;
- 5 L-1. A plan for training and development of all personnel that is aligned with the  
6 system of learning results as established in section 6209;
- 7 M. The use of time-out areas, administered in accordance with requirements adopted  
8 by the department and with this paragraph. The use of a time-out area is subject to  
9 the following:
- 10 (1) The time-out area must be well ventilated and sufficiently lighted. The time-  
11 out area may not be locked; and
- 12 (2) The time-out area must be designed to ensure the safety of the student so that  
13 the student is supervised by a professional staff member in the room or can be  
14 observed from outside of the time-out area and can be heard by a person  
15 supervising the time-out area;
- 16 N. Preparation of a written local policy and implementation of training for all  
17 unlicensed personnel who administer medication in accordance with the requirements  
18 under section 254, subsection 5;
- 19 O. Preparation of a written local policy and implementation of training for all  
20 guidance counselors and school personnel who administer reintegration planning  
21 pursuant to section 254, subsection 12, who participate in a reintegration team and  
22 who have access to confidential criminal justice information regarding juveniles  
23 pursuant to section 1055, subsection 12; ~~and~~
- 24 P. Provision of family outreach and support programs designed to improve parent-  
25 school relations and parenting skills consistent with section 4252, subsection 8; and
- 26 Q. Response to intervention systems to ensure an all-encompassing, tiered system of  
27 support for general and special education students in accordance with section 4710.

28 **Sec. 3. 20-A MRSA §4710**, as enacted by PL 2009, c. 313, §10, is amended to  
29 read:

30 **§4710. Kindergarten to grade 12 response to intervention; tiered system of support**

31 By the school year that begins in the fall of 2012, all school administrative units shall  
32 develop and implement a system of ~~interventions~~ response to intervention for  
33 kindergarten to grade 12 that ~~provide~~ provides each student who is not progressing  
34 toward meeting the content standards of the parameters for essential instruction and  
35 graduation requirements with different learning experiences or assistance to achieve the  
36 standard. The ~~interventions~~ response to intervention must be specific, timely and based  
37 upon ongoing formative assessments that continuously monitor student progress.

38 **1. Tiered system of support.** By the school year that begins in the fall of 2020, all  
39 school administrative units shall enhance and upgrade the system of response to  
40 intervention for kindergarten to grade 12 to become an all-encompassing, tiered system of

1 support that provides each general and special education student who is not progressing  
2 toward meeting the content standards of the parameters for essential instruction and  
3 graduation requirements with different learning experiences or assistance to achieve the  
4 standards.

5 **Sec. 4. Collaboration between general education and special education.**

6 The Department of Education shall facilitate a process to help schools apply for  
7 schoolwide status with respect to federal Title I funds in order to be able to use the funds  
8 for funding for the development of schoolwide programs designated under the federal  
9 Every Student Succeeds Act, 20 United States Code, Section 6315(a) and related  
10 regulations to support the continued and increased collaboration for comprehensive  
11 reform strategies to raise the achievement levels of all general education and special  
12 education students. The Department of Education, with input from state and local  
13 education policy experts and stakeholders, shall inform school administrative units about  
14 the potential advantages of applying for schoolwide status and the procedures for  
15 receiving Title I funds by including the program information on the department's publicly  
16 accessible website.

17 **Sec. 5. Dual certification programs.**

18 The Department of Education and the State Board of Education shall address special education staffing shortages by reviewing  
19 the certification processes in order to reduce barriers to obtaining special education and  
20 related certifications, including, without limitation, certifications for special education  
21 teachers, reading and math specialists and paraprofessionals. The department and the  
22 state board shall collaborate with both state and local education policy makers to design  
23 and promote the use of dual certification programs at the university level whereby Maine  
24 students are able to graduate and obtain certification in both general and special  
25 education. The department and the state board shall investigate the opportunities for  
26 promoting dual certification programs and shall jointly report their feedback, findings and  
27 recommendations to the Joint Standing Committee on Education and Cultural Affairs no  
28 later than February 1, 2020. After receipt and review of the report, the committee may  
29 report out legislation regarding the establishment of dual certification programs to the  
30 Second Regular Session of the 129th Legislature.

31 **Sec. 6. Recodification of the Maine Revised Statutes, Title 20-A, Part 4,**  
32 **subpart 1.**

33 The Office of Policy and Legal Analysis and the Office of the Revisor of  
34 Statutes, referred to in this section as "legislative staff," shall prepare a recodification of  
35 the Maine Revised Statutes, Title 20-A, Part 4, subpart 1, concerning special education,  
36 for introduction in the First Regular Session of the 130th Legislature. Legislative staff  
37 may consult with the Department of Education, the State Board of Education, the  
38 Department of Health and Human Services, the Office of the Attorney General and other  
interested parties in preparing the recodification.

39 Legislative staff shall submit the recodification under this section to the joint standing  
40 committee of the Legislature having jurisdiction over education and cultural affairs no  
41 later than January 15, 2021.

42 **Sec. 7. Review of maintenance of effort allocation component.**

43 The Department of Education shall review the maintenance of effort funding component of

1 the essential programs and services funding formula to determine the purpose of the  
2 funding, whether it is accomplishing this purpose, why some school administrative units'  
3 expenditures are consistent with the funding formula allocation model and some are not  
4 and how to increase the equity of special education allocations across all school  
5 administrative units. The department shall invite input from state and local stakeholders  
6 and policy makers. The department shall report its findings and recommendations,  
7 including any statutory changes, to the Joint Standing Committee on Education and  
8 Cultural Affairs not later than February 15, 2020. After review of the report, the  
9 committee may report out a bill related to increasing equity of special education  
10 allocations across all school administrative units.

11 **Sec. 8. Review and improvement of MaineCare billing systems and**  
12 **procedures.** The Department of Education shall collaborate with the Department of  
13 Health and Human Services to create a regional pilot program that uses a state agency  
14 navigator to provide seed money to school administrative units for MaineCare billing  
15 purposes for medically necessary services. In order to gather input from the regional  
16 pilot program's stakeholders, the departments shall establish a working group to review  
17 and address the problems in the current MaineCare billing systems and processes for  
18 medically necessary services including:

19 1. Improving the distribution of seed money to remove barriers for school  
20 administrative units to provide medically necessary services, particularly with respect to  
21 students sent to special purpose private schools;

22 2. Considering regional collaborative billing for public schools or for regional  
23 service centers that are beyond a billing center; and

24 3. Having a state agency navigator provide support for accessing funds for medically  
25 necessary services.

26 Following the conclusion of the regional pilot program, the Department of Education  
27 and the Department of Health and Human Services working group shall establish a time  
28 frame to implement policies and rules to improve the quality of MaineCare billing  
29 services and the reduction of risks and administrative burdens for school administrative  
30 units by fiscal year 2020-21. The departments shall jointly report their findings and  
31 recommendations to the joint standing committees of the Legislature having jurisdiction  
32 over education and cultural affairs and health and human services matters no later than  
33 January 15, 2021. After receipt and review of the report, the joint standing committees  
34 may report out legislation regarding the requirements for the MaineCare billing systems  
35 to the First Regular Session of the 130th Legislature.

36 **SUMMARY**

37 This bill makes the following changes to the laws governing special education.

38 1. It adds 4 provisions to the laws regarding nontraditional limited purpose schools  
39 that were part of Department of Education rule Chapter 250 which has been repealed.

1           2. It adds response to intervention systems to the minimum requirements for basic  
2 school approval to ensure an all-encompassing, tiered system of support for general and  
3 special education students. It also clarifies that rules regarding those requirements are  
4 major substantive rules.

5           3. It facilitates collaboration between general education and special education,  
6 including a clarification that the Department of Education is required to facilitate a  
7 process to help schools apply for schoolwide status with respect to federal Title I funds.

8           4. It promotes dual certification programs by the Department of Education and the  
9 State Board of Education.

10          5. It requires recodification of the Maine Revised Statutes, Title 20-A, Part 4, subpart  
11 1, concerning special education, by the Office of Policy and Legal Analysis and the  
12 Office of the Revisor of Statutes.

13          6. It requires a review of the purpose of the maintenance of effort funding  
14 component of the essential programs and services funding formula and whether it is  
15 accomplishing this purpose and how to increase equity among all school administrative  
16 units.

17          7. It requires a review and improvement of MaineCare billing systems and  
18 procedures through a pilot program through the Department of Education in collaboration  
19 with the Department of Health and Human Services.