

# MAINE STATE LEGISLATURE

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April 22, 1977

Honorable Mary Najarian,  
House of Representatives  
State House  
Augusta, Maine

Re: L.D. 665.

Dear Representative Najarian:

You have inquired as to whether school superintendents would be required to provide education for exceptional children under 5 years of age if L.D. 665 is enacted.

The threshold question to be answered is whether the language contained in L.D. 665 would require school administrative units to offer "a childhood education program in special education. . . to exceptional children who are less than 5 years of age on October 15th of the school year." It is my opinion that the administrative units would not be required to provide such a program since the proposed law states that "Any unit may provide a childhood education program. . . ." (emphasis supplied) If an administrative unit does not elect to provide such a program, then the superintendent would have no right or duty to provide education for exceptional children under 5 years of age.

As indicated in the Statement of Fact on L.D. 665, "The purpose of this bill is to permit any local administrative unit to offer special education programs to exceptional children from birth to 5 years of age." Therefore, the bill is a permissive one rather than one which mandates a new program to be provided by the administrative unit. The only time a superintendent of an administrative unit might be the proper party to be sued under this law would be if he refused to provide the educational program for these exceptional children once the administrative unit had authorized him to provide such a program.

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In addition, I would note that, without regard to the provisions of L.D. 665, the State and localities may be assuming some obligation to provide free appropriate public education for all handicapped children as a result of implementation of the Federal Education for All Handicapped Children Act of 1975 (P.L. 94-142). The law amended 20 U.S.C. § 1411, et seq. to establish a special grant program which, in its implementation, will require states that participate to provide free appropriate public education for all handicapped children between the ages of 3 and 18. You might check with the Department of Educational and Cultural Services to determine the exact status of implementation of their program.

I hope the above answers the questions you have regarding L.D. 665; if there are any further questions relative to this matter, please feel free to contact me.

Sincerely,

JOSEPH E. BRENNAN  
Attorney General

JEB/ec