

MAINE STATE LEGISLATURE

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L.D. 2360

(Filing No. S- 679)

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STATE OF MAINE
SENATE
115TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 921, L.D. 2360, Bill, "An Act Regarding Maine's Comprehensive Early Intervention System for Infants and Children under 6 Years of Age"

Amend the bill by striking out the title and substituting the following:

'An Act Regarding Maine's Comprehensive Early Intervention System for Infants and Children Ages 0 to School-age 5'

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 5 MRSA §12004-G, sub-§8-A, as amended by PL 1991, c. 622, Pt. G, §2 and affected by §33, is further amended to read:

| | | | |
|-----------|--------------|----------|--------------|
| 8-A. | Interde- | Expenses | 20-A |
| Education | partmental | Only | MRSA |
| | Coordinating | | @7704 |
| | Council for | | <u>§7733</u> |
| | Early Inter- | | |
| | vention | | |

Sec. 2. 20-A MRSA c. 307, as amended, is repealed.

Sec. 3. 20-A MRSA c. 307-A is enacted to read:

CHAPTER 307-A

INFANTS AND CHILDREN, AGES 0 TO SCHOOL-AGE 5, WITH DISABILITIES

§7724. System

1. Establishment. The Child Development Services System is established for the purpose of maintaining a coordinated service

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2 delivery system for the provision of childfind activities for
3 children, ages 0 to school-age 5, and free, appropriate and
4 public education services for eligible children, ages 3 to
5 school-age 5, who have a disability. The Child Development
6 Services System consists of 16 regional sites organized as
7 intermediate education units or as private nonprofit
8 corporations, one state level intermediate education unit and the
9 Interdepartmental Coordinating Council for Early Intervention
10 advisory board. The Child Development Services System shall
11 ensure the provisions of this chapter statewide through a
12 contractual or grant relationship between the Department of
13 Education and each regional site.

14 2. Governmental purpose. The Child Development Services
15 System is established as a body corporate and politic and as a
16 public instrumentality of the State, and the exercise of the
17 powers conferred by this section is deemed to be the performance
18 of essential governmental functions.

20 §7725. Definitions

22 As used in this chapter, unless the context otherwise
23 indicates, the following terms have the following meanings.

24
25 1. Child Development Services System. "Child Development
26 Services System," or "CDS," means 16 regional sites, a state
27 level intermediate education unit and the Interdepartmental
28 Coordinating Council for Early Intervention established to ensure
29 the provision of childfind activities and free, appropriate and
30 public education services to eligible children.

31
32 2. Childfind. "Childfind" means the identification,
33 location and evaluation, at no cost to the family, of children,
34 ages 0 to school-age 5, with disabilities.

35
36 3. Departments. "Departments" means 2 or more of the
37 participating state agencies, the Department of Education, the
38 Department of Human Services and the Department of Mental Health
39 and Mental Retardation.

40
41 4. Disability. "Disability" means:

42
43 A. A condition of children, ages 0 to school-age 5, who are
44 in need of early intervention or special education services
45 due to a delay in one or more of the following areas:
46 cognitive development; physical development, including
47 vision and hearing; communication development; social or
48 emotional development; and adaptive development; or

2 B. For children, ages 0 to 2, a diagnosed, established
3 condition or biological factors that have a high probability
4 of resulting in developmental delay.

5 5. Free, appropriate public education services. "Free,
6 appropriate public education services" or "FAPE" means those
7 services that are designed to meet the developmental needs of
8 eligible children, ages 3 to school-age 5, who have a
9 disability. These services include:

- 10 A. Early identification, screening and assessment services;
- 11
- 12 B. Medical services for diagnostic or evaluation purposes
13 only;
- 14
- 15 C. Occupational therapy;
- 16
- 17 D. Parent counseling and training;
- 18
- 19 E. Physical therapy;
- 20
- 21 F. Psychological services;
- 22
- 23 G. Special instruction;
- 24
- 25 H. Speech pathology and audiology; and
- 26
- 27 I. Transportation.
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29 6. Council. "Council" means the Interdepartmental
30 Coordinating Council for Early Intervention established in
31 section 7733.

32 7. Intermediate educational unit. "Intermediate
33 educational unit," as defined in federal Public Law 94-142, means
34 any public authority, other than a local educational agency,
35 under the general supervision of a state educational agency, that
36 is established for the purpose of providing free public education
37 on a regional basis and that provides special education and
38 related services to handicapped children within the State.

39 8. Regional site. "Regional site" means one of the 16
40 locally governed regional intermediate educational units or
41 private nonprofit corporations established to ensure provision of
42 services to infants and children under this chapter.

43 §7727. Department of Education

44 1. Responsibility. The department is designated as the
45 state education agency responsible for carrying out the State's
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2 obligations under the federal Individuals with Disabilities
Education Act of 1991, Public Law 101-476.

4 2. Plan. The department shall submit the State's plan for
meeting the requirements of federal Public Law 101-476 to the
6 Federal Government.

8 3. Rule-making authority. The commissioner may adopt rules
necessary to implement this chapter in accordance with the Maine
10 Administrative Procedure Act.

12 4. Contracts. The department may enter into contracts,
leases and agreements and any other instruments and arrangements
14 that are necessary, incidental or convenient to the performance
of its duties and the execution of its powers under this chapter.

16 The department shall contract with the board of directors of a
private nonprofit corporation for no fewer than 3 years and
18 approve an annual entitlement plan with the board of directors of
a regional intermediate education unit for the purpose of
20 assuring coordinated service delivery in each region of the State.

22 Contracts with boards of directors of private nonprofit
24 corporations or plans of regional intermediate education units
must ensure:

26 A. That screening, evaluation and referral services, at no
28 cost to the family, are accessible to all children, ages 0
to school-age 5; and

30 B. That preschool children with disabilities, ages 3 to
32 school-age 5, have free, appropriate public education
services available to them at no cost to the family.

34 5. Implementation of free, appropriate public education
36 services. The department, through the Child Development Services
System, shall ensure:

38 A. That screening, evaluation and referral services, at no
40 cost to the family, are accessible to all children, ages 0
to school-age 5. The commissioner shall adopt rules
42 describing these services;

44 B. That preschool children with disabilities, ages 3 to
46 school-age 5, have free, appropriate public education
services available to them at no cost to the family; and

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

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- (1) Least restrictive environment;
- (2) Nondiscrimination;
- (3) Rights of parents;
- (4) Free and appropriate public services;
- (5) Eligibility criteria;
- (6) The federal "childfind" program;
- (7) Program development, service descriptors and service delivery;
- (8) Early childhood team;
- (9) Individualized family service plan;
- (10) Statements of assurances;
- (11) Procedural safeguards and appeals processes;
- (12) Due process hearings;
- (13) Confidentiality of information;
- (14) Data collection, reporting and utilization; and
- (15) Surrogate parents.

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6. Regional site compliance. The department, in consultation with regional sites and the Interdepartmental Coordinating Council for Early Intervention, shall develop an action plan with timelines to achieve compliance for regional sites that are not in compliance with federal or state law. The department may assume temporary responsibility for operations at a site that fails to meet compliance requirements.

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§7728. State intermediate education unit; establishment; powers; duties and obligations

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The commissioner shall establish and supervise a state intermediate education unit to perform the following duties:

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1. Federal obligations. Develop and adopt statewide policies and rules for carrying out the provisions of this chapter to meet federal obligations under the federal Individuals with Disabilities Education Act of 1991, Public Law 101-476,

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2 Part B, Section 619 and Part H. These obligations must include
3 but are not limited to:

4 A. Personnel standards;

6 B. Comprehensive system of personnel development;

8 C. Program monitoring;

10 D. Data collection;

12 E. Interagency agreements at the state level; and

14 F. Public awareness;

16 2. Program and policy compliance. Provide training and
17 technical assistance in the policies and procedures necessary to
18 meet all federal and state guidelines required by this chapter.

20 3. Fiscal compliance. Ensure regional site fiscal
21 compliance by reviewing or performing regular audits of site
22 records;

24 4. Free, appropriate public education training. Provide
25 training and certification to regional site employees and others
26 in commitment of funds used to provide free, appropriate public
27 education;

28 5. Administrative case management. Provide billing services
29 to each regional site for administrative case management;

32 6. Employees. Employ professional and other staff necessary
33 to carry out the state level functions required by this chapter.
34 Employees of the state intermediate education unit are employees
35 of the State and entitled to all the rights, privileges and
36 benefits of state employees;

38 7. Suits. Sue and be sued in its own name;

40 8. Acquire supplies. Acquire supplies, materials and
41 incidental services through cash purchases, sole-source purchase
42 orders and bids or contracts as necessary or convenient to
43 fulfill the purposes of this chapter;

44 9. Acquire property. Acquire by purchase, gift, lease or
45 rent any property, lands, buildings, structures, facilities or
46 equipment necessary to fulfill the purposes of this chapter;

48 10. Other duties. Perform other duties assigned by the
49 Legislature, delegate duties and authority, but not
50 perform other duties assigned by the Legislature, delegate

responsibility, as necessary for the efficient operation of this chapter and do any other acts or things necessary or convenient to carry out the powers expressly granted or reasonably implied in this chapter; and

11. Dissemination of information. Apply the federal Family Educational Rights and Privacy Act of 1974, Public Law 93-380, as amended by Public Law 93-568, and the federal Education for All Handicapped Children Act of 1975, Public Law 94-142, to the dissemination of information about infants and children, ages 0 to school-age 5, with disabilities who are served by the Child Development Services System.

All state intermediate education unit employees are employees for purposes of the Maine Tort Claims Act.

§7729. Regional site governance; choice

Boards of directors of the local coordinating committees under former chapter 307, established to ensure childfind activities for children, ages 0 to 5, and to coordinate free, appropriate public education services for children ages 3 to 5 who have a disability shall organize, at the discretion of each board, as a private nonprofit corporation or an intermediate education unit.

§7730. Regional site board of directors

Each board of directors of a regional intermediate education unit or a private nonprofit corporation is responsible for governance of its activities, including the management and oversight of its general operations as established in section 7728. Membership must include representatives of the regional offices of the Department of Human Services and the Department of Mental Health and Mental Retardation, representatives of participating school administrative units, parents of infants and children with disabilities and other community members as determined appropriate. Terms of membership and methods of appointment or election must be determined by board of directors bylaws, subject to approval of the department.

§7731. Regional site; administration

The regional site board of directors shall:

1. Fiscal services. Provide fiscal management of money allocated to it, in compliance with state and federal laws and subject to proof of an annual audit. Fiscal services may be secured as a contracted or in-kind service;

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2 2. Employees. Employ qualified professional and other staff
3 at the local site. The board of directors has the authority to
4 hire, fire and supervise the staff of the regional site and to
5 develop and adopt personnel policies for its employees;

6 3. Collective bargaining. Bargain collectively if employees
7 choose to be represented by a collective bargaining agent. The
8 board of directors of a local intermediate education unit is a
9 public employer within the meaning of Title 26, section 962,
10 subsection 7. Employees of the board of directors are public
11 employees within the meaning of Title 26, section 962, subsection
12 6;

13 4. Fringe benefits. Determine which fringe benefits may be
14 offered to employees, dependent on cost, ease of administration
15 and competitiveness in recruiting and retaining qualified
16 personnel;

17 5. Retirement plan. Select an employee retirement plan
18 option that meets all applicable federal and state requirements;

19 6. Contracts. Subject to the approval of the department,
20 enter into contracts, leases and agreements and any other
21 instruments and arrangements that are necessary, incidental or
22 convenient to the performance of its duties and the execution of
23 its powers under this chapter;

24 7. Suits. Sue and be sued in its own name;

25 8. Acquire supplies. Acquire supplies, materials and
26 incidental services, through cash purchases, sole-source purchase
27 orders, bids or contracts, as necessary or convenient to fulfill
28 the purposes of this chapter;

29 9. Acquire property. Acquire by purchase, gift, lease or
30 rent any property, lands, buildings, structures, facilities or
31 equipment necessary to fulfill the purposes of this chapter;

32 10. Other duties. Fulfill other duties as necessary for
33 the efficient operation of this chapter and do any other acts or
34 things necessary or convenient to carry out the powers expressly
35 granted or reasonably implied in this chapter; and

36 11. Dissemination of information. Apply the federal Family
37 Educational Rights and Privacy Act of 1974, Public Law 93-380, as
38 amended by Public Law 93-568, and the federal Individuals with
39 Disabilities Education Act of 1991, Public Law 101-476, to the
40 dissemination of information about infants and children, 0 to
41 school-age 5, with disabilities who are served through the
42 regional site.

2 All regional site employees and board of directors members
3 of a regional intermediate education unit are employees for
4 purposes of the Maine Tort Claims Act.

6 **§7732. Regional site; duties and obligations**

8 The board of directors of a private nonprofit corporation or
9 a regional local intermediate education unit shall:

10 1. Part H. Perform appropriate data collection, training
11 and staff development in accordance with federal Public Law
12 101-476, Part H;

14 2. Childfind. Ensure provision of childfind activities as
15 required by federal Public Law 101-476;

17 3. Childcount. Ensure provision of childcount activities as
18 required by federal Public Law 101-476;

20 4. Free, appropriate public education. Ensure that eligible
21 children, ages 3 to school-age 5, receive free, appropriate
22 public education services;

24 5. Individual family service plan. Coordinate development
25 of individual family service plans with eligible families;

27 6. Service providers. Contract with providers of targeted
28 case management services approved by the Bureau of Medical
29 Services within the Department of Human Services;

31 7. Designate personnel for training. Designate local
32 personnel for training to commit funds for free, appropriate
33 public education. Personnel who commit funds for free,
34 appropriate public education must be trained and certified by the
35 state intermediate education unit. The board of directors shall
36 determine which trained and certified personnel may commit funds;
37 and

39 8. Targeted case management. Following certification by the
40 Bureau of Medical Services within the Department of Human
41 Services, seek reimbursement for targeted case management.

43 **§7733. Interdepartmental coordination**

45 The Interdepartmental Coordinating Council for Early
46 Intervention as established in Title 5, section 12004-G,
47 subsection 8-A is established as an advisory body to the
48 commissioner regarding the coordination of policies and programs
49 aimed at implementing federal Public Law 99-457.
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2 Membership of the council must be in keeping with federal
4 Public Law 101-476, Subparts F and G, contingent upon state
6 participation in these programs. Appointments to the council
 must be made by the Governor for terms defined in rules adopted
 by the commissioner. The council shall meet at least quarterly.

8 The commissioner shall adopt rules describing the
10 composition of the council, selection process and duties of the
 members consistent with the purposes of this chapter.

12 The council shall designate from among its members a
14 steering committee responsible to the council for carrying out
16 the duties described in this section. The commissioner shall
 adopt rules describing the composition, selection process and
 responsibilities of the steering committee.

18 1. Recommendations. The council shall recommend to the
20 department, with the advice of the regional site boards of
22 directors, legislation that is needed to maintain or further
 develop the statewide system of quality early intervention
 services.

24 2. Consider issues. The council shall consider, with the
26 advice of the regional site boards of directors and the state
28 intermediate education unit, contemporary issues affecting early
 intervention services in the State, including, but not limited
 to, the following:

30 A. Successful early intervention strategies;

32 B. Personnel preparation and continuing education;

34 C. Childfind activities and methods as required by federal
 Public Law 101-476, as amended;

36 D. Public awareness as required by federal Public Law
38 101-476, as amended;

40 E. Contemporary research;

42 F. Conflict resolution between departments;

44 G. Accountability, accessibility and equitability issues
 within CDS;

46 H. Costs and implications of case management entitlement
48 and provision of FAPE services;

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2 I. Costs and implications of inclusion of at-risk children
and of providing entitlement for children ages 0 to 2;

4 J. Implications of continued state participation in federal
Public Law 101-476, Part H;

6 K. Development of common language between departments
participating in CDS;

8 L. Costs and implications of delivery of services under
this chapter by local schools;

10 M. Effectiveness of private nonprofit and local
intermediate education unit models for delivery of local
services under this chapter. The council shall study the
costs of administration, quality and stability of service
delivery and other pertinent questions raised during review
of the 2 service delivery models; and

12 N. Equitable parameters for salaries and benefits at local
sites.

14 3. Bylaws. The council shall develop and adopt bylaws for
its conduct.

16 4. Advise. The council shall advise the department in the
development and implementation of rules, to be carried out by the
department, as necessary to carry out the duties and purposes of
this chapter.

18 5. Chair. The council shall annually elect one member to
serve as chair.

20 6. Compensation. The members of the council are entitled
to compensation in accordance with Title 5, section 12004-G.
Agency representatives on the council are entitled to
reimbursement for expenses incurred in the performance of their
council duties by the appointing agencies in accordance with the
provisions for state employees. Consumer members are entitled to
reimbursement for actual and necessary expenses incurred in the
performance of their duties.

22 7. Staffing. The department and the state intermediate
education unit shall provide to the council the equivalent of one
full-time professional staff person from funds allocated to
operation of the state intermediate education unit.

24 8. Committee and advisory activities. The council may
establish committees composed of parents, professionals, advocacy

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2 group representatives, board representatives and employees in
keeping with the bylaws adopted by the council.

4 9. Voting. A majority must be present for any action taken
by the council. Actions must be approved by a majority vote of
6 the members present and voting.

8 10. Conflict resolution. The council shall identify areas
of conflict for resolution by the Committee for the
10 Interdepartmental Coordination of Services to Children and
Families.

12 **§7734. Allocation of federal and state funds**

14 1. State level share for fiscal year 1992-93. For fiscal
16 year 1992-93 only, the total of all federal, state and other
funds that may be expended under this chapter for department
18 expenses and state intermediate education unit expenses,
including staff support to the Interdepartmental Coordinating
20 Council for Early Intervention, is \$400,000.

22 2. Allocation of funds by the department to regional
sites. Allocation of funds by the department to regional sites
24 is governed by this subsection.

26 A. Public Law 101-476, Part B, Section 619 funds must be
distributed in accordance with federal law.

28 B. Public Law 101-476, Part H funds must be distributed
30 based upon a regional site application describing activity
permitted under Public Law 101-476.

32 C. State and other funds granted to a regional site must be
34 allocated on the following basis.

36 (1) Each site must receive a base allocation for
operations. Of the remaining amount, 70% must be based
38 on the site's share of the total of Maine children aged
3 to school-age 5. Labor and census data, updated
40 every 2 years, must be used to calculate population
shares. The remaining 30% must be based on the site's
42 share of land area in the State.

44 **§7735. Conflict of interest**

46 Notwithstanding Title 5, section 18, subsection 1, paragraph
B, each member of the Interdepartmental Coordinating Council for
48 Early Intervention and each employee, contractor, agent or other
representative of the Child Development Services System is deemed
50 an "executive employee" solely for the purposes of Title 5,

2 section 18. The department shall provide training to
3 participants to ensure compliance with conflict of interest
4 requirements. Regional site boards of directors shall develop
5 conflict of interest policies for employees and board members and
6 may request assistance from the department in developing those
7 policies.

8 **§7736. Insurer or 3rd-party obligation**

10 Nothing in this chapter relieves an insurer or similar 3rd
11 party from an otherwise valid obligation to provide or pay for
12 services.

14 **Sec. 4. Study; agreements.** The Interdepartmental Coordinating
15 Council for Early Intervention shall study the history and
16 current status of distribution of available federal, state and
17 Medicaid funds within the Child Development Services System and
18 make recommendations for a new funding formula. The council
19 shall submit a preliminary report by December 1, 1992 and a final
20 report, together with any necessary implementing legislation, by
21 February 15, 1993 to the joint standing committee of the
22 Legislature having jurisdiction over education matters.

24 The Department of Education, the Department of Human
25 Services and the Department of Mental Health and Mental
26 Retardation shall develop interagency agreements on sharing
27 federal mandate responsibilities under federal Public Law 99-457,
28 develop early intervention standards and address Child
29 Development Services System eligibility issues by July 1, 1992.

30 For fiscal year 1992-93, up to 8 regional sites may seek
31 reimbursement for targeted case management.

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FISCAL NOTE

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38 This bill establishes a method to distribute existing
39 General Fund appropriations and federal funds among the 16
40 regional Child Development Services sites and the state level
41 unit.

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43 The Department of Education can absorb the costs of adopting
44 rules to implement the Maine Revised Statutes, Title 20-A,
45 chapter 307-A and, with the Departments of Human Services and
46 Mental Health and Mental Retardation, can absorb within existing
47 resources the costs of developing interagency agreements and
48 standards.

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STATEMENT OF FACT

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The amendment replaces the original bill. It changes the Child Development Services System by directing the boards of directors of the local coordinating committees under former chapter 307 to organize at the discretion of each board as a private nonprofit corporation or as an intermediate educational unit. It establishes a state level intermediate educational unit under the supervision of the Department of Education to perform certain state duties required by state and federal law. It also establishes the Interdepartmental Coordinating Council for Early Intervention as an advisory body to the Commissioner of Education.

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The amendment also adds a fiscal note to the bill.

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Reported by Senator McCormick for the Committee on Education.
Reproduced and Distributed Pursuant to Senate Rule 12.
(3/24/92) (Filing No. S-679)