

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 839

S.P. 275

In Senate, March 9, 1993

**An Act to Provide for the Efficient Delivery of Educational Services to
Children with Special Needs.**

Reference to the Committee on Education suggested and ordered printed.

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

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator HANDY of Androscoggin.
Cosponsored by Representative CONSTANTINE of Bar Harbor and
Senators: McCORMICK of Kennebec, O'DEA of Penobscot, PARADIS of Aroostook,
Representatives: BEAM of Lewiston, CARROLL of Gray, GWADOSKY of Fairfield, JOSEPH
of Waterville, KILKELLY of Wiscasset, MITCHELL of Vassalboro, OLIVER of Portland,
PINEAU of Jay, RYDELL of Brunswick, WINN of Glenburn.

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

2
4 **Sec. 1. 5 MRSA §12004-G, sub-§8-A**, as amended by PL 1991, c. 843, §1, is further amended to read:

6	8-A.	Interde-	Expenses	20-A MRSA
8	Education	partmental	Only	§7733
10		Coordina-		§7755
12		ting Coun-		
		cil for		
		Early Inter-		
		vention		

14 **Sec. 2. 20-A MRSA c. 307-A**, as enacted by PL 1991, c. 843, §3,
16 is repealed.

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

20 **CHAPTER 307-B**

22 **SPECIAL EDUCATION SERVICES FOR ELIGIBLE CHILDREN**

24 **AGES 3 TO SCHOOL-AGE 5**

26 **§7741. Definitions**

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

30 1. **Childfind.** "Childfind" means the identification, location and evaluation, at no cost to the family, of children, ages 3 to school-age 5, with disabilities.

32 2. **Regional board.** "Regional board" means the governing board of each regional site consisting of a representative from each of the school administrative units within the regional site's boundaries.

34 3. **Department.** "Department" means the Department of Education.

36 4. **Disability.** "Disability" means the condition of children, ages 3 to school-age 5, who are in need of special education services due to a delay in one or more of the following areas: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; and adaptive development.

38 5. **Eligible child.** "Eligible child" means a child, age 3 to school-age 5, who has a disability that adversely affects development.

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

- 8 A. Early identification, screening and assessment services;
- 10 B. Medical services for diagnostic or evaluation purposes
12 only;
- 14 C. Occupational therapy;
- 16 D. Parent counseling and training;
- 18 E. Physical therapy;
- 20 F. Psychological services;
- 22 G. Special instructions;
- 24 H. Speech pathology and audiology; and
- 26 I. Transportation.

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

36 8. Parent. "Parent" means a parent, a guardian, a person
38 acting as a parent of a child or a surrogate parent who has been
 appointed in accordance with state and federal regulations.
40 "Parent" does not include the State if the child is a ward of the
 State.

42 9. Regional site. "Regional site" means one of 16 locally
44 governed sites established as an intermediate education unit to
 ensure the provision of services to children under this chapter.

46 §7742. Department of Education

48 1. Responsibility. The department is designated as the
50 state education agency responsible for carrying out the State's
 obligations under the federal Individuals with Disabilities
 Education Act of 1991, Public Law 101-476, Part B, Section 619.

2 2. Plan. The department shall submit the State's plan for
meeting the requirements of federal Public Law 101-476, Part B,
4 Section 619 to the Federal Government.

6 3. Rule-making authority. The commissioner may adopt rules
necessary to implement this chapter in accordance with the Maine
8 Administrative Procedure Act. Rules adopted under this chapter
may not exceed the minimum standards established by federal
10 Public Law 101-476, Part B, Section 619.

12 4. Procedure and policy. The department shall provide
training and technical assistance in policies and procedures
14 necessary to meet all federal and state guidelines required by
this chapter.

16 5. Entitlement plan. The department shall approve an
18 annual entitlement plan with the board of directors of a regional
intermediate educational unit for the purpose of ensuring
20 services under federal Public Law 101-476, Part B, Section 619 in
each region of the State.

22 **§7743. Geographical regions**

24 1. Establishment. Regional sites are established to ensure
26 provision of early childhood special education services for
eligible children within the region in accordance with this
28 chapter.

30 2. Service delivery regions. The 16 regional sites shall
provide service in accordance with the following boundaries.

32 A. Apple Catchment Area: Bridgewater, Caribou, Caswell,
34 Easton, Grand Isle, Limestone, Madawaska, New Sweden,
Stockholm, Woodland, School Administrative District 1,
36 School Administrative District 10, School Administrative
District 14, School Administrative District 20, School
38 Administrative District 24, School Administrative District
25, School Administrative District 27, School Administrative
40 District 29, School Administrative District 30, School
Administrative District 32, School Administrative District
42 33, School Administrative District 42, School Administrative
District 45, School Administrative District 70 and Southern
44 Aroostook Community School District.

46 B. Costep Catchment Area: Cape Elizabeth, Falmouth,
Freeport, Gorham, Portland, Raymond, Scarborough, South
48 Portland, Westbrook, Windham, Yarmouth, School
Administrative District 15, Gloucester and School
50 Administrative District 51.

2 C. First Step Catchment Area: Auburn, Durham, Lewiston,
4 Lisbon, Mechanic Falls, Minot, Poland, Sabattus, Wales,
6 School Administrative District 36 and School Administrative
8 District 52.

10 D. Franklin Catchment Area: Dallas Plantation, Jay,
12 Madrid, Magalloway Plantation, Rangeley, Rangeley
14 Plantation, School Administrative District 9, School
16 Administrative District 21 and School Administrative
18 District 58.

20 E. GUIDE Catchment Area: Greenville, Harmony, Shirley,
22 School Administrative District 4, School Administrative
24 District 12, School Administrative District 41, School
26 Administrative District 46, School Administrative District
28 48 and School Administrative District 68.

30 F. Hancock Catchment Area: Bar Harbor, Blue Hill,
32 Brooklin, Brooksville, Bucksport, Castine, Dedham,
34 Ellsworth, Gouldsboro, Hancock, Lamoine, Mt. Desert, Orland,
36 Otis, Penobscot, Sedgwick, Southwest Harbor, Surry, Tremont,
38 Trenton, Winter Harbor, School Administrative District 26,
40 School Administrative District 76, Airline Community School
42 District, Deer Isle/Stonington Community School District,
44 Flanders Bay Community School District, Mt. Desert Community
46 School District and Schoodic Community School District.

48 G. Lincoln Catchment Area: Alna, Bremen, Bristol,
50 Damariscotta, Dresden, Edgecomb, Jefferson, Newcastle,
Nobleboro, Somerville, South Bristol, Southport, Westport,
Whitefield, Wiscasset, Boothbay Harbor Community School
District and Great Salt Bay Community School District.

H. Mid-Coast Catchment Area: Appleton, Hope, Islesboro,
Lincolnton, School Administrative District 5, School
Administrative District 7, School Administrative District 8,
School Administrative District 28, School Administrative
District 40 and School Administrative District 50.

I. Opportunities Catchment Area: Gilead, Hanover, Peru,
Upton, School Administrative District 17, School
Administrative District 39, School Administrative District
43, School Administrative District 44, School Administrative
District 61 and School Administrative District 72.

J. PEDS Catchment Area: China, Highland Plantation,
Vassalboro, Waterville, Winslow, School Administrative
District 13, School Administrative District 47, School
Administrative District 49, School Administrative District

2 53, School Administrative District 54, School Administrative
District 59 and School Administrative District 74.

4 K. Penobscot Catchment Area: Alton, Bangor, Bradley,
Brewer, East Millinocket, Glenburn, Greenbush, Greenfield,
6 Hermon, Medford, Medway, Milford, Millinocket, Old Town,
8 Orono, Orrington, Veazie, Reed Plantation, Woodville, School
Administrative District 22, School Administrative District
10 23, School Administrative District 30, School Administrative
District 31, School Administrative District 38, School
12 Administrative District 63, School Administrative District
64, School Administrative District 67 and Indian Island.

14 L. SEARCH - Catchment Area: Arrowsic, Bath, Brunswick,
Georgetown, Phippsburg, West Bath, Woolwich and School
16 Administrative District 75.

18 M. Southern Kennebec Preschool Program Area: Augusta,
Chelsea, Litchfield, Manchester, Monmouth, Mount Vernon,
20 Readfield, Richmond, Rome, Wayne, Windsor, Winthrop, School
Administrative District 11, School Administrative District
22 16 and Maranacook Community School District.

24 N. Waldo Catchment Area: Palermo, School Administrative
District 3, School Administrative District 34, School
26 Administrative District 53 and School Administrative
District 56.

28 O. Washington Catchment Area: Alexander, Baileyville,
30 Baring Plantation, Beals, Calais, Centerville, Charlotte,
Crawford, DeBlois, Dennistown Plantation, Dennysville,
32 Eastport, Jonesboro, Jonesport, Machias, Marshfield,
Northfield, Pembroke, Perry, Princeton, Robbinston, Roque
34 Bluffs, Steuben, Vanceboro, Wesley, Whitneyville, School
Administrative District 19, School Administrative District
36 37, School Administrative District 77, Peter Dana Point,
Pleasant Point, East Range Community School District and
38 Moosabec Community School District.

40 P. York Catchment Area: Acton, Arundel, Biddeford, Dayton,
Kittery, Old Orchard, Saco, Sanford, York, School
42 Administrative District 6, School Administrative District
35, School Administrative District 55, School Administrative
44 District 57, School Administrative District 60, School
Administrative District 71 and Wells-Ogunquit Community
46 School District.

48 **§7744. Regional site board of directors**

2 Each board of directors of a regional site is responsible
3 for governance of its activities, including the management and
4 oversight of its general operations as established in section
5 7745. Membership must include but is not limited to
6 representatives from each school administrative unit within its
7 geographical boundaries. Terms of membership and methods of
8 appointment or election must be determined by board of director
9 bylaws, subject to approval by the department.

10 **§7745. Regional site; administration**

11 The regional site board of directors shall:

12
13 **1. Fiscal services.** Provide fiscal management of money
14 allocated to it, in compliance with state and federal laws and
15 subject to proof of an annual audit. Fiscal services may be
16 secured as a contracted or in-kind service;

17
18 **2. Employees.** Employ qualified professional staff at the
19 regional site. The board has the authority to hire, fire and
20 supervise the staff of the regional site and to develop and adopt
21 personnel policies for its employees;

22
23 **3. Collective bargaining.** Bargain collectively if
24 employees choose to be represented by a collective bargaining
25 agent. The board of a regional site is a public employer within
26 the meaning of Title 26, section 962, subsection 7. Employees of
27 the board are public employees within the meaning of Title 26,
28 section 962, subsection 6;

29
30 **4. Fringe benefits.** Determine which fringe benefits may be
31 offered to employees, dependent on costs, ease of administration
32 and competitiveness in recruiting and retaining qualified
33 personnel;

34
35 **5. Contracts.** Enter into contracts, leases, agreements and
36 any other instruments and arrangements that are necessary,
37 incidental or convenient to the performance of its duties and
38 exercise of its powers under this chapter;

39
40 **6. Acquire supplies.** Acquire supplies, materials and
41 incidental services through cash purchases, sole-source purchase
42 orders, bids or contracts as necessary or convenient to fulfill
43 the purpose of this chapter;

44
45 **7. Acquire property.** Acquire by purchase, gift, lease or
46 rent any property, lands, buildings, structures, facilities or
47 equipment necessary to fulfill the purpose of this chapter;
48

2 8. Prepare a budget. Prepare a budget for the regional
site and submit that budget for approval by the department; and

4 9. Suits. Sue and be sued in its own name.

6 **§7746. Regional site; duties and obligations**

8 The regional site board shall:

10 1. Free, appropriate public education. Ensure that
eligible children, ages 3 to school-age 5, receive free,
12 appropriate public education services;

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

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

20 4. Service provision models. Ensure that a continuum of
service provision models is available for each child in the
22 program so that services are delivered in the least restrictive
environment; and

24 5. Audit and legal services. Share, with all other boards,
26 the cost of appropriate audit and legal services at each site.
Regional site boards shall seek audit and legal services at the
28 lowest possible cost. Boards that obtain audit or legal services
at no cost are exempt from cost sharing for that service.

30 **§7747. Allocation of funds**

32 Funds available to support early childhood special education
34 programs must be distributed as follows:

36 1. Federal funds. Ninety-five percent of federal Public
Law 101-476, Part B, Section 619 funds that may be expended under
38 this chapter must be distributed to the regional sites on a
per-child basis. Five percent of federal funds may be expended
40 by the department for administrative services necessary to
support this program;

42 2. State funds. One hundred percent of state funds
44 available to support this program must be distributed to the
regional sites. Each regional site is entitled to receive a base
46 allocation of \$150,000; and

48 3. Additional funds. Additional funds must be distributed
in accordance with the following formula:

50

2 A. Forty percent must be allocated to the 16 regional sites
3 based on each region's population of children, ages 3 to 5,
4 as measured by the most recent federal census;

5 B. Forty percent must be allocated to the 16 regional sites
6 based on the geographical size of each region; and

7 C. Twenty percent must be allocated to the 16 regional
8 sites based on each region's childcount figure for the
9 preceding year.

10 **§7748. Prohibited appointments and employment**

11 The following provisions apply to members of a regional site
12 board.

13 1. Definition. "Employee" means a person regularly
14 employed on a weekly basis regardless of remuneration or the
15 number of hours worked.

16 2. Employment by early childhood special education region.
17 A member of a board or spouse of a member may not be employed as
18 an employee of the regional site within the jurisdiction of the
19 board to which the member is appointed.

20 3. Appointment to civil office and other employment. A
21 board member may not, during the term for which the member serves
22 on the board and for one year after the member ceases to serve on
23 the board, be appointed to any civil office of profit or
24 employment position that has been created or the compensation of
25 which has been increased by the action of the board during the
26 time the member serves on the board.

27 **§7749. Third party**

28 Nothing in this chapter relieves an insurer or similar third
29 party from an otherwise valid obligation to provide or pay for
30 services.

31 Sec. 4. 20-A MRSA c. 307-C is enacted to read:

32 **CHAPTER 307-C**

33 **SERVICES FOR INFANTS AND TODDLERS**

34 **§7751. Purpose**

35 The purpose of this chapter is to establish a system for the
36 effective delivery of services to infants and toddlers, ages 0 to

2, as mandated by the federal Individuals with Disabilities Education Act of 1991, Public Law 101-476, Part H.

4 **§7752. Definitions**

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

10 1. **Childfind.** "Childfind" means the identification,
12 location and evaluation, at no cost to the family, of children,
14 ages 0 to 2, with disabilities.

16 2. **Department.** "Department" means the Department of
18 Education.

20 3. **Disability.** "Disability" means a condition of infants
22 and toddlers, ages 0 to 2, who demonstrate a delay in one or more
24 of the following areas: cognitive development; physical
26 development, including vision and hearing; communication
28 development; social or emotional development; and adaptive
30 development.

32 4. **Eligible child.** "Eligible child" means an infant or
34 toddler, ages 0 to 2, who has a disability that adversely affects
36 development.

38 5. **Free, appropriate, public education services.** "Free,
40 appropriate, public education services" or "FAPE" means those
42 services that are designed to meet the developmental needs of
44 eligible children, ages 3 to school-age 5, who have a
46 disability. These services include:

- 48 A. **Early identification, screening and assessment services;**
50 B. **Medical services for diagnostic or evaluation purposes**
only;
C. **Occupational therapy;**
D. **Parent counseling and training;**
E. **Physical therapy;**
F. **Psychological services;**
G. **Special instructions;**
H. **Speech pathology and audiology; and**
I. **Transportation.**

2 6. Parent. "Parent" means a parent, a guardian, a person
4 acting as a parent of a child, or a surrogate parent who has been
6 appointed in accordance with state and federal regulations. The
 term does not include the State if the child is a ward of the
 State.

8 7. Regional site. "Regional site" means one of the 16
10 locally governed regional sites as provided in chapter 307-B
 established as intermediate educational units to ensure the
 provision of services under this chapter.

12 8. Council. "Council" means the Interdepartmental
14 Coordinating Council for Early Intervention described in section
 7752.

16 9. Part H. "Part H" means that section of federal Public
18 Law 101-476 concerning services to infants and toddlers, ages 0
20 to 2.

22 §7753. Department of Education

24 1. Responsibility. The department is designated as the
 lead agency responsible for carrying out the State's obligations
26 under federal Public Law 101-476, Part H.

28 2. Plan. The department shall submit the State's plan for
 meeting the requirements of federal Public Law 101-476, Part H to
30 the Federal Government. The plan must permit use of Part H funds
 for all activities that regional sites may perform to meet the
 requirements of federal Public Law 101-476, Part H.

32 3. Rule-making authority. The commissioner may adopt rules
34 necessary to implement this chapter in accordance with the Maine
 Administrative Procedure Act. The rules adopted may not exceed
36 the minimum standards established by the federal statutes and
 regulations.

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

44 5. Entitlement plan. The department shall approve an
46 annual entitlement plan with the board of directors of a regional
 intermediate educational unit for the purpose of ensuring Part H
 services in each region of the State.

48 6. Implementation of Part H requirements. The department,
50 through the 16 regional sites, shall ensure:

- 2 A. That screening, evaluation and referral services, at no
4 cost to the family, are accessible to all infants and
 toddlers, ages 0 to 2; and
- 6 B. That all other requirements of the State's continued
8 participation in the Part H program, as mandated by federal
 Public Law 101-476, Part H are fulfilled.

10 **§7754. Regional site duties and responsibilities**

12 The regional site board of directors shall:

14 1. Fiscal services. Provide fiscal management of money
16 allocated to it, in compliance with state and federal laws and
 subject to proof of an annual audit;

18 2. Childfind. Ensure the provision of childfind activities
20 as required by federal Public Law 101-476, Part H.

22 3. Other duties. Ensure the provision of all other
24 services mandated by federal Public Law 101-476, Part H that
 pertain to the State's current year of participation in the
 federal Part H program.

26 **§7755. Interdepartmental Coordinating Council for Early**
28 Intervention

30 The Interdepartmental Coordinating Council for Early
32 Intervention, as established in Title 5, section 12004-G,
34 subsection 8-A, is an advisory body to the commissioner regarding
 the coordination of policies and programs aimed at implementing
 federal Public Law 101-476, Part H.

36 Membership of the council must be in keeping with federal
38 Public Law 101-476, Subparts F and G, contingent upon state
40 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.

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

46 1. Recommendations. The council shall recommend to the
48 department, with the advice of the regional site boards of
 directors, legislation that is needed to maintain or further
 develop the statewide system of quality early intervention
50 services for infants and toddlers, ages 0 to 2.

2 2. Consider issues. The council shall consider, with the
3 advice of the regional site boards of directors, contemporary
4 issues affecting early intervention services in the State,
5 including the following:

6 A. Successful early intervention strategies for infants and
7 toddlers, ages 0 to 2;

8 B. Personnel preparation and continuing education;

9 C. Childfind activities and methods as required by federal
10 Public Law 101-476, Part H;

11 D. Public awareness as required by federal Public Law
12 101-476, Part H;

13 E. Contemporary research;

14 F. Conflict resolution between departments providing
15 services to infants and toddlers;

16 G. Accountability, accessibility and equitability issues;

17 H. Costs and implications of case management entitlement
18 and provision of FAPE services;

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

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

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

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

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

31 6. Compensation. The members of the council are entitled
32 to compensation in accordance with Title 5, section 12004-G,
33 subsection 8-A. Agency representatives on the council are
34 entitled to reimbursement for expenses incurred in the
35 performance of their council duties by the appointing agencies in
36 accordance with the provisions for state employees. Consumer

2 members are entitled to reimbursement for actual and necessary
3 expenses incurred in the performance of their duties.

4 7. Committee and advisory activities. The council may
5 establish committees composed of parents, professionals, advocacy
6 group representatives, board representatives and employees in
7 keeping with the bylaws adopted by the council.

8
9 8. Voting. A majority must be present for any action taken
10 by the council. Actions must be approved by a majority vote of
11 the members present and voting.

12
13 9. Conflict resolution. The council shall identify areas
14 of conflict for resolution by the committee for the
15 interdepartmental coordination of services to children and
16 families established in Title 34-B, section 1214.

17 **§7756. Allocation of federal Part H funds**

18
19 1. Department share. Ten percent of federal Public Law
20 101-476, Part H funds that may be expended under this chapter
21 must be allocated to the department for administrative purposes.

22
23 2. Regional site share. Ninety percent of federal Public
24 Law 101-476, Part H funds that may be expended under this chapter
25 must be distributed to the 16 regional sites for the purpose of
26 meeting their duties and obligations under this chapter. Each
27 regional site is entitled to receive 1/16 of the federal Part H
28 award available to the regional sites under this section.

29
30 **Sec. 5. 26 MRSA §962, sub-§7, ¶A,** as amended by PL 1991, c.
31 **843, §4,** is further amended to read:

32
33 A. Any officer, board, commission, council, committee or
34 other persons or body acting on behalf of:

35
36 (1) Any municipality or any subdivision of a
37 municipality;

38
39 (2) Any school, water, sewer or other district;

40
41 (3) The Maine Turnpike Authority;

42
43 (4) Any board of directors functioning as a regional
44 intermediate education unit pursuant to Title 20-A,
45 section 7730 7741, subsection 9 and section 7752,
46 subsection 7; or

47
48 (5) Any county or subdivision of a county; or
49
50

2	Sec. 6. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.		
4		1993-94	1994-95
6	EDUCATION, DEPARTMENT OF		
8	Handicapped Children Services -		
	Preschool		
10			
12	All Other	\$2,273,440	\$2,190,112
14	Provides funds to carry out		
	the State's obligations under		
	federal law to preschool		
	handicapped children.		
18	DEPARTMENT OF EDUCATION		
	TOTAL	\$2,273,440	\$2,190,112

22 **STATEMENT OF FACT**

24 This bill makes several changes to the child development services system. It reduces the responsibilities of the Department of Education for oversight of the 16 regional sites providing services to preschool handicapped children; eliminates the state level intermediate education unit responsible for performing certain state level functions; and limits special education services for preschool handicapped children to services required by federal law.

32 The bill appropriates \$2,273,440 for fiscal year 1993-94 and 34 fiscal year 1994-95 for Preschool Handicapped Children Services.