

MAINE STATE LEGISLATURE

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EDUCATION

Reported by: Senator O'DEA of Penobscot

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**STATE OF MAINE
SENATE
116TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT " A " to S.P. 663, L.D. 1831, Bill, "An Act Regarding Maine's Comprehensive Early Intervention System for Infants and Children, Ages Zero to Five"

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, from Birth to under Age Six'

Further amend the bill by striking out everything after the enacting clause and before the emergency clause and inserting in its place the following:

'Sec. 1. 20-A MRSA c. 307-A, first 3 lines are repealed and the following enacted in their place:

CHAPTER 307-A

**INFANTS AND CHILDREN, FROM BIRTH TO
UNDER AGE 6, WITH DISABILITIES**

Sec. 2. 20-A MRSA §7724, sub-§1, as enacted by PL 1991, c. 843, §3, is amended to read:

1. Establishment. The Child Development Services System is established for the purpose of maintaining a coordinated service delivery system for the provision of childfind activities for children, ages-0-to-school-age-5 from birth to under age 3, early intervention services for eligible children, from birth to under age 3, and free, appropriate and public education services for

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

12 **Sec. 3. 20-A MRSA §§7725 and 7727**, as enacted by PL 1991, c.
13 843, §3, are amended to read:

14

15 **§7725. Definitions**

16

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

19 **1. Child Development Services System.** "Child Development
20 Services System," or "CDS," means 16 regional sites, a state
21 level state-level intermediate ~~education~~ educational unit and the
22 Interdepartmental Coordinating Council for Early Intervention
23 established to ensure the provision of childfind activities,
24 early intervention services and free, appropriate and public
25 education services to eligible children.

26 **2. Childfind.** "Childfind" means the identification,
27 location and evaluation, at no cost to the family, of children,
28 ~~ages--0--to--school-age--5~~ from birth to under age 6, with
29 disabilities.

30

31 **3. Departments.** "Departments" means 2 or more of the
32 participating state agencies, the Department of Education, the
33 Department of Human Services and the Department of Mental Health
34 and Mental Retardation.

35 **4. Disability.** "Disability" means:

36 **A.** A condition of children, ~~ages-0-to-school-age-5~~ from
37 birth to under age 6, who are in need of early intervention
38 or special education services due to a delay in one or more
39 of the following areas: cognitive development; physical
40 development, including vision and hearing; communication
41 development; social or emotional development; and adaptive
42 development; or

43 **B.** For children, ~~ages-0-to-2~~ from birth to under age 3, a
44 diagnosed, established condition or biological factors that
45 have a high probability of resulting in developmental delay.
46

47

2 **4-A. Early intervention services.** "Early intervention
3 services" means services that are designed to meet the
4 developmental needs of each child, from birth to under age 3,
5 eligible under the federal Individuals with Disabilities
6 Education Act, 20 United States Code, Section 1400 et seq., and
7 the needs of the family related to enhancing the child's
8 development that are provided under public supervision by
9 qualified providers and that are made available by use of
10 3rd-party resources or a system of payments by families,
11 including a schedule of sliding fees.

12 **5. Free, appropriate public education services.** "Free,
13 appropriate public education services," or "FAPE," means those
14 services that are designed to meet the developmental needs of
15 eligible children, ages-3-to-school-age-5 from age 3 to under age
16 6, who have a disability. These services include:

- 17 A. Early identification, screening and assessment services;
18
19 B. Medical services for diagnostic or evaluation purposes
20 only;
21
22 C. Occupational therapy;
23
24 D. Parent counseling and training;
25
26 E. Physical therapy;
27
28 F. Psychological services;
29
30 G. Special instruction;
31
32 H. Speech pathology and audiology; and
33
34 I. Transportation.

35 **6. Council.** "Council" means the Interdepartmental
36 Coordinating Council for Early Intervention established in
37 section 7733.

38 **7. Intermediate educational unit.** "Intermediate
39 educational unit," as defined in the federal Public Law-94-142
40 Individuals with Disabilities Education Act, 20 United States
41 Code, Section 1400 et seq., means any public authority, other
42 than a local educational agency, under the general supervision of
43 a state educational agency, that is established for the purpose
44 of providing free public education on a regional basis and that
45 provides special education and related services to handicapped
46 children within the State.

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2 8. **Regional site.** "Regional site" means ~~one-of-the-16~~
3 locally governed regional intermediate educational units or
4 private nonprofit corporations established to ensure provision of
5 services to infants and children under this chapter.

6
7 **§7727. Department of Education**

8
9 1. **Responsibility.** The department is designated as the
10 state education agency responsible for carrying out the State's
11 obligations under the federal Individuals with Disabilities
12 Education Act of 1991, Public Law 101-476 20 United States Code,
13 Section 1400 et seq.

14
15 2. **Plan.** The department shall submit the State's plan for
16 meeting the requirements of the federal Public Law 101-476
17 Individuals with Disabilities Education Act, 20 United States
18 Code, Section 1400 et seq., to the Federal Government.

19 2-A. Administration of federal funds. The department is
20 the entity responsible for assigning financial responsibility
21 among appropriate agencies under 34 Code of Federal Regulations,
22 Section 303.143, July 1993 and in accordance with 34 Code of
23 Federal Regulations, Section 303.523, July 1993.

24
25 3. **Rule-making authority.** The commissioner may adopt rules
26 necessary to implement this chapter in accordance with the Maine
27 Administrative Procedure Act.

28
29 4. **Contracts.** The department may enter into contracts,
30 leases and agreements and any other instruments and arrangements
31 that are necessary, incidental or convenient to the performance
32 of its duties and the execution of its powers under this chapter.

33
34 The department shall contract with the board of directors of a
35 private nonprofit corporation for no fewer than 3 years and
36 approve an annual entitlement plan with the board of directors of
37 a regional intermediate education educational unit for the
38 purpose of ~~assuring~~ ensuring coordinated service delivery in each
39 region of the State.

40
41 Contracts with boards of directors of private nonprofit
42 corporations or plans of regional intermediate education
43 educational units must ensure:

44
45 A. That screening, evaluation and referral services, at no
46 cost to the family, are accessible to all children, ~~ages-0~~
47 ~~to-school-age-5~~ from birth to under age 6; and

2 B. That preschool children with disabilities, ~~ages 3 to~~
3 ~~school-age 5~~ from age 3 to under age 6, have free,
4 appropriate public education services available to them at
5 no cost to the family; and

6 C. That infants and toddlers, from birth to under age 3,
7 have early intervention services available to them by July
8 1, 1994 through 3rd-party payment or through a system of
9 payments by families, including a schedule of sliding fees.

10 5. Implementation of early intervention and of free,
11 appropriate public education services. The department, through
12 the Child Development Services System, shall ensure:

13 A. That screening, evaluation and referral services, at no
14 cost to the family, are accessible to all children, ~~ages 0~~
15 ~~to school-age 5.~~ The commissioner shall adopt rules
16 describing these services from birth to under age 6;

17 B. That preschool children with disabilities, ~~ages 3 to~~
18 ~~school-age 5~~ from age 3 to under age 6, have free,
19 appropriate public education services available to them at
20 no cost to the family; and

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

- 23 (1) Least restrictive environment;
- 24 (2) Nondiscrimination;
- 25 (3) Rights of parents;
- 26 (4) Free and appropriate public services;
- 27 (5) Eligibility criteria;
- 28 (6) The federal "childfind" program;
- 29 (7) Program development, service descriptors and
30 service delivery;
- 31 (8) Early childhood team;
- 32 (9) Individualized family service plan;
- 33 (10) Statements of assurances;
- 34 (11) Procedural safeguards and appeals processes;

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- 2 (12) Due process hearings;
- 4 (13) Confidentiality of information;
- 6 (14) Data collection, reporting and utilization; and
- 8 (15) Surrogate parents; and
- 10 (16) Payment for and provision of early intervention services; and

12 D. That infants and toddlers, from birth to under age 3, have early intervention services available to them by July
14 1, 1994 through 3rd-party payment or through a system of
16 payments by families, including a schedule of sliding fees.

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

32 **Sec. 4. 20-A MRSA §7728, sub-§1,** as enacted by PL 1991, c.
34 843, §3, is amended to read:

36 **1. Federal obligations.** Develop and adopt statewide
38 policies and rules for carrying out the provisions of this
40 chapter to meet federal obligations under the federal Individuals
42 with Disabilities Education Act of 1991, Public Law 101-476, Part
44 B, Section 619 and Part H, 20 United States Code, Section 1400 et
46 seq. These obligations must include but are not limited to:

- 36 A. Personnel standards;
- 38 B. Comprehensive system of personnel development;
- 40 C. Program monitoring;
- 42 D. Data collection;
- 44 E. Interagency agreements at the state level; and
- 46 F. Public awareness;

48 **Sec. 5. 20-A MRSA §7728, sub-§5,** as enacted by PL 1991, c.
843, §3, is repealed.

2 **Sec. 6. 20-A MRSA §7728, sub-§11**, as enacted by PL 1991, c.
3 843, §3, is amended to read:

4 **11. Dissemination of information.** Apply the federal Family
5 Educational Rights and Privacy Act of 1974, Public Law 93-380, as
6 amended by Public Law 93-568, and the federal ~~Education for All~~
7 ~~Handicapped Children Act of 1975, Public Law 94-142~~ Individuals
8 with Disabilities Education Act, 20 United States Code, Section
9 1400 et seq., to the dissemination of information about infants
10 and children, ~~ages 0 to school age 5~~ from birth to under age 6,
11 with disabilities who are served by the Child Development
12 Services System.

14 **Sec. 7. 20-A MRSA §7729**, as enacted by PL 1991, c. 843, §3,
15 is amended to read:

16 **§7729. Regional site governance; choice**

17 Boards of directors of the ~~local-coordinating-committees~~
18 ~~under former chapter 307,~~ regional sites established to ensure
19 childfind activities for children, ~~ages 0 to 5~~ from birth to
20 under age 6, to coordinate early intervention services for
21 eligible children, from birth to under age 6, and to coordinate
22 free, appropriate public education services for eligible children
23 ~~ages 3 to 5 who have a disability from age 3 to under age 6~~ shall
24 organize, at the discretion of each board, as a private nonprofit
25 corporation or an intermediate education educational unit.
26 Regional site boards of directors may take formal action, in
27 accordance with their regional bylaws, to dissolve or to
28 consolidate with another regional site board that has agreed to
29 the consolidation. The process of dissolution and any decisions
30 to consolidate are subject to the approval of the Department of
31 Education.

32 **Sec. 8. 20-A MRSA §7731, sub-§11**, as enacted by PL 1991, c.
33 843, §3, is amended to read:

34 **11. Dissemination of information.** Apply the federal Family
35 Educational Rights and Privacy Act of 1974, Public Law 93-380, as
36 amended by Public Law 93-568, and the federal Individuals with
37 Disabilities Education Act of 1991, Public Law 101-476 20 United
38 States Code, Section 1400 et seq., to the dissemination of
39 information about infants and children, ~~0 to school age 5~~ from
40 birth to under age 6, with disabilities who are served through
41 the regional site.

42 **Sec. 9. 20-A MRSA §7732**, as enacted by PL 1991, c. 843, §3,
43 is repealed.

44 **Sec. 10. 20-A MRSA §7732-A** is enacted to read:

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§7732-A. Regional site; duties and obligations

The board of directors of a private nonprofit corporation or a regional local intermediate educational unit shall:

1. Childfind. Ensure provision of childfind activities as required by the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq.;

2. Childcount. Ensure provision of childcount activities as required by the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq.;

3. Part H. Ensure appropriate data collection, training, staff development and direct service provision to eligible children, from birth to under age 3, in accordance with Part H of the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq.;

4. Early intervention services. Ensure that eligible children, from birth to under age 3, receive early intervention services, in accordance with the payment provisions established by the State;

5. Free, appropriate public education. Ensure that eligible children, from age 3 to under age 6, receive free, appropriate public education services;

6. Individual family service plan. Coordinate development of individual family service plans with eligible families;

7. Service providers. Contract, whenever possible, with providers of early intervention services approved by the Bureau of Medical Services within the Department of Human Services;

8. Designate personnel for training. Designate local personnel for training to commit funds for free, appropriate public education. Personnel who commit funds for free, appropriate public education must be trained and certified by the state intermediate educational unit. The board of directors shall determine which trained and certified personnel may commit funds; and

9. Targeted case management. Following certification by the Bureau of Medical Services within the Department of Human Services, seek reimbursement, whenever feasible, for targeted case management.

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2 **Sec. 11. 20-A MRSA §7733, first 2 paragraphs,** as enacted by PL
3 1991, c. 843, §3, are amended to read:

4 The Interdepartmental Coordinating Council for Early
5 Intervention, as established in Title 5, section 12004-G,
6 subsection 8-A, is established as an advisory body to the
7 commissioner regarding the coordination of policies and programs
8 aimed at implementing the federal Public-Law-99-457 Individuals
9 with Disabilities Education Act, 20 United States Code, Section
10 1400 et seq. and 34 Code of Federal Regulations, 303.650 to
11 303.654, July 1993.

12 Membership of the council must be in keeping with the
13 federal Public-Law-101-476,--Subparts--F--and--G Individuals with
14 Disabilities Education Act, 20 United States Code, Section 1400
15 et seq., contingent upon state participation in ~~these programs~~
16 the federal Individuals with Disabilities Education Act, Parts B
17 and H. Appointments to the council must be made by the Governor
18 for terms defined in rules adopted by the commissioner. The
19 council shall meet at least quarterly.

22 **Sec. 12. 20-A MRSA §7733, sub-§2, ¶¶C to E,** as enacted by PL
23 1991, c. 843, §3, are amended to read:

24 C. Childfind activities and methods as required by the
25 federal Public--Law--101-476--as--amended Individuals with
26 Disabilities Education Act, 20 United States Code, Section
27 1400 et seq.;

30 D. Public awareness as required by the federal Public-Law
31 101-476,--as--amended Individuals with Disabilities Education
32 Act, 20 United States Code, Section 1400 et seq.; and

34 E. Contemporary research.

36 **Sec. 13. 20-A MRSA §7733, sub-§2, ¶¶F to N,** as enacted by PL
37 1991, c. 843, §3, are repealed.

38 **Sec. 14. 20-A MRSA §7733, sub-§§9 and 10,** as enacted by PL
39 1991, c. 843, §3, are repealed and the following enacted in their
40 place:

42 9. Voting. The council shall adopt bylaws that define a
43 quorum for the purpose of conducting business of the council.

46 10. Dispute resolution. The council shall assist the lead
47 agency in dispute resolution in a manner consistent with 34 Code
48 of Federal Regulations, Section 303.524, July 1993.

50 **Sec. 15. 20-A MRSA §7734,** as corrected by PL 1993, c. 1, §47,
is repealed.

2 Sec. 16. 20-A MRSA §§7734-A, 7734-B and 7734-C are enacted to
3 read:

4 **§7734-A. Distribution of funds to school administrative units**

6 In addition to the programs authorized in this chapter, the
7 commissioner may authorize expenditures to school administrative
8 units for services for infants and children, from birth to under
9 age 6, who are disabled, in a manner consistent with section
10 15603, subsection 22, paragraph D.

12 1. Governance and financial responsibility. The school
13 board responsible for operating the preschool service shall
14 assume the financial responsibility for the program. The school
15 board is entitled to receive the state subsidy for the program
16 and may charge tuition for costs that exceed expenditures made
17 for those programs in the base year.

19 2. Dedication of funds. Funds generated under the school
20 subsidy formula through expenditures for programs for infants and
21 children, from birth to under age 6, who are disabled, must be
22 committed to continue to fund programs and services for the
23 target population at the local level.

25 3. Coordination of services and resource development
26 activities. School administrative units shall coordinate their
27 program and service activities for infants and children, from
28 birth to under age 6, who are disabled, with their local regional
29 sites to avoid duplication and maximize the use of rules as
30 adopted by the department.

32 **§7734-B. Annual recommendation**

34 Prior to December 15th of each year, the council and the
35 boards of directors of the regional sites shall provide to the
36 commissioner a joint recommendation for funding level
37 computations and requested funding level for operating and
38 program costs. The commissioner shall act on the recommendation
39 no later than April 1st. In order to develop this
40 recommendation, state-level intermediate educational unit and the
41 boards of directors of the regional sites, in consultation with
42 regional site coordinators, shall review all state and federal
43 funding sources and federal statutory requirements for
44 disbursement. The state-level intermediate educational unit and
45 the boards of directors of the regional sites shall propose a
46 funding formula to ensure equitable distribution of resources.

48 **§7734-C. Annual report**

The council shall provide the joint standing committee on educational matters a yearly report on the Child Development Services System.

Sec. 17. 20-A MRSA §15603, sub-§22, ¶D, as amended by PL 1987, c. 767, §2, is further amended to read:

D. Starting in 1986-87 for expenditures in the base year 1984-85, the following preschool handicapped services:

(1) The salary and benefit costs of certified professional, assistants and aides or persons contracted to perform preschool handicapped services which that have been approved by the commissioner; and

(2) The cost of tuition to other schools for programs which that have been approved by the commissioner; .

Federal and state grants awarded to school administrative units to initiate these services must be considered local funds in computing the units' educational costs;

Sec. 18. PL 1991, c. 843, §5 is repealed.'

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

This bill will require adjustments to allocations from the Federal Expenditure Fund in fiscal year 1994-95 due to the designation of the Department of Education as the agency responsible for the administration of Part H funds. The Department of Mental Health and Mental Retardation will require a deallocation from the Federal Expenditure Fund of \$1,042,702, the Department of Human Services will require a deallocation of \$32,251 and the Department of Education will require an allocation of \$998,387. These amounts are included in the Governor's proposed supplemental budget bill.'

STATEMENT OF FACT

This amendment makes the following changes to the bill:

1. Changes the description of the children served by the Child Development Services System to coincide with federal and state drafting conventions;

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- 2 2. Corrects references to intermediate educational units;
- 4 3. Clarifies the Department of Education's responsibility
6 for assigning financial responsibilities among agencies by citing
the Code of Federal Regulations;
- 8 4. Permits regional site boards of directors to dissolve or
10 consolidate with other boards. All affected boards and the
Department of Education must approve the change;
- 12 5. Clarifies the role of the Interdepartmental Coordinating
14 Council for Early Intervention in resolving disputes between
agencies involved in the State's early intervention program;
- 16 6. Clarifies the responsibilities of school administrative
18 units that provide preschool handicapped services to infants and
children;
- 20 7. Requires that regional site boards of directors and the
22 Interdepartmental Coordinating Council for Early Intervention
provide the Commissioner of Education with an annual
24 recommendation for funding;
- 26 8. Requires that the state intermediate educational unit
and regional site boards of directors propose a funding formula
28 for equitable distribution of resources; and
- 30 9. Clarifies that federal and state funds for preschool
handicapped services received by school administrative units are
32 considered local funds in computing local unit education costs.
- 34 This amendment also conforms existing law to current drafting
standards.