

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1337

S.P. 416

In Senate, March 4, 1997

An Act to Amend the Laws Relating to Education.

Submitted by the Department of Education pursuant to Joint Rule 204.
Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.

A handwritten signature in cursive script, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator SMALL of Sagadahoc.
Cosponsored by Senator PENDLETON of Cumberland, Representatives: DESMOND of
Mapleton, McELROY of Unity.

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

2
3 **Sec. 1. 5 MRSA §937**, as amended by PL 1995, c. 560, Pt. F,
4 §§2 and 3, is further amended to read:

6 **§937. Department of Education**

8 **1. Major policy-influencing positions.** The following
9 positions are major policy-influencing positions within the
10 Department of Education. Notwithstanding any other provision of
11 law, these positions and their successor positions are subject to
12 this chapter:

14 A. Deputy Commissioner;

16 ~~B. Deputy Commissioner;~~

18 F. Director, Planning and Management Information;

20 G. Federal and State Education Program Coordinator; and

22 ~~H. Executive Director, Interdepartmental Council, with the~~
23 ~~approval of the other commissioners of the Interdepartmental~~
24 ~~Council.~~

26 J. Director of Special Projects and External Affairs.

28 **Sec. 2. 20-A MRSA §203, sub-§1**, as amended by PL 1995, c. 560,
29 Pt. F, §§9 and 10, is further amended to read:

30 **1. Commissioner's appointments.** The following officials
31 are appointed by and serve at the pleasure of the commissioner:

34 A. Deputy Commissioner;

36 ~~B. Deputy Commissioner;~~

38 F. Director, Planning and Management Information;

40 G. Federal and State Education Program Coordinator; and

42 ~~H. Executive Director, Interdepartmental Council, with the~~
43 ~~approval of the other commissioners of the Interdepartmental~~
44 ~~Council.~~

46 J. Director of Special Projects and External Affairs.

48 **Sec. 3. 20-A MRSA §1405, sub-§1**, as amended by PL 1987, c.
49 395, Pt. A, §62, is further amended to read:

50 **1. Petition.** The residents of a participating municipality
51 within a school administrative district composed of 3 or more
52

2 municipalities may petition to withdraw from the district in the
3 same manner as they would petition for the dissolution of a
4 school administrative district in accordance with section 1403,
5 ~~except that only a simple majority vote of those casting valid~~
6 ~~ballets in the municipality is required before the petition may~~
7 ~~be presented to the board of directors and to the commissioner.~~

8 **Sec. 4. 20-A MRSA §1407, sub-§2,** as amended by PL 1983, c.
9 364, §5, is further amended to read:

10
11 **2. Expense of keeping the school open.** If the voters vote
12 to keep the school open, the member municipality shall ~~be~~ is
13 liable for any some additional expense for actual local operating
14 costs, and transportation costs, ~~and minor capital costs~~ as
15 defined in section 15503, 15603 ~~which exceed by 10% the expense~~
16 ~~of the district for the operating costs, transportation costs,~~
17 ~~and minor capital costs as compared on a per pupil basis in the~~
18 ~~base year.~~ The determination of costs shall ~~be~~ is subject to the
19 approval of the commissioner. The cost to be borne by the town
20 voting to keep an elementary school open is the amount that would
21 be saved if the school were closed less the state operating
22 subsidy for the students that attend the elementary school. Any
23 additional costs which that must be borne by the member
24 municipality shall must be part of the article presented to the
25 voters at the meeting to determine whether the school should
26 remain open.

27 **Sec. 5. 20-A MRSA §2902, sub-§6, ¶E,** as amended by PL 1985, c.
28 797, §23, is further amended to read:

29 E. Maintain adequate, safely protected records; and

30
31 **Sec. 6. 20-A MRSA §2902, sub-§7,** as amended by PL 1985, c.
32 797, §24, is further amended to read:

33
34 **7. Approval rules.** Meet the requirements applicable to the
35 approval of private schools for attendance purposes adopted
36 jointly by the state board and the commissioner; and

37 **Sec. 7. 20-A MRSA §2902, sub-§8** is enacted to read:

38
39 **8. Release of student records.** Upon the request of a
40 school unit, release copies of all student records for students
41 transferring from the private school to the school unit.

42
43 **Sec. 8. 20-A MRSA §2951, sub-§5,** as amended by PL 1985, c.
44 797, §26, is further amended to read:

45
46 **5. Additional requirements.** Complies with the reporting
47 and auditing requirements in sections 2952 and 2953 and the
48 requirements adopted pursuant to section 2954; and

52

2 **Sec. 9. 20-A MRSA §2951, sub-§6**, as enacted by PL 1985, c.
797, §27, is amended to read:

4 **6. Student assessment.** Any school which that enrolls 60%
6 or more ~~publicly-funded~~ publicly funded students, as determined
by the previous year's October and April average enrollment,
8 shall participate in the statewide assessment program to measure
and evaluate the academic achievements of students; ~~and~~

10 **Sec. 10. 20-A MRSA §2951, sub-§7** is enacted to read:

12 **7. Release of student records.** Upon the request of a
14 school unit, release copies of all student records for students
transferring from the private school to the school unit.

16 **Sec. 11. 20-A MRSA §5805, sub-§2**, as enacted by PL 1981, c.
18 693, §§5 and 8, is amended to read:

20 **2. Maximum allowable tuition.** The maximum allowable
22 tuition charge by a public secondary school ~~shall be~~ is the rate
computed under subsection 1 or the state average per public
24 secondary student cost as adjusted, whichever is lower. The
school board of the sending unit may vote to pay a higher tuition
rate.

26 **Sec. 12. 20-A MRSA §9501, sub-§2**, as amended by PL 1995, c.
28 505, §9 and affected by §22, is further amended to read:

30 **2. Exemptions.** Educational programs related to the real
32 estate professions that are subject to approval under Title 32,
chapter 59, commercial driver education schools subject to
approval by the Secretary of State under Title 29-A, chapter 11,
34 subchapter III, schools of barbering and schools of cosmetology
subject to approval by the Board of Barbering and Cosmetology
36 under Title 32, chapter 126, educational programs offered by any
Maine nonprofit corporation, any educational programs offered by
38 any professional or trade association primarily for the benefit
of its own members and any educational institution authorized by
40 the laws of this State to grant a degree are exempt from the
requirements of this chapter.

42 **Sec. 13. 20-A MRSA §9502, sub-§§1 and 2**, as repealed and
44 replaced by PL 1983, c. 862, §62, are amended to read:

46 **1. Application requirements; licensing; bonding and**
revocation of license. The application for a license required by
48 this chapter shall must be made on forms furnished by the
commissioner and shall be accompanied by a fee of \$100, ~~except as~~
50 ~~provided in section 9505 for schools of barbering and~~
~~cosmetology,~~ and a surety bond in the penal sum of \$10,000.

52

2 A. A license is valid for the calendar year in which it is
issued.

4 B. The bond shall must be continuous and shall must provide
6 indemnification to any student suffering loss as a result of
any fraud or misrepresentation. The bond shall must provide
8 for written notification by the surety to the commissioner
in the event of cancellation. Cancellation of the bond by
10 the surety shall--~~result~~ results in the revocation of the
license.

12 2. **Renewal fee.** A fee of \$50 shall-be is charged for the
14 renewal of a license,--~~except--as--otherwise--provided--in--section~~
~~9505--for--schools--of--barbering--and--cosmetology.~~

16 **Sec. 14. 20-A MRSA §9505**, as enacted by PL 1983, c. 841, §6,
is repealed.

18 **Sec. 15. 20-A MRSA §13005**, as enacted by PL 1981, c. 693, §§5
20 and 8, is repealed.

22 **Sec. 16. 20-A MRSA §13012, sub-§1**, as amended by PL 1991, c.
24 682, §1, is further amended to read:

26 1. **Definition.** A provisional teacher certificate is the
entry level certificate issued to an individual who has not
28 taught previously in the State, except as provided in section
13013, subsection 2-A, ~~paragraph~~ paragraphs B and D.

30 **Sec. 17. 20-A MRSA §13013, sub-§1**, as amended by PL 1991, c.
32 682, §2, is further amended to read:

34 1. **Definition.** A professional teacher certificate is a
renewable certificate issued to an individual who has held a
36 provisional certificate and has met the qualifications of this
section, except as provided in subsection 2-A, ~~paragraph~~
paragraphs B and D.

38 **Sec. 18. 20-A MRSA §13013 sub-§2-A**, as amended by PL 1995, c.
40 320, §§3 and 4, is further amended to read:

42 2-A. **Qualifications.** State board rules governing the
44 qualifications for a professional teacher certificate must
require that the certificate may only be issued to an applicant
46 who, at a minimum, either:

48 A. Holds a provisional teacher certificate and has taught
in a classroom for 2 academic years or has held a
50 professional teacher certificate that has lapsed within the
last 5 years. In this case, an applicant must receive a
52 recommendation to the commissioner by an approved support
system pursuant to section 13015;

2 B. Is a teacher with 5 or more years of experience teaching
4 within the 7 years prior to application in the State under a
6 valid certificate in another state and who has graduated
8 from a state-approved preparation program that utilizes the
10 standards of a national association of state directors of
teacher education and certification or a national council
for accreditation of teacher education or, with the
exception of the national teachers exam, meets entry-level
standards for the endorsement; -e-

12 C. Holds a provisional teacher certificate issued under
14 section 13012, subsection 2, paragraph D and has taught for
at least one year under a provisional teacher certificate;
16 or

18 D. Is seeking to hold only adult education or from birth to
under age 6 endorsements.

20 **Sec. 19. 32 MRSA c. 126, sub-c. IV** is enacted to read:

22 **SUBCHAPTER IV**
24 **REGULATION OF SCHOOLS OF BARBERING**
26 **AND SCHOOLS OF COSMETOLOGY**

28 **§14245. License required; penalties**

30 1. Requirement of license. Any person, partnership,
32 association or corporation located either within or outside the
State must obtain a license as specified under section 14246 from
34 the board before operating or maintaining any school of barbering
or school of cosmetology within the State or before collecting
any tuition, fee or other charge for operating or maintaining
36 such a school within the State.

38 2. Penalties. Any person, partnership, association or
40 corporation that operates or maintains a school of barbering or
school of cosmetology in violation of this subchapter, or
42 represents itself as operating and maintaining such a school, is
subject to a civil penalty of not more than \$5,000, payable to
the State, to be recovered in a civil act.

44 3. Enforcement actions. The State may bring an action in
46 Superior Court to enjoin any person from violating this
subchapter, regardless of whether proceedings have been or may be
48 instituted in the Administrative Court or whether criminal
proceedings have been or may be instituted.

50 **§14246. License application form; fee; bond**

2 1. Application requirements; licensing; bonding and
3 revocation of license. The application for a license required by
4 this subchapter must be made on forms furnished by the board and
5 be accompanied by an application fee not to exceed \$100 and a
6 surety bond in the penal sum of \$10,000.

8 A. A license is valid for the calendar year in which it is
9 issued.

10 B. The bond must be continuous and must provide
11 indemnification to any student suffering loss as a result of
12 any fraud or misrepresentation. The bond must provide for
13 written notification by the surety to the board in the event
14 of cancellation. Cancellation of the bond by the surety
15 results in the revocation of the license.

18 2. License fee; renewal fee. A fee not to exceed \$500 is
19 charged for the initial license and for the annual renewal of a
20 license.

22 **§14247. Rules**

24 The board shall adopt rules for the licensing of persons,
25 partnerships, associations or corporations to maintain and
26 operate schools of barbering and schools of cosmetology. The
27 rules must include standards relating to educational programs,
28 instructor qualifications, records and recordkeeping, health and
29 sanitation, safety and physical facilities. Rules adopted
30 pursuant to this subchapter are routine technical rules pursuant
31 to Title 5, chapter 375, subchapter II-A.

32 **§14248. On-site evaluations**

34 The board shall conduct biennial on-site evaluations of
35 schools to ensure compliance with this subchapter and applicable
36 rules. The expense of the on-site evaluation must be borne by
37 the school examined. This expense includes only the reasonable,
38 necessary and proper hotel and travel expenses of the board
39 member evaluators and staff and board member per diem. A school
40 evaluated pursuant to this section must promptly pay to the board
41 the expenses of the evaluation upon presentation of a reasonably
42 detailed written statement of the expenses.

44 **§14249. Complaints; license; refusal to renew; suspension;**
45 **revocation**

48 The board may investigate complaints involving a school
49 including any allegation of noncompliance with or violation of
50 this subchapter and applicable rules. After a hearing in
51 conformance with Title 5, chapter 375, subchapter IV, the board
52 may amend or modify any license and may suspend or refuse to

renew a license as provided in Title 5, section 10004.

A board member may not participate in any on-site evaluation, complaint, hearing or license-related action that involves a school of barbering or a school of cosmetology with which the board member has or has had a direct relationship as a student, instructor, administrator or director or the board member has a direct pecuniary interest in the school.

The Administrative Court may suspend or revoke the license of any person, partnership, association or corporation found to have violated any provision of this subchapter or any lawful order or rule issued by the board.

§14250. Hearings

The board may not refuse to renew a license for any reason other than failure to pay the required renewal fee, unless the licensee has been given an opportunity for a hearing.

Hearings may also be conducted by the board at the board's discretion to assist with investigations of complaints to determine whether grounds exist for suspension, revocation, denial or nonrenewal of any license, or as otherwise determined necessary to fulfill the responsibilities under this subchapter.

The board may subpoena witnesses, records and documents in any hearing conducted pursuant to this subchapter.

Sec. 20. PL 1995, c. 395, Part J, §6 is amended to read:

Sec. J-6. Implementation plan. Beginning in March 1996 1997, the State Board of Education shall develop for the Legislature an implementation plan for funding essential programs and essential services. The plan must be based on the criteria for student learning developed by the Task Force on Learning Results established in Public Law 1993, chapter 290. The plan must include establishment of a system to measure and ensure that schools are held accountable for student learning results. The board shall present its plan and implementing legislation to the joint standing committee of the Legislature having jurisdiction over education matters by December 1, 1996 1997. The committee may report out a bill based on the proposal.

Sec. 21. Retroactivity. That section of this Act that amends Public Law 1995, chapter 395, Part J, section 6 applies retroactively to December 1, 1996.

SUMMARY

2

4 This bill makes some changes to the education laws of the
6 State of Maine. It revises the designation of commissioner
8 appointments within the Department of Education, and also revises
10 the provisions of calculating elementary and secondary tuition
12 rates to be consistent with each other. The bill extends the
14 reporting deadline for the State Board of Education on the issue
16 of essential programs and essential services. It also increases
18 the percentage of voters in a municipality required to approve a
20 withdrawal petition from a school administrative district. It
22 moves the authority of approval of licensing of barbering and
24 cosmetology schools from the Department of Education to the
26 Department of Professional and Financial Regulation. It
28 clarifies how to calculate the cost to a town in a school
 administrative district if it votes to keep an elementary school
 open against the wishes of the school administrative district
 school board. It repeals language providing for the teacher
 candidate employment registry within the Department of
 Education. It provides that the professional teacher certificate
 is the entry level, renewable certificate for an individual
 seeking certification only as an adult education teacher or an
 individual seeking from birth to under age 6 endorsements. It
 requires that, upon the request of a local school administrative
 unit, a private school approved for the receipt of public funds
 and private schools approved for attendance purposes only must
 release copies of student records for students transferring from
 the private school to the local school administrative unit.