

# MAINE STATE LEGISLATURE

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L.D. 1772

DATE: 4-11-06

(Filing No. S-585)

EDUCATION AND CULTURAL AFFAIRS

Reported by: Majority

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STATE OF MAINE  
SENATE  
122ND LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 689, L.D. 1772, Bill, "An Act To Improve Early Childhood Special Education"

Amend the bill by striking out everything after the title and before the summary and inserting in its place the following:

**Emergency preamble.** Whereas, acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** there is an immediate need for the Department of Education to begin implementation of the early childhood special education system, including employee salary and benefits administration, fiscal management, data management and service delivery; and

**Whereas,** failure to begin implementation would result in delays or possible disruption of early intervention and special education and related services to eligible children with disabilities and their families; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

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**PART A**

**Sec. A-1. 5 MRSA §4602, sub-§2**, as amended by PL 1991, c. 99, §28, is further amended to read:

**2. Unlawful educational discrimination on the basis of physical or mental disability.** It is unlawful educational discrimination in violation of this Act solely on the basis of physical or mental disability to:

A. Exclude from participation in, deny the benefits of or subject to discrimination under any educational program or activity any otherwise qualified individual with physical or mental disability;

B. Deny any person equal opportunity in athletic programs, provided that no educational institution may be required under this subsection to provide separate athletic programs to serve persons with physical or mental disability;

C. Deny admission to any institution or program or fail to provide equal access to and information about an institution or program through recruitment; or

D. Deny financial assistance availability and opportunity.

Nothing in this subsection may be construed to cover the rights of ~~exceptional--students~~ children with disabilities to special education programs under state or federal law.

**Sec. A-2. 5 MRSA §12004-G, sub-§8-A**, as reenacted by PL 2001, c. 471, Pt. C, §1 and affected by §10, is repealed.

**Sec. A-3. 5 MRSA §19508**, as amended by PL 2005, c. 279, §4, is further amended to read:

**§19508. Application to residents in children's homes**

This chapter also applies to ~~exceptional--students~~ children with disabilities in children's homes, emergency shelters, family foster homes, specialized children's homes and residential child care facilities, as defined in Title 22, section 8101, and to other residential educational facilities, including the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf and other similar facilities.

**Sec. A-4. 20-A MRSA §1, sub-§3-A** is enacted to read:

2 3-A. Child with a disability. "Child with a disability"  
3 has the same meaning as in section 7001.

4 **Sec. A-5. 20-A MRSA §1, sub-§12**, as enacted by PL 1981, c.  
5 693, §§5 and 8, is repealed.

6 **Sec. A-6. 20-A MRSA §1001, sub-§9-B**, as amended by PL 1999, c.  
7 424, Pt. A, §1, is further amended to read:

10 **9-B. Disciplinary sanctions for children with**  
11 **disabilities.** They retain the authority to sanction an  
12 ~~exceptional--student~~ a child with a disability as defined in  
13 section 7001, subsection 2 ~~1-A~~ for misconduct that violates  
14 school rules. Notwithstanding the duties of school  
15 administrative units as described in section 7202, the school  
16 board may authorize the superintendent, principal or assistant  
17 principal to enforce this subsection by allowing the  
18 superintendent, principal or assistant principal to suspend an  
19 ~~exceptional--student~~ a child with a disability up to a maximum of  
20 10 days individually or cumulatively for infractions of school  
21 rules. When an ~~exceptional--student~~ a child with a disability is  
22 suspended for 10 days or less individually or cumulatively within  
23 a school year for a violation of school rules, the school board  
24 is not required to provide a tutor, transportation or any other  
25 aspect of the student's special education program. Discipline of  
26 ~~exceptional---students~~ children with disabilities must be  
27 consistent with the requirements of the federal Individuals with  
28 Disabilities Education Act, 20 United States Code, Section  
29 1415(k).

30 **Sec. A-7. 20-A MRSA §3001**, as enacted by PL 1981, c. 693,  
31 §§5 and 8, is amended to read:

34 **§3001. Schools for children with disabilities**

36 Private schools which ~~that~~ operate programs for ~~exceptional~~  
37 ~~students~~ children with disabilities shall conform to the  
38 applicable provisions of this chapter and chapters 301 and 303.

40 **Sec. A-8. 20-A MRSA §3254-A, sub-§1**, as enacted by PL 1985, c.  
41 490, §7, is amended to read:

42 **1. Special education programs.** The commissioner shall  
43 provide special education and related services to all ~~exceptional~~  
44 ~~students~~ children with disabilities of the unorganized territory  
45 in accordance with the provisions of chapter 303, except that the  
46 commissioner shall carry out the duties of school administrative  
47 units and superintendents as described in that chapter.

2           **Sec. A-9. 20-A MRSA §4722, sub-§3**, as amended by PL 2005, c.  
446, §2, is further amended to read:

4           **3. Satisfactory completion.** A diploma may be awarded to  
6 secondary school students who have satisfactorily completed all  
diploma requirements in accordance with the academic standards of  
8 the school administrative unit and this chapter. All secondary  
school students must work toward achievement of the content  
10 standards of the system of learning results. ~~Exceptional~~  
students children with disabilities, as defined in section 7001,  
12 subsection 2 1-A, who successfully meet the content standards of  
the system of learning results in addition to any other diploma  
14 requirements applicable to all secondary school students, as  
specified by the goals and objectives of their individualized  
16 education plans, may be awarded a high school diploma. Career  
and technical students may, with the approval of the  
18 commissioner, satisfy the 2nd-year math and science, the 2nd-year  
social studies and the fine arts requirements of subsection 2  
20 through separate or integrated study within the career and  
technical school curriculum.

22           **Sec. A-10. 20-A MRSA §4801, sub-§1, ¶D**, as enacted by PL 1989,  
c. 128, is amended to read:

24           D. A school administrative unit, operating under a plan  
26 approved by the commissioner, may provide for the use of up  
to 5 of the 175 instructional days required by this section  
28 to be used for screening incoming first year students for  
the purpose of identifying ~~exceptional--students~~ children  
30 with disabilities and students at risk of school failure as  
required by state or federal law.

32           **Sec. A-11. 20-A MRSA §5201, sub-§1**, as repealed and replaced  
34 by PL 1985, c. 506, Pt. A, §36, is amended to read:

36           **1. Eligibility to enroll; school year.** A person meeting  
the minimum age requirements of subsection 2 or section 7001,  
38 subsection 2 1-B, paragraph ~~-A-~~ B, and who has not reached 20  
years of age before the start of the school year may enroll as a  
40 full-time or, with the consent of the school board, as a  
part-time student, in the public elementary and secondary schools  
42 where the student resides as defined in section 5202. The school  
year, for the purpose of this subsection, is defined as starting  
44 on July 1st and ending on the following June 30th.

46           **Sec. A-12. 20-A MRSA §5201, sub-§3, ¶E**, as enacted by PL 1981,  
c. 693, §§5 and 8, is amended to read:

48           E. The eligibility for ~~exceptional--students~~ a child with a  
50 disability is governed by section 7001, subsection 2 1-A.

2           **Sec. A-13. 20-A MRSA §6202, first ¶**, as amended by PL 2005, c.  
446, §3, is further amended to read:

4           The commissioner shall establish a statewide assessment  
6 program to measure and evaluate on a continuing basis the  
academic achievements of students at grades 4, 8 and 11 in the  
8 content areas of the system of learning results established in  
section 6209 specified by the commissioner. The commissioner may  
10 elect to provide for the use of alternative measures of student  
achievement in grade 11. This assessment applies to students in  
12 the public elementary and secondary schools and in all private  
schools approved for tuition whose school enrollments include at  
14 least 60% ~~publicly-funded~~ publicly funded students, as determined  
by the previous school year's October and April average  
16 enrollment. The assessment program must be adapted to meet the  
needs of ~~exceptional--students~~ children with disabilities as  
18 defined in section 7001, subsection 2 1-A or other students as  
defined under rules by the commissioner.

20           **Sec. A-14. 20-A MRSA §6209, first ¶**, as amended by PL 2001, c.  
22 454, §31, is further amended to read:

24           The department in consultation with the state board shall  
establish and implement a comprehensive, statewide system of  
26 learning results, referred to in this section as the "system," no  
later than the 2002-03 school year. The system, based broadly  
28 upon guiding principles set forth in this section, must establish  
high academic standards at all grade levels in the areas of math;  
30 English; science and technology; social studies, including  
history, economics and civics; career preparation; visual and  
32 performing arts; health and physical education; and foreign  
languages. Only students in a public school or a private school  
34 approved for tuition that enrolls at least 60% publicly funded  
students, as determined by the previous school year's October and  
36 April average enrollment, are required to participate in the  
system of learning results. The commissioner shall develop  
38 accommodation provisions for instances where course content  
conflicts with sincerely held religious beliefs and practices of  
40 a student's parent or guardian. The system must be adepted  
adapted to accommodate ~~exceptional--students~~ children with  
42 disabilities as defined in section 7001, subsection 2 1-A.

44           **Sec. A-15. 20-A MRSA §7001**, as amended by PL 2003, c. 676,  
§§1 and 2, is further amended to read:

46           **§7001. Definitions**

48           As used in this subpart, unless the context otherwise  
50 indicates, the following terms have the following meanings.

2           1. **Agency.** "Agency" means an agency, school, organization,  
3 facility or institution.

4  
5           1-A. Child Development Services System. "Child Development  
6 Services System" means regional sites, or their successor sites,  
7 and the state intermediate educational unit under section 7209,  
8 subsection 3, or its successor, established to ensure the  
9 provision of child find activities, early intervention services  
10 and free, appropriate public education services to eligible  
11 children.

12           1-B. Child with a disability. "Child with a disability"  
13 means:

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15           A. For children from birth to under 3 years of age:

16  
17           (1) A child who needs early intervention services  
18 because the child has a significant developmental  
19 delay, as measured by both diagnostically appropriate  
20 instruments and procedures, in one or more of the  
21 following areas: cognitive development; physical  
22 development, including vision and hearing;  
23 communication development; social or emotional  
24 development; and adaptive development; or

25           (2) A child with a diagnosed physical or mental  
26 condition that has a high probability of resulting in a  
27 developmental delay, with the condition being such that  
28 the child needs early intervention services; or

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30           B. For children at least 3 years of age and under 20 years  
31 of age evaluated in accordance with the federal Individuals  
32 with Disabilities Education Act, 20 United States Code,  
33 Section 1414, subsections (a) to (c) as measured by both  
34 standardized, norm-referenced diagnostic instruments and  
35 appropriate procedures with delays or impairments such that  
36 the children need special education:

37           (1) A child at least 3 years of age and under 6 years  
38 of age with a significant developmental delay, at the  
39 discretion of the intermediate educational unit or  
40 school administrative unit, as defined in rules adopted  
41 by the department, in one or more of the following  
42 areas: cognitive development; physical development,  
43 including vision and hearing; communication  
44 development; social or emotional development; adaptive  
45 development; or

46           (2) A child with at least one of the following:

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- 2 (a) Mental retardation;
- 4 (b) Hearing impairment, including deafness;
- 6 (c) Speech or language impairment;
- 8 (d) Visual impairment, including blindness;
- 10 (e) Serious emotional disturbance;
- 12 (f) Orthopedic impairment;
- 14 (g) Autism;
- 16 (h) Traumatic brain injury;
- 18 (i) Other health impairment;
- 20 (j) Specific learning disabilities;
- 22 (k) Deafness and blindness; and
- 24 (l) Multiple disabilities.

26 1-C. Early intervention services. "Early intervention  
28 services" means developmental services that are provided under  
30 public supervision; are provided at no cost except where federal  
32 or state law provides for a system of payments by families,  
34 including a schedule of sliding fees; are designed to meet the  
36 developmental needs of a child with a disability, as identified  
38 by the individualized family service plan team, in one or more  
40 areas including physical development, cognitive development,  
communication development, social or emotional development and  
adaptive development; meet the standards of the State; are  
provided by qualified personnel; to the maximum extent  
appropriate, are provided in natural environments, including the  
home, and community settings in which children without  
disabilities participate; and are provided in conformity with an  
individualized family service plan.

42 ~~2.---Exceptional---student,---"Exceptional---student"---is---an~~  
44 ~~individual-who:-~~

46 ~~A,---Has-reached-5-years-of-age-on-or-before-October-15th;~~

48 ~~B,---Has-net-reached-20-years-of-age-at-the-start-of-the~~  
~~school-year;-and~~



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2           ~~C.--Requires special education because of one or more of the~~  
          ~~following:--~~

4                   ~~(1)--Visual impairments, including blindness;~~

6                   ~~(2)--Hearing impairments, including deafness;~~

8                   ~~(3)--Speech and language impairments;~~

10                   ~~(4)--Specific learning disabilities;~~

12                   ~~(5)--Orthopedic impairments;~~

14                   ~~(6)--Emotional disability;~~

16                   ~~(7)--Mental retardation;~~

18                   ~~(8)--Autism;~~

20                   ~~(9)--Traumatic brain injury;~~

22                   ~~(10)--Other health impairment;~~

24                   ~~(11)--Deafness and blindness; or~~

26                   ~~(12)--Multiple disabilities.~~

28           ~~Notwithstanding paragraph A, "exceptional student" does not~~  
30           ~~include a child who reaches 5 years of age between September 1st~~  
          ~~and October 15th who is already receiving free, appropriate~~  
32           ~~public education services through the Child Development Services~~  
          ~~System and whose parent chooses, in accordance with rules adopted~~  
34           ~~by the commissioner, not to enroll the child in kindergarten~~  
          ~~until the start of the following school year.~~

36           2-A. Free, appropriate public education. "Free,  
38           appropriate public education" means special education and related  
          services that are provided at public expense, under public  
40           supervision and direction and without charge; meet the standards  
          of the department; include an appropriate preschool, elementary  
42           school or secondary school education in the State; and are  
          provided in conformity with the individualized family service  
44           plan or individualized education program. Preschool children  
          with disabilities who reach 5 years of age between September 1st  
          and October 15th who are already receiving free, appropriate  
46           public education through the Child Development Services System  
          and whose parents choose, in accordance with rules adopted by the  
48           commissioner, not to enroll those children in kindergarten until  
          the start of the following school year must have free,

2 appropriate public education available to them through the Child  
3 Development Services System for one additional school year.

4 2-B. Intermediate educational unit. "Intermediate  
5 educational unit" means an entity that meets the definition of  
6 intermediate educational unit in the federal Individuals with  
7 Disabilities Education Act, 20 United States Code, Section 1402,  
8 (23) as in effect prior to June 4, 1997 and that is a public  
9 authority, other than a local educational agency, under the  
10 general supervision of the department, that is established for  
11 the purpose of providing free public education on a regional  
12 basis and that provides special education and related services to  
13 children with disabilities within the State. An intermediate  
14 educational unit is considered a local educational agency under  
15 federal law. The Child Development Services System regional  
16 sites are organized as intermediate educational units. In this  
17 State, a local educational agency is a school administrative  
18 unit. For purposes of this chapter all references to school  
19 administrative units include intermediate educational units.

20  
21 4.---Preschool--handicapped--child.---"Preschool--handicapped  
22 child"--means-a-person-who+

23 B.---Has-not-reached-5-years-of-age-on-or-before-October-15th;

24  
25 B-1.---Notwithstanding-paragraph-B,--has--reached-5-years--of  
26 age--between--September--1st--and--October--15th,--is--already  
27 receiving--free,--appropriate--public--education--services  
28 through--the--Child--Development--Services--System--and--whose  
29 parent--chooses,--in--accordance--with--rules--adopted--by--the  
30 commissioner,--not--to--enroll--the--child--in--kindergarten--until  
31 the--start--of--the--following--school--year.

32  
33 C.---Requires-special-services-because-of-one-or-more-of-the  
34 following+

35 (1)---Visual-impairments,--including-blindness;

36 (2)---Hearing-impairments,--including-deafness;

37 (3)---Speech-and-language-impairments;

38 (4)---Specific-learning-disabilities;

39 (5)---Orthopedic-impairments;

40 (7)---Mental-retardation;

41 (8)---Autism;

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(9)--Traumatic-brain-injury;

(10)--Other-health-impairment;

(11)--Deafness-and-blindness;-or

(12)--Multiple-disabilities.

4-A. Regional site. "Regional site" means a locally governed regional intermediate educational unit established to ensure the provision of services to children with disabilities under this chapter.

4-B. Related services. "Related services" means special education transportation and such developmental, corrective and other related services, as defined by the commissioner, as are required to assist children with disabilities to benefit from their special education programs.

5. Special education. "Special education" means classroom, home, hospital, institutional or other instruction; educational diagnosis and evaluation; transportation and other supportive assistance, services, activities or programs, as defined by the commissioner, required by exceptional students, specially designed instruction, at no cost to parents, to meet the unique needs of children with disabilities, as defined by the commissioner, including:

A. Instruction conducted in the classroom, in the home, in hospitals and institutions and in other settings; and

B. Instruction in physical education.

6. Special education facility. "Special education facility" means a public or private school, or portion thereof of a public or private school, intended for use in meeting the educational and related needs of exceptional students children with disabilities.

7. State licensed agency. "State licensed agency" means an institution or facility licensed by the State to provide education, emotional or mental health services, alcohol or drug rehabilitation, boarding care or other child care services to a person between the ages of 5 and 20 years. It includes:

A. Facilities under Title 22, chapter 1661; and

B. Community mental health centers services under Title 34 34-B, chapter 183, 3, subchapter 3.

~~C. Alcohol treatment facilities approved under Title 22, chapter 1601, and~~

~~D. Residential drug abuse treatment facilities under Title 22, chapter 1601.~~

8. **Residential child care facility.** "Residential child care facility" is a facility defined in Title 22, section 8101, subsection 4.

9. **Special education program.** A "special education program" is a full-time or part-time educational program designed to provide an equal educational opportunity to exceptional students children with disabilities through the delivery of special education services by qualified individuals.

10. **Special education services.** "Special education services" are educational services provided by qualified individuals as defined by the commissioner. Special education services shall must be provided by qualified individuals employed or contracted by the school administrative unit.

**Sec. A-16. 20-A MRSA §7002,** as enacted by PL 1981, c. 693, §§5 and 8, is repealed.

**Sec. A-17. 20-A MRSA §7003,** as enacted by PL 1981, c. 693, §§5 and 8, is repealed.

**Sec. A-18. 20-A MRSA §7004,** as enacted by PL 1997, c. 308, §1, is repealed.

**Sec. A-19. 20-A MRSA §7005,** as reallocated by RR 1997, c. 1, §20, is amended to read:

**§7005. Special education**

1. **Rulemaking.** The commissioner is authorized to adopt rules necessary for the administration of this chapter and chapters 303 and 305. These rules are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. The department shall identify in its regulatory agenda, when feasible, a proposed rule or provision of a proposed rule that is anticipated to be more stringent than the federal statute or regulation, if an applicable federal statute or regulation exists.

During the consideration of any proposed rule, when feasible, and using information available to it, the department shall identify provisions of the proposed rule that the department believes would impose a regulatory burden more stringent than the burden imposed by the corresponding federal statute or regulation, if

2 such a federal statute or regulation exists, and explain in a  
3 separate section of the basis statement the justification for the  
4 difference between the agency rule and the federal statute or  
5 regulation.

6 **Sec. A-20. 20-A MRSA §7006** is enacted to read:

8 **§7006. Responsibility**

10 The Department of Education is designated as the state  
11 education agency responsible for carrying out the State's  
12 obligations under the federal Individuals with Disabilities  
13 Education Act, 20 United States Code, Section 1400 et seq., as  
14 amended. The department and every school administrative unit,  
15 intermediate educational unit, public school or other public  
16 agency that receives federal or state funds to provide early  
17 intervention or free, appropriate public education services to  
18 children with disabilities shall comply with the federal  
19 Individuals with Disabilities Education Act, as amended, and all  
20 federal regulations adopted under the Act.

22 **Sec. A-21. 20-A MRSA c. 303**, as amended, is further amended by  
23 repealing the chapter headnote and enacting the following in its  
24 place:

26 **CHAPTER 303**

28 **CHILDREN WITH DISABILITIES**

30 **Sec. A-22. 20-A MRSA §7201**, as amended by PL 1995, c. 95,  
31 §1, is further amended to read:

32 **§7201. Policy and purpose**

34 The policy of the State for the education of exceptional  
35 students children with disabilities is as follows.

38 **1. Equal educational opportunities.** All students shall  
39 must be provided with equal educational opportunities and all  
40 school administrative units shall provide equal educational  
41 opportunities for all exceptional---students children with  
42 disabilities.

44 ~~2.--Least restrictive education alternative.--An exceptional~~  
45 ~~student shall be educated with students in regular programs to~~  
46 ~~the maximum extent possible.~~

48 ~~A.---Educational opportunities for an exceptional student~~  
49 ~~shall be provided by means of the addition of appropriate~~  
50 ~~supportive assistance to regular educational programs.~~

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~~B. Removal of an exceptional student from the regular educational environment shall occur only if the nature or severity of the exceptionality is such that the student's education cannot be satisfactorily accomplished in~~

~~{1} Regular classes with the use of supplemental aids and services; or~~

~~{2} Self contained classes within the regular school programs.~~

~~C. An exceptional student may be placed in a residential school or institution, or in a private day school or program, only after supporting evaluative data justifying the placement have been submitted to and approved by the commissioner.~~

2-A. Natural or least restrictive environment. To the maximum extent appropriate:

A. Early intervention services must be provided in natural environments, including the home, and community settings in which children from birth to under 3 years of age without disabilities participate; and

B. Children with disabilities at least 3 years of age and under 20 years of age, including children in public or private institutions or other care facilities, must be educated with children without disabilities. Special classes, separate schooling or other removal of children with disabilities from the regular educational environment may occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

3. Students diagnosed as deaf. An exceptional A student, diagnosed as deaf, shall must be educated with regular students without disabilities whenever possible and shall must be educated under the principle of the least restrictive educational alternative environment as set forth in state laws and rules and federal laws and regulations.

4. Parent's right to be a member of the team. Parents, surrogate parents or guardians have the right to be a member of the team which that will carry out duties and responsibilities in accordance with rules established by the commissioner.

2 5. **Blind students; Braille instruction.** All students may  
3 receive instruction in Braille reading and writing as part of  
4 their individualized family service plans or individualized  
5 education plans programs. A student may not be denied the  
6 opportunity of instruction in Braille reading and writing solely  
7 because the student has some remaining vision. If Braille is not  
8 provided to a child who is blind, the reason for not  
9 incorporating Braille in the individualized family service plan  
10 or individualized education plan programs must be documented in  
11 the individualized family service plan or individualized  
12 education plan program.

13 6. **Participation in cocurricular activities.** Eligibility  
14 for ~~an--exceptional--student~~ a child with a disability to  
15 participate in cocurricular activities may not be denied solely  
16 because the student is enrolled in a reduced course load when the  
17 reduced course load is due to the student's ~~exceptionality~~  
18 disability, provided that only if the student is satisfactorily  
19 completing the requirements of the educational components of an  
20 individualized family service plan or individualized education  
21 plan program and is otherwise in compliance with the plan  
22 program. If the student is not satisfactorily completing the  
23 educational components of an individualized family service plan  
24 or individualized education plan program or is not otherwise in  
25 compliance with the plan program, the student's eligibility may  
26 be determined in the same manner as the eligibility of a  
27 ~~nonexceptional--student~~ child without disabilities who is not  
28 satisfying the applicable academic standards.

29 **Sec. A-23. 20-A MRSA §7202,** as amended by PL 2005, c. 446,  
30 §7, is further amended to read:

31 **§7202. Duties of school administrative units**

32 Each school administrative unit operating schools shall:

33 1. **Identification.** Identify all children within its  
34 jurisdiction who require special education;

35 2. **Records.** Make and keep current records of ~~exceptional~~  
36 students children with disabilities within its jurisdiction, as  
37 required by rules established by the commissioner, and institute  
38 procedures which that guarantee the confidentiality of these  
39 records in accordance with state and federal law;

40 2-A. **Assist advocates for developmentally disabled.** Assist  
41 the ~~Protection--and--Advocacy--Agency--for--the--Developmentally~~  
42 Disabled--in--Maine advocacy agency designated under Title 5,  
43 section 19502 in conducting an investigation, pursuant to Title  
44 22 5, section 3554 19505, subsection 4, by providing access to

2 relevant case records, notifying parents or guardians of these  
investigations and by requesting parental consent for access to  
4 case records by the agency. Parents or guardians may refuse to  
consent to the examination of these records;

6 **3. Diagnosis and evaluation.** Provide ~~educational-diagnosis~~  
and-~~evaluation-necessary~~ the evaluations and assessments required  
8 by the federal Individuals with Disabilities Education Act, 20  
10 United States Code, Section 1400 et seq., as amended, to plan and  
implement a special education program for ~~exceptional--students~~  
12 children with disabilities at least 3 years of age and under 20  
years of age within its jurisdiction;

14 **4. Plan.** Submit a plan for its special education programs  
to the commissioner for approval in accordance with rules  
16 established by the commissioner;

18 **5. Special education and early intervention services.**  
Provide special education for each ~~exceptional--student~~ eligible  
20 child with a disability within its jurisdiction;

22 **5-A. Diploma requirements.** Award a high school diploma to  
each ~~exceptional--student~~ child with a disability who successfully  
24 meets the content standards of the system of learning results, in  
addition to any other diploma requirements applicable to all  
26 secondary school students pursuant to section 4722, as specified  
by the goals and objectives of the ~~student's~~ child's  
28 individualized education ~~plan~~ program;

30 **6. Compliance.** Provide the commissioner with the  
information the commissioner may require to determine compliance  
32 with this chapter;

34 **7. Notice of parent's right to be a member of the team.**  
Notify in writing the ~~exceptional--student's~~ parent, surrogate  
36 parent or guardian of ~~their~~ the child with a disability of that  
person's right to be a member of the team and place a copy of the  
38 notice in the ~~exceptional~~ student's permanent records;

40 **8. Facility construction, renovation and repair.** Seek  
approval in advance from the commissioner for construction,  
42 renovation or repair, with or aided by public funds, of  
facilities intended for the education of ~~exceptional--students~~  
44 children with disabilities, or give assurances that other  
facilities in the school administrative unit are adequate to meet  
46 the needs of those students;

48 **9. Securing parental permission.** For the ~~Protection--and~~  
~~Advocacy-Agency-for-the-Developmentally-Disabled-in-Maine~~ agency  
50 conducting studies pursuant to Title 22 5, chapter 961 511;



- 2           A. Assist the agency in its studies; and
- 4           B. Facilitate access to relevant case records by:
- 6                 (1) Notifying parents or guardians of the study; and
- 8                 (2) Requesting parental consent for the agency to have  
                  access to case records; and

10           **10. Department of Health and Human Services; authority to**  
12 **request convening of pupil evaluation team meeting.** Notify in  
14 writing the individual designated by the Department of Health and  
16 Human Services that the Department of Health and Human Services  
18 has the authority to request the school administrative unit to  
20 convene a pupil evaluation team meeting and to attend and  
22 participate in any pupil evaluation team meetings concerning an  
~~exceptional--student~~ a child with a disability who is a state  
ward. The written notice must indicate the time and place of the  
pupil evaluation team meeting and a copy of the notice must be  
placed in the ~~exceptional--student's~~ child's permanent record.

24           **Sec. A-24. 20-A MRSA §7203**, as enacted by PL 1981, c. 693,  
§§5 and 8, is repealed.

26           **Sec. A-25. 20-A MRSA §7204**, as amended by PL 1983, c. 806,  
§64, is further amended to read:

28           **§7204. Duties of the commissioner**

30           The commissioner:

32           1. **Related services.** Shall provide, or cause to be  
34 provided by administrative units operating schools, all  
36 ~~supportive--assistance--and~~ related services, as defined in rules  
the commissioner establishes, required by an ~~exceptional--student~~  
a child with a disability so that the student child may benefit  
38 from equal educational opportunities;

40           2. **State plan.** Shall make and annually review a state plan  
42 for education of all ~~exceptional---students~~ children with  
disabilities in the State. The State's plan may not require  
44 services that exceed minimum federal requirements. The plan  
46 shall must be available to the public on request. The department  
is the entity responsible for assigning financial responsibility  
48 among appropriate agencies as required under Part C of the  
federal Individuals with Disabilities Education Act, 20 United  
States Code, Section 1401 (8), Section 1412 (a)(12)(A,B,C) and  
50 Section 1435 (a)(10)(C) and continues to serve pursuant to  
Section 1435 (a)(10) as the single line of responsibility for

2 carrying out the general administration and supervision of  
3 programs and activities receiving assistance under Part C of the  
4 federal Individuals with Disabilities Education Act and the  
5 monitoring of programs and activities used to carry out that Part;

6 3. **School year.** May approve special education programs  
7 for:

8 A. The usual public school year as defined in section 4801,  
9 subsection 1;

10 B. An extended school year; or

11 C. Other periods the commissioner determines appropriate;

12 4. **Program approval.** Shall approve plans for all early  
13 intervention and special education programs. The criteria for  
14 approval shall must include:

15 A. Requirements for admission;

16 B. Qualification or certification of staff;

17 C. Plan of instruction;

18 D. Adequacy of facilities;

19 E. Adequacy of supportive services;

20 F. Professional supervision; and

21 G. Teacher-student ratio;

22 5. **Due process.** Shall:

23 A. Adopt or amend rules to assure and protect the rights of  
24 due process for ~~exceptional---students~~ children with  
25 disabilities; and

26 B. Inform and train each school administrative unit on  
27 ~~exceptional---students'~~ the rights of children with  
28 disabilities to due process under state laws and rules and  
29 federal law and regulations; and

30 6. **Technical assistance.** May, on the request of a school  
31 administrative unit, provide technical assistance in the  
32 formulation of a plan or subsequent report required of all  
33 administrative units. Assistance shall may not be designed to  
34 transfer the responsibility for or actual development of the plan  
35 or report.

2           **Sec. A-26. 20-A MRSA §7206, sub-§1**, as amended by PL 1999, c.  
424, Pt. A, §5, is further amended to read:

4  
6           **1. Complaint.** An interested party may file with the  
8 commissioner a written complaint alleging that a school  
10 administrative unit or private school serving ~~exceptional~~  
12 students children with disabilities has failed to comply with  
14 this chapter. The complaint must allege a violation that  
occurred not more than one year prior to the date that the  
complaint is received unless a longer period is reasonable  
because a violation is continuing or the complaint is requesting  
compensatory services for a violation that occurred not more than  
3 years prior to the date the complaint is received.

16           **Sec. A-27. 20-A MRSA §7207-A, sub-§2**, as amended by PL 1989,  
c. 700, Pt. B, §46 and enacted by c. 857, §56 and amended by PL  
18 2003, c. 689, Pt. B, §6, is further amended to read:

20           **2. Objection to appointments.** When ~~an exceptional student~~  
22 a child with a disability is a state ward and the Department of  
24 Health and Human Services has notified the school administrative  
unit and the Department of Education that the Department of  
26 Health and Human Services objects to the appointment of the  
foster parent as the surrogate parent, the foster parent may not  
be automatically appointed to serve as surrogate parent for the  
28 ~~exceptional student~~ child with a disability. When ~~an exceptional~~  
30 student a child with a disability is a state ward and the  
Department of Health and Human Services objects to the  
32 appointment of the foster parent as the surrogate parent, the  
Department of Health and Human Services shall recommend to the  
Department of Education an individual to serve as surrogate  
parent.

34           **Sec. A-28. 20-A MRSA §7207-B, sub-§3-A**, as enacted by PL 1997,  
36 c. 441, §1, is repealed.

38           **Sec. A-29. 20-A MRSA §7207-B, sub-§4**, as amended by PL 1985,  
c. 797, §41, is further amended to read:

40  
42           **4. Hearing officers, immunity.** The State shall ~~train~~ ensure  
44 that impartial hearing officers meet the criteria contained in  
the federal Individuals with Disabilities Education Act, 20  
United States Code, Section 1400 et seq., as amended. For  
46 purposes of the Maine Tort Claims Act only, Title 14, chapter  
741, hearing officers, while they are carrying out their official  
48 duties as hearing officers, shall--be are considered state  
employees and shall--be are entitled to the immunity provided  
state employees under the Maine Tort Claims Act.

50

Sec. A-30. 20-A MRSA §§7209 and 7210 are enacted to read:

§7209. General administration and supervision

1. Department of Education. The department shall serve as the lead agency for the statewide system pursuant to 20 United States Code, Section 1435, including the identification and coordination of all available resources within the State for services to eligible children from birth to under 3 years of age, and shall exercise general supervisory authority over child find as provided in 20 United States Code, Section 1412 (a) (3) and the provision of a free, appropriate public education to children at least 3 years of age and under 6 years of age.

A. The commissioner or the commissioner's designee is responsible for developing and adopting rules necessary to carry out the provisions of the federal Individuals with Disabilities Education Act, Part B, Section 619 and Part C, 20 United States Code, Section 1400 et seq.

B. During the period from July 1, 2006 to September 30, 2007, the department, in a manner consistent with the authority of the board of directors of an intermediate educational unit, shall only approve the annual entitlement plan and the budget for an intermediate educational unit pursuant to subsection 6 in accordance with the following.

(1) The department shall approve the entitlement plan and the budget if the provisions of the entitlement plan and the budget are in compliance with the statewide standards established by the state intermediate educational unit pursuant to subsection 3 for the purpose of ensuring coordinated service delivery in each region of the State.

(2) In the event that the department determines that the provisions of the annual entitlement plan and the budget presented by a board of directors of an intermediate educational unit are not in compliance with the statewide standards established pursuant to subsection 3, the department shall require the board of directors of the intermediate educational unit to revise and resubmit the annual entitlement plan and the budget in a reasonable amount of time as determined by the commissioner.

(3) In the event the provisions of the resubmitted annual entitlement plan and the budget are not in compliance with the statewide standards established pursuant to subsection 3, the department is authorized

2 to determine and approve an appropriate, final annual  
3 entitlement plan and a budget for the intermediate  
4 educational unit that is in compliance with the  
5 statewide standards established pursuant to subsection  
6 3.

7 This paragraph is repealed September 30, 2007.

8  
9  
10 C. The commissioner or the commissioner's designee is  
11 responsible for ensuring legal and policy compliance  
12 throughout the early childhood special education program by  
13 reviewing or performing regular audits of program records.

14 D. The commissioner or the commissioner's designee is  
15 responsible for ensuring fiscal compliance throughout the  
16 early childhood special education program by reviewing or  
17 performing regular audits of program records.

18  
19 E. The department, in consultation with regional sites,  
20 shall develop an action plan with timelines to achieve  
21 compliance with federal or state law. The department may  
22 assume temporary responsibilities for operations at a  
23 regional site that fails to meet compliance requirements.

24  
25 2. State-level advisory committee. The state-level  
26 advisory committee is established for the period from July 1,  
27 2006 to September 30, 2007 to advise on the provisions of this  
28 section. Members of the state-level advisory committee are  
29 appointed by the commissioner and must include representatives  
30 from each board of directors of a regional site described in  
31 subsection 5, the early childhood education consultant and the  
32 director of early childhood special education within the  
33 department. This subsection is repealed September 30, 2007.

34  
35 3. State intermediate educational unit. The commissioner  
36 shall establish and supervise the state intermediate educational  
37 unit. The state intermediate educational unit is established as  
38 a body corporate and politic and as a public instrumentality of  
39 the State for the purpose of conducting child find activities as  
40 provided in 20 United States Code, Section 1412 (a) (3) for  
41 children from birth to under 6 years of age, ensuring the  
42 provision of early intervention services for eligible children  
43 from birth to under 3 years of age and ensuring a free,  
44 appropriate public education for eligible children at least 3  
45 years of age and under 6 years of age. For the period from July  
46 1, 2006 to September 30, 2007, the state intermediate educational  
47 unit shall perform the following statewide coordination and  
48 administration functions:

2 A. Establish standard policies and procedures for a  
3 statewide salary and benefits administration system,  
4 including personnel classifications, position descriptions  
5 and salary ranges, and a standard package of health,  
6 retirement and other fringe benefits for Child Development  
7 Services System personnel, which must be included in the  
8 annual entitlement plan described in subsection 1 beginning  
9 in fiscal year 2006-07;

10 B. Develop a statewide salary and benefits administration  
11 system and perform the payroll functions for Child  
12 Development Services System personnel;

14 C. Establish a centralized system for statewide fiscal  
15 administration to be implemented by September 1, 2006. The  
16 state intermediate educational unit shall establish internal  
17 controls and implement accounting policies and procedures in  
18 accordance with standards set forth by the State Controller;

20 D. Develop and implement a centralized data management  
21 system to be fully operational beginning July 1, 2007;

22 E. Establish a standard, statewide template for regional  
23 site contracts with therapeutic service providers, including  
24 policies and procedures for the review of contracts, that  
25 must be included in the annual entitlement plan described in  
26 subsection 1, beginning in fiscal year 2006-07;

28 F. Refine program accountability standards for compliance  
29 with federal mandates that must be included in the annual  
30 entitlement plan described in subsection 1, including the  
31 development of a performance review system to monitor and  
32 improve regional site performance through the use of  
33 efficiency ratings aligned with the accountability standards  
34 and through a compliance plan that requires the regional  
35 site to address the unmet needs of eligible children in  
36 accordance with specific targets and time frames;

38 G. Design and implement a statewide plan to provide  
39 professional development and training to Child Development  
40 Services System personnel; and

42 H. Employ professional and other personnel, including those  
43 necessary to ensure the implementation of the centralized  
44 fiscal and data management systems. All state intermediate  
45 educational unit employees are employees for the purposes of  
46 the Maine Tort Claims Act.

48 4. Director of early childhood special education. The  
49 commissioner shall appoint and supervise a director of early  
50 childhood special education.

2 childhood special education. The director has the following  
3 powers and duties:

4 A. To administer the state intermediate educational unit  
5 established under subsection 3. The director shall develop  
6 operating policies and establish organizational and  
7 operational procedures that include supervision, monitoring,  
8 data and accountability structures;

10 B. To develop statewide policies and procedures for  
11 carrying out federal and state laws and rules relating to  
12 child find, early intervention services and the provision of  
13 a free, appropriate public education to children from birth  
14 to under 6 years of age; and

16 C. To provide training in federal and state laws,  
17 regulations, rules and policies relating to child find as  
18 provided in 20 United States Code, Section 1412 (a) (3),  
19 early intervention services and the provision of a free,  
20 appropriate public education to children from birth to under  
21 6 years of age and to conduct regular file reviews to  
22 determine compliance with federal and state laws,  
23 regulations, rules and policies and conduct training and  
24 provide technical assistance where deficiencies are found.

26 5. Regional site board of directors. A board of directors  
27 of a regional site is responsible for governance of its  
28 activities, including the management and oversight of its general  
29 operations. Membership must include representatives of the  
30 regional offices of the Department of Health and Human Services,  
31 representatives of participating school administrative units,  
32 parents of children with disabilities and other community members  
33 as determined appropriate. A regional site board member or a  
34 board member's employer may not, during the term for which the  
35 member serves on the board, derive any revenue from work  
36 performed for the Child Development Services System. A  
37 representative of a participating school administrative unit  
38 whose participation in the Child Development Services System is  
39 limited to work performed for the school administrative unit is  
40 exempt from the requirements of this subsection. Terms of  
41 membership and methods of appointment or election for each board  
42 of directors must be determined by the board of director's  
43 bylaws, subject to approval by the department.

44 6. Regional site board of directors; annual entitlement  
45 plan; site budget approval. A board of directors of a regional  
46 site is entitled to receive annual grant award allocations that  
47 are approved by the department in accordance with the approval  
48 provisions for the annual entitlement plan and the budget for a

1 regional site pursuant to subsection 1, paragraph B. This  
2 subsection is repealed September 30, 2007.

4 7. Regional site; administration. A board of directors of  
a regional site shall:

6  
8 A. Hire, fire and supervise the staff of the regional site  
9 according to the job classifications, pay scales and  
10 personnel policies established by the state intermediate  
11 educational unit established under subsection 3;

12 B. Enter into contracts, leases and agreements and any  
13 other instruments and arrangements that are necessary,  
14 incidental or convenient to the performance of its duties  
15 and the execution of its powers under this chapter, using  
16 forms and procedures developed by the department;

18 C. Ensure data entry and reporting through June 30, 2007;  
19 and

20  
21 D. Provide fiscal management of money allocated to it, in  
22 compliance with federal and state laws and subject to proof  
23 of an annual audit.

24  
25 8. Regional site; duties and obligations. A board of  
26 directors of a regional site shall:

28 A. Ensure provision of child find activities as required by  
29 the federal Individuals with Disabilities Education Act, 20  
30 United States Code, Section 1400 et seq.;

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

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

42  
43 D. Ensure that eligible children with disabilities, from  
44 birth to under 3 years of age, receive early intervention  
45 services, in accordance with the payment provisions  
46 established by the State;

48 E. Ensure that eligible children with disabilities, from 3  
years of age to under 6 years of age, receive free,



2 appropriate public education services, in collaboration with  
3 school administrative units when possible;

4 F. Coordinate with eligible families the development of  
5 individualized family service plans for children with  
6 disabilities from birth to 2 years of age or coordinate an  
7 individualized education program for a child 3 years of age  
8 to under 6 years of age unless an individualized family  
9 service plan is preferred; and

10 G. Designate local personnel for training to commit funds  
11 for free, appropriate public education. Personnel who  
12 commit funds for free, appropriate public education must be  
13 trained and certified by the state intermediate educational  
14 unit established under subsection 3. The board of directors  
15 of a regional site shall determine which trained and  
16 certified personnel may commit funds.

17 **§7210. Conflict of interest**

18  
19 Notwithstanding Title 5, section 18, subsection 1, paragraph  
20 B, all members of the state-level advisory committee established  
21 under section 7209, subsection 2 and all employees, contractors,  
22 agents and other representatives of the state intermediate  
23 educational unit are deemed executive employees solely for  
24 purposes of Title 5, section 18. The Department shall provide  
25 training to participants to ensure compliance with conflict of  
26 interest requirements.

27 **Sec. A-31. 20-A MRSA §7252-A**, as enacted by PL 1987, c. 395,  
28 Pt. A, §76, is amended to read:

29 **§7252-A. Early intervention; special education programs; approval**

30  
31 Special Early intervention and special education programs  
32 may be established for the delivery of early intervention and  
33 special education services to exceptional--students children with  
34 disabilities in accordance with section 7204, subsection 4. An  
35 early intervention program may be provided by an intermediate  
36 educational unit, an approved private school or a state licensed  
37 agency. A special education program may be offered by a school  
38 administrative unit, an approved private school or a state  
39 licensed agency. All early intervention and special education  
40 programs offered by approved private schools or state licensed  
41 agencies shall must:

42  
43 **1. Supervision.** Be provided under the supervision of the  
44 school administrative unit responsible for the education of the  
45 exceptional--student child with a disability enrolled in the  
46 program;

2           2. **Description.** Be described in a master contractual  
agreement between the agency or private school and the  
4 commissioner; and

6           3. **Approval.** Be approved in advance of the enrollment of  
any ~~exeptional-student~~ child with a disability.

8  
10           **Sec. A-32. 20-A MRSA §7252-B**, as enacted by PL 1987, c. 395,  
Pt. A, §76, is amended to read:

12           **§7252-B. Early intervention; special education services; approval**

14           The commissioner shall adopt or amend rules to define  
allowable early intervention and special education services and  
16 the qualifications of individuals who provide early intervention  
or special education services. Each intermediate educational  
18 unit, approved private school or state licensed agency providing  
early intervention services shall submit a report at such time  
20 and in such form as the commissioner may require. Each school  
administrative unit, approved private school or licensed state  
22 licensed agency providing special education services shall submit  
a report at such time and in such form as the commissioner may  
24 require.

26           **Sec. A-33. 20-A MRSA §7255**, as enacted by PL 1981, c. 693,  
§§5 and 8, is amended to read:

28           **§7255. Other programs**

30           In addition to, or in place of, those methods listed in this  
chapter, a school administrative unit may make other provisions,  
32 subject to approval in advance by the commissioner, to ensure the  
education of all ~~exeptional-students~~ children with disabilities.  
34

36           **Sec. A-34. 20-A MRSA §7257**, as enacted by PL 1983, c. 64, is  
amended to read:

38           **§7257. General supervision**

40           All educational programs for ~~exeptional-students~~ children  
42 with disabilities within the State, including all such programs  
administered by any other state or local agency, ~~will-be~~ are  
44 under the general supervision of the commissioner.

46           **Sec. A-35. 20-A MRSA §7302, sub-§2**, as amended by PL 2005, c.  
153, §6, is further amended to read:

48           2. **Private special education facilities; private general**  
50 **purpose agencies.** Private agencies that operate facilities that

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2 exclusively serve ~~exceptional~~-students children with disabilities  
and private general purpose agencies that receive state aid for  
3 special education programs shall comply with the following in  
4 computing tuition rates.

6 A. All tuition rates are subject to approval by the  
commissioner.

8 B. The tuition rates may not exceed the actual per student  
10 cost incurred in the operation during the preceding school  
year.

12 C. The commissioner shall adopt or amend rules to define  
14 allowable expenditures used to determine per student costs.

16 D. An agency shall file an annual financial report  
detailing the allowable expenditures and the computation of  
18 the tuition rate at such time and in the form the  
commissioner may require.

20 E. Increases in the tuition rate from one year to the next  
22 may not exceed the tuition rate established through  
negotiation unless evidence is presented to the commissioner  
24 that a hardship will exist if a higher rate of increase is  
not approved, and this evidence is determined sufficient by  
26 the commissioner.

28 F. The commissioner shall establish a tuition rate for new  
special education programs in special purpose private  
30 schools and private general purpose agencies based on the  
estimated allowable costs of these schools.

32 **Sec. A-36. 20-A MRSA §7502**, as amended by PL 1991, c. 655,  
34 §6, is further amended to read:

36 **§7502. State institutions**

38 The director of a state institution shall apply to the  
superintendent of the school administrative unit in which the  
40 institution is located, or in any adjoining unit, for children in  
the institution to attend that unit's schools. These ~~exceptional~~  
42 students children with disabilities are entitled to attend under  
the same conditions as apply to students residing in the school  
44 administrative unit and under the rules of the department  
relating to special education.

46 **Sec. A-37. 20-A MRSA c. 307-A**, as amended, is repealed.

48 **Sec. A-38. 20-A MRSA §13024, sub-§1, ¶C**, as enacted by PL  
50 2005, c. 457, Pt. FF, §3, is amended to read:

2 C. Personnel employed by or serving the school  
administrative unit as contracted service providers; and

4  
6 **Sec. A-39. 20-A MRSA §13024, sub-§1, ¶D**, as enacted by PL  
2005, c. 457, Pt. FF, §3, is repealed and the following enacted  
in its place:

8 D. Personnel for whom certification or authorization is not  
10 required prior to being hired or being placed under contract  
by a public school or an intermediate educational unit.

12 **Sec. A-40. 20-A MRSA §13024, sub-§1, ¶E**, as enacted by PL  
14 2005, c. 457, Pt. FF, §3, is repealed.

16 **Sec. A-41. 20-A MRSA §15672, sub-§30-A, ¶D**, as enacted by PL  
2005, c. 2, Pt. D, §36 and affected by §§72 and 74 and c. 12, Pt.  
18 WW, §18, is amended to read:

20 D. Special education costs that are the costs of  
22 educational services provided to students who are  
temporarily unable to participate in regular school  
24 programs. Students who may be included are pregnant  
students, hospitalized students or those confined to their  
homes for illness or injury, students involved in substance  
26 abuse programs within hospital settings or in residential  
rehabilitation facilities licensed by the Department of  
28 Health and Human Services, Office of Alcoholism and Drug  
Abuse Prevention for less than 6 weeks duration or students  
30 suffering from other temporary conditions that prohibit  
their attendance at school. Students served under this  
32 paragraph may not be counted as ~~exceptional--students~~  
children with disabilities for federal reporting purposes.

34 **Sec. A-42. 22 MRSA §8823, sub-§2, ¶C**, as enacted by PL 1999,  
36 c. 647, §2, is amended to read:

38 C. A representative of hospitals, a representative of  
health carriers, a representative of the ~~Child-Development~~  
40 ~~Services--System--established--in--Title--20--A--section--7724~~  
early childhood special education program under Title 20-A,  
42 chapter 303 and a representative of the department.

44 **Sec. A-43. 26 MRSA §962, sub-§7, ¶A**, as amended by PL 2005, c.  
279, §15, is further amended to read:

46 A. Any officer, board, commission, council, committee or  
48 other persons or body acting on behalf of:

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- 2 (1) Any municipality or any subdivision of a  
municipality;
- 4 (2) Any school, water, sewer, fire or other district;
- 6 (3) The Maine Turnpike Authority;
- 8 ~~(4) Any board of directors functioning as a regional  
intermediate education unit pursuant to Title 20-A,  
section 7730;~~
- 10
- 12 (5) Any county or subdivision of a county;
- 14 (6) The Maine State Retirement System; or
- 16 (7) The Maine Educational Center for the Deaf and Hard  
of Hearing and the Governor Baxter School for the Deaf;
- 18

20 **Sec. A-44. Effective date.** That section of this Part that  
repeals the Maine Revised Statutes, Title 20-A, chapter 307-A  
takes effect June 30, 2006.

22

**PART B**

24

26 **Sec. B-1. Adoption of rules.** The major substantive rules  
adopting the unified eligibility provisions for early childhood  
special education and other special education programs for  
28 eligible persons from birth to 20 years of age, pursuant to the  
Maine Revised Statutes, Title 20-A, section 7005, subsection 1,  
30 must be presented by the Department of Education for legislative  
review in the First Regular Session of the 123rd Legislature,  
32 except that the Commissioner of Education may adopt a rule for  
the unified eligibility provisions for early childhood special  
34 education and other special education programs for eligible  
persons from birth to 20 years of age for the state fiscal year  
36 2006-07 as an emergency rule pursuant to Title 5, section 8073.  
Notwithstanding Title 5, section 8052, subsection 1, the  
38 Department of Education must hold a public hearing on the  
emergency, major substantive rule adopted pursuant to this  
40 section. The commissioner shall report to the joint standing  
committee of the Legislature having jurisdiction over education  
42 and cultural affairs by February 15, 2007 on the emergency, major  
substantive rule established for fiscal year 2006-07.

44

**PART C**

46

48 **Sec. C-1. Subcommittee established.** The Subcommittee To Study  
Early Childhood Special Education, referred to in this Part as  
"the subcommittee," is established to study early childhood  
50 special education programs and services provided for infants and

2 young children from birth to 8 years of age. The subcommittee  
3 shall function as a subcommittee of the Task Force on Early  
4 Childhood, an initiative of the Children's Cabinet established  
5 pursuant to the Maine Revised Statutes, Title 5, chapter 439 that  
6 proposes to implement a state plan for comprehensive early  
7 childhood systems.

8 **Sec. C-2. Subcommittee membership.** The subcommittee consists  
9 of no more than 28 members appointed as follows:

10 1. Two members of the Senate, one belonging to the political  
11 party holding the largest number of seats in the Senate and one  
12 belonging to the political party holding the 2nd largest number  
13 of seats in the Senate, appointed by the President of the Senate;

14 2. Two members of the House of Representatives, one  
15 belonging to the political party holding the largest number of  
16 seats in the House of Representatives and one belonging to the  
17 political party holding the 2nd largest number of seats in the  
18 House of Representatives, appointed by the Speaker of the House;

19 3. Twenty-four members appointed jointly by the Commissioner  
20 of Education and the Commissioner of Health and Human Services,  
21 who are the lead commissioners for the early childhood priority  
22 established by the Children's Cabinet. The Commissioner of  
23 Education and the Commissioner of Health and Human Services shall  
24 appoint subcommittee members from a list of 2 to 3 nominees  
25 submitted for each subcommittee position by the respective  
26 statewide organizations that represent the specified categories  
27 as follows:

28 A. Two members who are parents of infants or toddlers with a  
29 disability that have knowledge of or experience with  
30 programs for infants and toddlers with disabilities, who are  
31 nominated by the Maine Parent Federation, Inc., or its  
32 successor;

33 B. Two members who are parents of children with a  
34 disability between 3 years of age and 8 years of age that  
35 have knowledge of or experience with programs for children  
36 with disabilities, who are nominated by the Maine Parent  
37 Federation, Inc., or its successor;

38 C. Two members who are contracted service providers of  
39 early intervention and free, appropriate public education  
40 services, who are nominated by the Maine Association for  
41 Community Service Providers, or its successor;

42 D. Two members who are Child Development Services System  
43 regional site staff who provide direct services, who are  
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COMMITTEE AMENDMENT "A" to S.P. 689, L.D. 1772

2 nominated by the boards of directors of the regional sites  
within the Child Development Services System;

4 E. One member who is a member of a board of directors of a  
Child Development Services System regional site, who are  
6 nominated by the boards of directors of the regional sites  
within the Child Development Services System;

8 F. One member who is a director of a Child Development  
10 Services System regional site, who is nominated by the Child  
Development Services System Site Directors Council;

12 G. One member who is a representative of a Head Start agency  
14 or program, who is nominated by the Director of the Office  
of Child Care and Head Start in the Department of Health and  
16 Human Services;

18 H. One member who is a representative of a child care  
program, who is nominated by the Director of the Office of  
20 Child Care and Head Start in the Department of Health and  
Human Services;

22 I. One member who is a teacher in an early childhood  
24 education program for children 4 years of age established by  
a public elementary school that includes coordination of  
26 programs and services for eligible children with a Child  
Development Services System regional site, who is nominated  
28 by the Executive Director of the Maine Education  
Association, or its successor;

30 J. One member who is a principal of a public elementary  
32 school that has implemented an early childhood education  
program for children 4 years of age that includes  
34 coordination of programs and services for eligible children  
with a Child Development Services System regional site, who  
36 is nominated by the Executive Director of the Maine  
Principals' Association, or its successor;

38 K. Two members who are special education directors, who are  
40 nominated by the Executive Director of the Maine  
Administrators of Services for Children with Disabilities,  
42 or its successor;

44 L. One member who serves as a superintendent of a school  
administrative unit that has implemented an early childhood  
46 education program for children 4 years of age that includes  
coordination of programs and services for eligible children  
48 with a Child Development Services System regional site, who  
is nominated by the Executive Director of the Maine School  
50 Superintendents Association, or its successor;

2 M. One member who serves as a school board member of a  
4 school administrative unit that has implemented an early  
6 childhood education program for children 4 years of age that  
8 includes coordination of programs and services for eligible  
children with a Child Development Services System regional  
site, who is nominated by the Executive Director of the  
Maine School Boards Association, or its successor;

10 N. One member who is an individual with a disability, who is  
12 nominated by the Executive Director of the Maine  
Administrators of Services for Children with Disabilities,  
14 or its successor;

16 O. One member who is a representative on the Maine Advisory  
18 Council for the Education of Children with Disabilities, who  
is nominated by the chair of the Maine Advisory Council for  
the Education of Children with Disabilities, or its  
20 successor;

22 P. Two members representing the Department of Education, who  
are nominated by the Commissioner of Education; and

24 Q. Two members representing the Department of Health and  
26 Human Services, who are nominated by the Commissioner of  
Health and Human Services.

28 **Sec. C-3. Chairs.** The President of the Senate and the Speaker  
of the House shall each select one member appointed in section 2,  
30 subsection 3 to serve as a cochair of the subcommittee, except  
that the President of the Senate and the Speaker of the House may  
32 not appoint a Legislator to serve as a cochair of the  
subcommittee.

34 **Sec. C-4. Appointments; convening of subcommittee.** All the  
36 appointments must be made no later than 30 days following the  
effective date of this Part. The appointing authorities shall  
38 notify the Executive Director of the Legislative Council once all  
appointments have been completed. Within 15 days after  
40 appointment of all members, the chairs shall call and convene the  
first meeting of the subcommittee.

42 **Sec. C-5. Duties.** The subcommittee shall examine the  
44 following:

46 1. The extent to which services provided by the early  
48 childhood special education systems established in the State to  
deliver effective early intervention and free, appropriate public  
education services for eligible children from birth to 8 years of



COMMITTEE AMENDMENT "A" to S.P. 689, L.D. 1772

2 age are provided in an efficient manner that meets federal and  
state legal requirements;

4 2. The extent to which the existing early childhood systems  
6 established in the State strike a reasonable balance between the  
cognitive development and the emotional and physical needs of  
8 young children from birth to 8 years of age;

10 3. National trends and relevant models of governing and  
12 delivering early childhood special education systems in other  
states and jurisdictions that hold the potential for enhancing  
14 the effectiveness, efficiency or accountability of the early  
childhood special education systems established in the State;

16 4. The short-term and long-term costs and benefits of the  
Department of Education plan to restructure the Child Development  
18 Services System as presented by the Commissioner of Education to  
the Legislature pursuant to Public Law 2005, chapter 12, Part YY  
20 on November 30, 2005 and as set forth in this Act; and

22 5. Such other issues as the subcommittee membership  
determine to be useful or necessary in examining this policy  
24 matter.

**Sec. C-6. Staff assistance.** The Department of Education shall  
26 provide necessary staffing services to the subcommittee.

28 **Sec. C-7. Compensation.** Legislative members of the  
subcommittee are entitled to receive the legislative per diem and  
30 reimbursement for travel and other necessary expenses related to  
their attendance at authorized meetings of the subcommittee.  
32 Other members of the subcommittee may not receive compensation  
for their participation on the subcommittee.

34 **Sec. C-8. Report.** The subcommittee shall submit a report that  
36 includes its findings and recommendations, including suggested  
legislation, which may include an extension of any of the time  
38 periods established in the Maine Revised Statutes, Title 20-A,  
section 7209, for presentation to the Commissioner of Education  
40 and the Commissioner of Health and Human Services, who are the  
lead commissioners for the early childhood priority established  
42 by the Children's Cabinet, and to the joint standing committee of  
the Legislature having jurisdiction over education and cultural  
44 affairs and to the joint standing committee of the Legislature  
having jurisdiction over health and human services matters no  
46 later than January 31, 2007. The subcommittee is authorized to  
introduce legislation related to the recommendations contained in  
48 its report to the First Regular Session of the 123rd Legislature  
at the time of submission of its report.

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**PART D**

**Sec. D-1. Appropriations and allocations.** The following appropriations and allocations are made.

**EDUCATION, DEPARTMENT OF**

**Preschool Handicapped 0449**

Initiative: Deappropriates funds in fiscal year 2005-06 and appropriates funds in fiscal year 2006-07 in order to recognize savings achieved in fiscal year 2005-06.

<b>GENERAL FUND</b>	<b>2005-06</b>	<b>2006-07</b>
All Other	(\$930,000)	\$930,000
<b>GENERAL FUND TOTAL</b>	<u>(\$930,000)</u>	<u>\$930,000</u>

**Preschool Handicapped 0449**

Initiative: Appropriates funds associated with savings in the MaineCare program in fiscal year 2005-06 due to a decline in enrollment of MaineCare-eligible children.

<b>GENERAL FUND</b>	<b>2005-06</b>	<b>2006-07</b>
All Other	\$0	\$214,500
<b>GENERAL FUND TOTAL</b>	<u>\$0</u>	<u>\$214,500</u>

**Preschool Handicapped 0449**

Initiative: Appropriates funds associated with savings in the MaineCare program in fiscal year 2006-07 due to a decline in enrollment of MaineCare-eligible children.

<b>GENERAL FUND</b>	<b>2005-06</b>	<b>2006-07</b>
All Other	\$0	\$277,616
<b>GENERAL FUND TOTAL</b>	<u>\$0</u>	<u>\$277,616</u>

**Preschool Handicapped 0449**

Initiative: Appropriates funds associated with savings in the MaineCare program in fiscal year 2006-07 due to adherence to current eligibility criteria and other changes in evaluations and service delivery for MaineCare-eligible children.

COMMITTEE AMENDMENT "A" to S.P. 689, L.D. 1772

2	<b>GENERAL FUND</b>	<b>2005-06</b>	<b>2006-07</b>
	All Other	\$0	\$544,500
4	<b>GENERAL FUND TOTAL</b>	<u>\$0</u>	<u>\$544,500</u>

6      **Preschool Handicapped   0449**

8      Initiative: Appropriates funds associated with savings in the  
 10     MaineCare program in fiscal year 2006-07 related to autism  
 12     programs for MaineCare-eligible children.

12	<b>GENERAL FUND</b>	<b>2005-06</b>	<b>2006-07</b>
	All Other	\$0	\$100,000
14	<b>GENERAL FUND TOTAL</b>	<u>\$0</u>	<u>\$100,000</u>

16     **EDUCATION, DEPARTMENT OF**  
 18     **DEPARTMENT TOTALS**

		<b>2005-06</b>	<b>2006-07</b>
20	<b>GENERAL FUND</b>	<b>(\$930,000)</b>	<b>\$2,066,616</b>
22	<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<u><b>(\$930,000)</b></u>	<u><b>\$2,066,616</b></u>

24     **HEALTH AND HUMAN SERVICES, DEPARTMENT OF**

26     **Medical Care - Payments to Providers   0147**

28     Initiative: Reduces funding associated with savings in the  
 30     MaineCare program due to a decline in enrollment of  
 32     MaineCare-eligible children in the Child Development Services  
 34     System.

32	<b>GENERAL FUND</b>	<b>2005-06</b>	<b>2006-07</b>
34	All Other	(\$214,500)	(\$277,616)
36	<b>GENERAL FUND TOTAL</b>	<u>(\$214,500)</u>	<u>(\$277,616)</u>

38	<b>FEDERAL EXPENDITURES FUND</b>	<b>2005-06</b>	<b>2006-07</b>
	All Other	(\$371,566)	(\$476,366)
40	<b>FEDERAL EXPENDITURES FUND TOTAL</b>	<u>(\$371,566)</u>	<u>(\$476,366)</u>

42     **Medical Care - Payments to Providers   0147**

44     Initiative: Reduces funds associated with savings in the  
 46     MaineCare program in fiscal year 2006-07 due to adherence to  
 48     current eligibility criteria and other changes in evaluations and  
     service delivery for MaineCare-eligible children.

COMMITTEE AMENDMENT "A" to S.P. 689, L.D. 1772

2	<b>GENERAL FUND</b>	<b>2005-06</b>	<b>2006-07</b>
	All Other	\$0	(\$544,500)
4	<b>GENERAL FUND TOTAL</b>	<hr/>	<hr/>
		\$0	(\$544,500)
6	<b>FEDERAL EXPENDITURES FUND</b>	<b>2005-06</b>	<b>2006-07</b>
	All Other	\$0	(\$934,316)
8	<b>FEDERAL EXPENDITURES FUND TOTAL</b>	<hr/>	<hr/>
		\$0	(\$934,316)

10 **Medical Care - Payments to Providers 0147**

12 Initiative: Reduces funds associated with savings in the  
 14 MaineCare program in fiscal year 2006-07 related to autism  
 16 programs for MaineCare-eligible children.

18	<b>GENERAL FUND</b>	<b>2005-06</b>	<b>2006-07</b>
	All Other	\$0	(\$100,000)
20	<b>GENERAL FUND TOTAL</b>	<hr/>	<hr/>
		\$0	(\$100,000)
22	<b>FEDERAL EXPENDITURES FUND</b>	<b>2005-06</b>	<b>2006-07</b>
	All Other	\$0	(\$171,592)
24	<b>FEDERAL EXPENDITURES FUND TOTAL</b>	<hr/>	<hr/>
		\$0	(\$171,592)

28 **HEALTH AND HUMAN SERVICES, DEPARTMENT OF**  
 30 **DEPARTMENT TOTALS**

32	<b>GENERAL FUND</b>	<b>2005-06</b>	<b>2006-07</b>
		(\$214,500)	(\$922,116)
	<b>FEDERAL EXPENDITURES FUND</b>	(\$371,566)	(\$1,582,273)
34	<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<hr/>	<hr/>
		(\$586,066)	(\$2,504,389)

36 **SECTION TOTALS**

38	<b>GENERAL FUND</b>	<b>2005-06</b>	<b>2006-07</b>
		(\$1,144,500)	\$1,144,500
40	<b>FEDERAL EXPENDITURES FUND</b>	(\$371,566)	(\$1,582,273)
42	<b>SECTION TOTAL - ALL FUNDS</b>	<hr/>	<hr/>
		(\$1,516,066)	(\$437,773)

44 **Emergency clause.** In view of the emergency cited in the  
 46 preamble, this Act takes effect when approved, except as  
 otherwise indicated.'

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**SUMMARY**

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This amendment is the majority report of the Joint Standing Committee on Education and Cultural Affairs. The amendment strikes and replaces the bill. The amendment accomplishes the following.

1. It consolidates the provisions of early childhood special education, from birth to 2 years of age, and of special education, from 3 years of age to 20 years of age, into one unified set of statutory provisions for birth to 20 years of age.

2. It directs the Department of Education to amend the department rules established for the provision of special education services to eligible children from 5 years of age to 20 years of age into one unified set of department rules for the provision of special education programs and services for eligible infants, toddlers and children from birth to 20 years of age. The Department of Education must adopt emergency rules, which are designated as major substantive rules, which combine the department rules in rules chapter 101 established for the provision of special education services to eligible children from 5 years of age to 20 years of age with the department rules in rules chapters 180 and 182 established for the Child Development Services System.

3. It revises existing state statutes to align with the recently reauthorized federal Individuals with Disabilities Education Act, which was amended by the Federal Government in 2004.

4. It requires that related services be provided at public expense to children with disabilities. Related services means special education transportation and such developmental, corrective and other related services, as defined by the commissioner, as are required to assist children with disabilities to benefit from their special education programs.

5. It further amends state statutes to ensure consistent terminology, including replacing the term exceptional student with the term child with a disability.

6. It reorganizes the responsibilities of the Department of Education, the state intermediate educational unit and the 16 regional sites of the Child Development Services System in order to enhance the effectiveness of early childhood special education programs and to achieve efficiencies of cost to realize administrative savings within the Child Development Services System as required by Public Law 2005, chapter 12, Part YY.

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2 7. It establishes initiatives within the early childhood  
special education program that centralize fiscal administration,  
4 salary and benefits administration and data management policies  
and procedures beginning with the fiscal year starting on July 1,  
6 2006.

8 8. It provides the Commissioner of Education with the duty  
to determine and approve the annual entitlement application and  
the budget presented by the respective boards of directors of the  
10 16 regional sites within the Child Development Services System.

12 9. It establishes the Subcommittee To Study Early Childhood  
Special Education, a 28-member subcommittee, to study early  
14 childhood special education programs and services provided for  
infants and young children from birth to 8 years of age. The  
16 subcommittee shall function as a subcommittee of the Task Force  
on Early Childhood, an initiative of the Children's Cabinet that  
18 proposes to implement a state plan for comprehensive early  
childhood systems. The subcommittee shall submit a report to the  
20 Commissioner of Education and the Commissioner of Health and  
Human Services and to the joint standing committee of the  
22 Legislature having jurisdiction over education and cultural  
affairs and to the joint standing committee of the Legislature  
24 having jurisdiction over health and human services matters no  
later than January 31, 2007. The subcommittee has the authority  
26 to submit legislation to the First Regular Session of the 123rd  
Legislature to implement the recommendations contained in its  
28 report.

30 10. It adds an appropriations and allocations section.

FISCAL NOTE REQUIRED  
(See Attached)



# 122nd MAINE LEGISLATURE

LD 1772

LR 3023(02)

## An Act to Improve Early Childhood Special Education

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Education and Cultural Affairs

Fiscal Note Required: Yes

### Fiscal Note

	2005-06	2006-07	Projections 2007-08	Projections 2008-09
<b>Net Cost (Savings)</b>				
General Fund	(\$1,144,500)	\$1,144,500	\$1,144,500	\$1,144,500
<b>Appropriations/Allocations</b>				
General Fund	(\$1,144,500)	\$1,144,500	\$1,144,500	\$1,144,500
Federal Expenditures Fund	(\$371,566)	(\$1,582,273)	(\$1,582,273)	(\$1,582,273)

#### Current Costs - Legislative Study

##### Legislative Study

The projected costs of the four legislative members of the Subcommittee to Study Early Childhood Special Education are \$1,680 in fiscal year 2006-07. The Legislature's budget includes \$20,000 in fiscal year 2006-07 for legislative studies. Whether the amount is sufficient to fund all studies will depend on the number of studies authorized by the Legislative Council and the Legislature.

##### Fiscal Detail and Notes

Public Law 2005, c. 12, Part YY deappropriated \$6,300,000 in fiscal year 2006-07 from the Child Development Services (Preschool Handicapped) program within the Department of Education and required the Commissioner of Education to develop a plan to restructure the CDS system to achieve savings through administrative and program cost efficiencies. The purpose of this legislation is to implement the proposals in the plan to achieve savings through the reorganization of the delivery of certain early childhood special education services and the centralization of certain administrative services.

The Department of Education has estimated that these changes will result in total General Fund savings of \$6.13 million over the 2006-2007 biennium with approximately \$5.0 million being saved in the Child Development Services program and an additional \$1.13 million being saved in the MaineCare program within the Department of Health and Human Services. Of the \$5.0 million in anticipated savings from the Child Development Services program over the

2006-2007 biennium, approximately \$0.9 million is expected to be generated in fiscal year 2005-06 and \$4.1 million generated in fiscal year 2006-07. Since the CDS program General Fund account is not a carrying account, any funds remaining at the end of fiscal year 2005-06 will lapse to the General Fund. This bill includes a General Fund deappropriation of \$930,000 in fiscal year 2005-06 and a General Fund appropriation of \$930,000 in fiscal year 2006-07 to the Child Development Services program within the Department of Education in order to recognize the FY06 savings in FY07.

The bill includes General Fund deappropriations of \$214,500 in fiscal year 2005-06 and \$922,116 in fiscal year 2006-07 for the MaineCare program based on the assumption of savings associated with the decline in enrollment, adherence to current eligibility criteria and other changes in evaluations and service delivery and the delivery of certain autism programs. The bill also includes Federal Expenditures Fund deallocations of \$371,566 in fiscal year 2005-06 and \$1,582,273 in fiscal year 2006-07 associated with the federal Medicaid match. The Department of Health and Human Services has not confirmed that these savings can be achieved or will not be offset by other increases in MaineCare spending. If net savings are not realized, these deappropriations will make it more difficult for the MaineCare program to keep spending within budgeted resources.

As stated above, the measures proposed in this bill are estimated to generate approximately \$6.13 million in savings in fiscal year 2006-07 which is \$0.17 million below the \$6.3 million savings required in FY 2006-07. If additional savings are not found, an additional General Fund appropriation may be needed in FY 2006-07 for the Child Development Services program for the shortfall.