

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



122nd MAINE LEGISLATURE

SECOND REGULAR SESSION-2006

Legislative Document

No. 1772

S.P. 689

In Senate, December 30, 2005

An Act To Improve Early Childhood Special Education

(EMERGENCY)

Submitted by the Department of Education pursuant to Joint Rule 204.

Received by the Secretary of the Senate on December 28, 2005. Referred to the Committee on Education and Cultural Affairs pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

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

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MITCHELL of Kennebec.

Cosponsored by Senators: BRENNAN of Cumberland, MARTIN of Aroostook, TURNER of Cumberland, Representatives: CUMMINGS of Portland, DAVIS of Falmouth, MILLETT of Waterford, NORTON of Bangor.

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

4 **Whereas,** there is an immediate need for the Department of
6 Education to begin implementation of the early childhood special
education system, including employment, fiscal management, data
8 management and service delivery; and

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

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

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

22 **Sec. 1. 5 MRSA §12004-C, sub-§8** is enacted to read:

24 **8. Early Childhood Expenses** 20-A MRSA §7209
26 Special Education Board Only
of Directors

28 **Sec. 2. 5 MRSA §12004-G, sub-§8-A,** as reenacted by PL 2001, c.
30 471, Pt. C, §1 and affected by §10, is repealed.

32 **Sec. 3. 20-A MRSA §1, sub-§7-A** is enacted to read:

34 7-A. Disability. "Disability" has the same meaning as in
section 7001.

36 **Sec. 4. 20-A MRSA §1, sub-§12,** as enacted by PL 1981, c. 693,
38 §§5 and 8, is repealed.

40 **Sec. 5. 20-A MRSA §1001, sub-§9-B,** as amended by PL 1999, c.
42 424, Pt. A, §1, is further amended to read:

44 **9-B. Disciplinary sanctions for children with**
disabilities. They retain the authority to sanction an
46 ~~exceptional--student~~ a child with a disability as defined in
section 7001, subsection 2 1-A for misconduct that violates
48 school rules. Notwithstanding the duties of school
administrative units as described in section 7202, the school

2 board may authorize the superintendent, principal or assistant
3 principal to enforce this subsection by allowing the
4 superintendent, principal or assistant principal to suspend an
5 ~~exceptional-student~~ a child with a disability up to a maximum of
6 10 days individually or cumulatively for infractions of school
7 rules. When an ~~exceptional-student~~ a child with a disability is
8 suspended for 10 days or less individually or cumulatively within
9 a school year for a violation of school rules, the school board
10 is not required to provide a tutor, transportation or any other
11 aspect of the student's special education program. Discipline of
12 ~~exceptional---students~~ children with disabilities must be
13 consistent with the requirements of the federal Individuals with
14 Disabilities Education Act, 20 United States Code, Section
15 1415(k).

16 **Sec. 6. 20-A MRSA §4722, sub-§3**, as amended by PL 2005, c.
17 446, §2, is further amended to read:

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

35 **Sec. 7. 20-A MRSA §5201, sub-§1**, as repealed and replaced by
36 PL 1985, c. 506, Pt. A, §36, is amended to read:

37 **1. Eligibility to enroll; school year.** A person meeting
38 the minimum age requirements of subsection 2 or section 7001,
39 subsection 2 1-A, paragraph A B, subparagraph (1), and who has
40 not reached 20 years of age before the start of the school year
41 may enroll as a full-time or, with the consent of the school
42 board, as a part-time student, in the public elementary and
43 secondary schools where the student resides as defined in section
44 5202. The school year, for the purpose of this subsection, is
45 defined as starting on July 1st and ending on the following June
46 30th.

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

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

8 **Sec. 9. 20-A MRSA §6202, first ¶**, as amended by PL 2005, c.
446, §3, is further amended to read:

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

26 **Sec. 10. 20-A MRSA §6209, first ¶**, as amended by PL 2001, c.
454, §31, is further amended to read:

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

50 **Sec. 11. 20-A MRSA §7001**, as amended by PL 2003, c. 676, §§1
and 2, is further amended to read:

2 **§7001. Definitions**

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

6 **1. Agency.** "Agency" means an agency, school, organization,
8 facility or institution.

10 **1-A. Disability.** "Disability" means:

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

14 (1) Significant developmental delay, as measured by
16 both diagnostically appropriate instruments and
18 procedures, in one or more areas of cognitive
 development; physical development, including vision and
 hearing; communication development; social or emotional
20 development; and adaptive development; or

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

26 **B. For children at least 3 years of age and under 20 years**
28 **of age evaluated in accordance with 34 Code of Federal**
30 **Regulations, Section 300.301-311 (2005), as measured by both**
32 **standardized, norm-referenced diagnostic instruments and**
 appropriate procedures with the delay or impairment being
 such that the child needs special education:

34 (1) Significant developmental delays for a child at
36 least 3 years of age and under 6 years of age, at the
38 discretion of the intermediate educational unit or
40 school administrative unit, as defined in rules adopted
 by the department in one or more of the following
 areas: cognitive development; physical development,
 including vision and hearing; communication
42 development; social or emotional development; adaptive
 development; or

44 (2) At least one of the following:

46 (a) Mental retardation;

48 (b) Hearing impairment, including deafness;

50 (c) Speech or language impairment;

- 2 (d) Visual impairment, including blindness;
- 4 (e) Serious emotional disturbance;
- 6 (f) Orthopedic impairment;
- 8 (g) Autism;
- 10 (h) Traumatic brain injury;
- 12 (i) Other health impairment;
- 14 (j) Specific learning disabilities;
- 16 (k) Deafness and blindness; or
- 18 (l) Multiple disabilities.

20 **1-B. Early intervention services.** "Early intervention
 22 services" means developmental services that are provided under
 24 public supervision; are provided at no cost except where federal
 26 or state law provides for a system of payments by families,
 28 including a schedule of sliding fees; are designed to meet the
 30 developmental needs of an infant or toddler with a disability, as
 32 identified by the individualized family service plan team; meet
 34 the standards of the state in which the services are provided;
 36 are provided by qualified personnel; to the maximum extent
 38 appropriate, are provided in natural environments, including the
 40 home, and community settings in which children without
 42 disabilities participate; and are provided in conformity with an
 44 individualized family service plan.

46 ~~**2.---Exceptional---student.---**"Exceptional---student"---is---an~~
 48 ~~individual-who+-~~

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

52 ~~B.---Has-net-reached-20-years-of-age-at-the-start-of-the~~
 54 ~~school-year;-and~~

56 ~~C.---Requires-special-education-because-of-one-or-more-of-the~~
 58 ~~following+-~~

- 60 ~~(1)--Visual-impairments,-including-blindness;~~
- 62 ~~(2)--Hearing-impairments,-including-deafness;~~
- 64 ~~(3)--Speech-and-language-impairments;~~
- 66 ~~(4)--Specific-learning-disabilities;~~

- 2 (5)--Orthopedic impairments;
- 4 (6)--Emotional disability;
- 6 (7)--Mental retardation;
- 8 (8)--Autism;
- 10 (9)--Traumatic brain injury;
- 12 (10)--Other health impairment;
- 14 (11)--Deafness and blindness; or
- 16 (12)--Multiple disabilities.

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

26 **2-A. Free appropriate public education.** "Free appropriate
28 public education" means special education and related services
30 that are provided at public expense, under public supervision and
32 direction and without charge; meet the standards of the
department; and are provided in conformity with the
individualized education program.

34 **2-B. Intermediate educational units.** "Intermediate
36 educational unit" means an entity that meets the definition of
38 intermediate educational unit in the federal Individuals with
40 Disabilities Education Act, 20 United States Code, Section 1402,
42 (23) as in effect prior to June 4, 1997 and that is a public
44 authority, other than a local educational agency, under the
46 general supervision of the department, that is established for
the purpose of providing free public education on a regional
basis and that provides special education and related services to
children with disabilities within the State. An intermediate
educational unit is considered a local educational agency under
federal law. In this State, a local educational agency is a
school administrative unit. For purposes of this chapter all
references to school administrative units include intermediate
educational units.

48 **4. Presechool handicapped child.** "Presechool handicapped
50 child" means a person who:

2 B. -- Has not reached 5 years of age on or before October 15th;
4 B-1. -- Notwithstanding paragraph B, -- has reached 5 years of
6 age -- between -- September -- 1st -- and -- October -- 15th, -- is -- already
8 receiving -- free, -- appropriate -- public -- education -- services
10 through -- the -- Child -- Development -- Services -- System -- and -- whose
parent -- chooses, -- in -- accordance -- with -- rules -- adopted -- by -- the
commissioner, -- not -- to -- enroll -- the -- child -- in -- kindergarten -- until
the -- start -- of -- the -- following -- school -- year.

12 C. -- Requires special services because of one or more of the
following:-

- 14 (1) -- Visual impairments, -- including blindness;
16 (2) -- Hearing impairments, -- including deafness;
18 (3) -- Speech and language impairments;
20 (4) -- Specific learning disabilities;
22 (5) -- Orthopedic impairments;
24 (7) -- Mental retardation;
26 (8) -- Autism;
28 (9) -- Traumatic brain injury;
30 (10) -- Other health impairment;
32 (11) -- Deafness and blindness, -- or
34 (12) -- Multiple disabilities.

36 **5. Special education.** "Special education" means classroom,
38 home, hospital, institutional or other instruction; educational
40 diagnosis and evaluation; transportation and other supportive
42 assistance, services, activities or programs, as defined by the
commissioner, required by ~~exceptional--students~~ children with
disabilities.

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

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

12 A. Facilities under Title 22, chapter 1661; and

14 B. Community mental health ~~centers~~ services under Title 34
16 34-B, chapter 183, 3, subchapter 3.

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

22 ~~D. Residential drug abuse treatment facilities under Title
24 22, chapter 1601.~~

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

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

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

Sec. 12. 20-A MRSA §7002, as enacted by PL 1981, c. 693, §§5
and 8, is repealed.

Sec. 13. 20-A MRSA §7003, as enacted by PL 1981, c. 693, §§5
and 8, is repealed.

Sec. 14. 20-A MRSA §7004, as enacted by PL 1997, c. 308, §1,
is repealed.

Sec. 15. 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. The department shall identify in its

2 regulatory agenda, when feasible, a proposed rule or provision of
a proposed rule that is anticipated to be more stringent than the
4 federal statute or regulation, if an applicable federal statute
or regulation exists.

6 During the consideration of any proposed rule, when feasible, and
using information available to it, the department shall identify
8 provisions of the proposed rule that the department believes
would impose a regulatory burden more stringent than the burden
10 imposed by the corresponding federal statute or regulation, if
such a federal statute or regulation exists, and explain in a
12 separate section of the basis statement the justification for the
difference between the agency rule and the federal statute or
14 regulation.

16 **Sec. 16. 20-A MRSA §7006** is enacted to read:

18 **§7006. Responsibility**

20 The Department of Education is designated as the state
22 education agency responsible for carrying out the State's
obligations under the federal Individuals with Disabilities
24 Education Act, 20 United States Code, Section 1400 et seq., as
amended. The department and every school administrative unit,
26 intermediate educational unit, public school or other public
agency that receives federal or state funds to provide early
28 intervention or free appropriate public education services to
infants, toddlers or children from birth to under 20 years of age
30 with disabilities shall comply with the federal Individuals with
Disabilities Education Act, as amended, and all federal
32 regulations adopted under the Act.

34 **Sec. 17. 20-A MRSA c. 303**, as amended, is further amended by
repealing the chapter headnote and enacting the following in its
place:

36 **CHAPTER 303**

38 **CHILDREN WITH DISABILITIES**

40 **Sec. 18. 20-A MRSA §7201**, as amended by PL 1995, c. 95, §1,
42 is further amended to read:

44 **§7201. Policy and purpose**

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

48 **1. Equal educational opportunities.** All students shall
50 must be provided with equal educational opportunities and all

2 school administrative units shall provide equal educational
opportunities for all exceptional---students children with
3 disabilities.

4
5 ~~2.--Least-restrictive-education-alternative.--An-exceptional~~
6 ~~student-shall-be-educated-with-students-in-regular-programs-to~~
7 ~~the-maximum-extent-possible.~~

8
9
10 ~~A.--Educational-opportunities-for-an-exceptional-student~~
11 ~~shall-be-provided-by-means-of-the-addition-of-appropriate~~
12 ~~supportive-assistance-to-regular-educational-programs.~~

13
14 ~~B.--Removal-of-an-exceptional-student-from-the-regular~~
15 ~~educational-environment-shall-occur-only-if-the-nature-or~~
16 ~~severity-of-the-exceptionality-is-such-that-the-student's~~
17 ~~education-cannot-be-satisfactorily-accomplished-in:~~

18 (1)--Regular-classes-with-the-use-of-supplemental-aids
19 and-services; or

20 (2)--Self-contained-classes-within-the-regular-school
21 programs.

22
23
24 ~~C.--An-exceptional-student-may-be-placed-in-a-residential~~
25 ~~school-or-institution,-or-in-a-private-day-school-or~~
26 ~~program,-only-after-supporting-evaluative-data-justifying~~
27 ~~the-placement-have-been-submitted-to-and-approved-by-the~~
28 ~~commissioner.~~

29
30 2-A. Developmental or educational environment. To the
31 maximum extent appropriate:

32
33 A. Early intervention services must be provided in natural
34 environments, including the home and community setting in
35 which children from birth to under 3 years of age without
36 disabilities participate; and

37
38 B. Children with disabilities at least 3 years of age and
39 under 20 years of age, including children in public or
40 private institutions or other care facilities, must be
41 educated with children without disabilities. Special
42 classes, separate schooling or other removal of children
43 with disabilities from the regular educational environment
44 may occur only when the nature or severity of the disability
45 of a child is such that education in regular classes with
46 the use of supplementary aids and services cannot be
47 achieved satisfactorily.

48
49 **3. Students diagnosed as deaf.** An-exceptional A student,
50 diagnosed as deaf, shall must be educated with regular students

2 without disabilities whenever possible and ~~shall~~ must be educated
4 under the principle of the least restrictive educational
alternative environment as set forth in state laws and rules and
federal laws and regulations.

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

10 **5. Blind students; Braille instruction.** All students may
12 receive instruction in Braille reading and writing as part of
their individualized family service plans for children from birth
14 to under 3 years of age or individualized education ~~plans~~
programs. A student may not be denied the opportunity of
16 instruction in Braille reading and writing solely because the
student has some remaining vision. If Braille is not provided to
18 a child who is blind, the reason for not incorporating Braille in
the individualized family service plan or individualized
20 education plan programs must be documented in the individualized
family service plan or individualized education plan program.

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

40 **Sec. 19. 20-A MRSA §7202**, as amended by PL 2005, c. 446, §7,
is further amended to read:

42 **§7202. Duties of school administrative units**

44 Each school administrative unit operating schools shall:

46 **1. Identification.** Identify all children within its
48 jurisdiction who require early intervention or special education;

2 **2. Records.** Make and keep current records of ~~exeeptional~~
students children with disabilities, as required by rules
4 established by the commissioner, and institute procedures which
that guarantee the confidentiality of these records in accordance
with state and federal law;

6
8 **2-A. Assist advocates for developmentally disabled.** Assist
the ~~Protection--and--Advocacy--Agency--for--the--Developmentally~~
10 ~~Disabled--in--Maine~~ advocacy agency designated under Title 5,
section 19502 in conducting an investigation, pursuant to Title
12 22 5, section 3554 19505, subsection 4, by providing access to
relevant case records, notifying parents or guardians of these
14 investigations and by requesting parental consent for access to
case records by the agency. Parents or guardians may refuse to
consent to the examination of these records;

16
18 **3. Diagnosis and evaluation.** Provide ~~educational-diagnosis~~
~~and-evaluation-necessary~~ the evaluations and assessments required
20 by the federal Individuals with Disabilities Education Act, 20
United States Code, Section 1400, et seq., as amended, to plan
22 and implement an early intervention program for eligible children
from birth to under 3 years of age and a special education
24 program for ~~exeeptional--students~~ children with disabilities at
least 3 years of age and under 20 years of age within its
jurisdiction;

26
28 **4. Plan.** Submit a plan for its early intervention and
special education programs to the commissioner for approval in
accordance with rules established by the commissioner;

30
32 **5. Special education and early intervention services.**
Provide early intervention and special education for each
34 ~~exeeptional-student~~ eligible child with a disability within its
jurisdiction and ensure appropriate data collection, training,
36 staff development and direct service provision to eligible
children, from birth to under 3 years of age, in accordance with
Part C of the federal Individuals with Disabilities Education
38 Act, 20 United States Code, Section 1400 et seq.;

40 **5-A. Diploma requirements.** Award a high school diploma to
each ~~exeeptional-student~~ child with a disability who successfully
42 meets the content standards of the system of learning results, in
addition to any other diploma requirements applicable to all
44 secondary school students pursuant to section 4722, as specified
by the goals and objectives of the student's child's
46 individualized education plan program;

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

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

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

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

20 A. Assist the agency in its studies; and

22 B. Facilitate access to relevant case records by:

24 (1) Notifying parents or guardians of the study; and

26 (2) Requesting parental consent for the agency to have
access to case records; and

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

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

44 **Sec. 21. 20-A MRSA §7204,** as amended by PL 1983, c. 806, §64,
is further amended to read:

46 **§7204. Duties of the commissioner**

48 The commissioner:

50

2 **1. Supportive services.** Shall provide, or cause to be
provided by administrative units operating schools, all
4 supportive assistance and services, as defined in rules the
commissioner establishes, required by ~~an exceptional student~~ a
6 child with disabilities so that the ~~student~~ child may benefit
from equal educational opportunities;

8 **2. State plan.** Shall make and annually review a state plan
for education of all ~~exceptional--students~~ children with
10 disabilities in the State. The State's plan may not require
12 services that exceed minimum federal requirements. The plan
shall must be available to the public on request. The department
14 is the entity responsible for assigning financial responsibility
among appropriate agencies as required under Part C of the
16 federal Individuals with Disabilities Education Act, 20 United
States Code, Section 1401 (8), Section 1412 (a)(12)(A,B,C) and
18 Section 1435 (a)(10)(C) and continues to serve pursuant to
Section 1435 (a)(10) as the single line of responsibility for
20 carrying out the general administration and supervision of
programs and activities receiving assistance under Part C of the
22 federal Individuals with Disabilities Education Act and the
monitoring of programs and activities used to carry out that Part;

24 **3. School year.** May approve early intervention or special
education programs for:

- 26 A. The usual public school year as defined in section 4801,
28 subsubsection 1;
- 30 B. An extended school year; or
- 32 C. Other periods the commissioner determines appropriate;

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

- 38 A. Requirements for admission;
- 40 B. Qualification or certification of staff;
- 42 C. Plan of instruction;
- 44 D. Adequacy of facilities;
- 46 E. Adequacy of supportive services;
- 48 F. Professional supervision; and
- 50 G. Teacher-student ratio;

2 **5. Due process.** Shall:

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

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

14 **6. Technical assistance.** May, on the request of a school
16 administrative unit, provide technical assistance in the
18 formulation of a plan or subsequent report required of all
 administrative units. Assistance ~~shall~~ may not be designed to
 transfer the responsibility for or actual development of the plan
 or report.

20 **Sec. 22. 20-A MRSA §7207-A, sub-§2,** as amended by PL 1989, c.
22 700, Pt. B, §46 and enacted by c. 857, §56 and amended by PL
 2003, c. 689, Pt. B, §6, is further amended to read:

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

40 **Sec. 23. 20-A MRSA §7207-B, sub-§3-A,** as enacted by PL 1997,
 c. 441, §1, is repealed.

42 **Sec. 24. 20-A MRSA §7207-B, sub-§4,** as amended by PL 1985, c.
44 797, §41, is further amended to read:

46 **4. Hearing officers, immunity.** The State shall ~~train~~ ensure
 that impartial hearing officers meet the criteria contained in
48 the federal Individuals with Disabilities Education Act, 20
 United States Code, Section 1400 et seq., as amended. For
50 purposes of the Maine Tort Claims Act only, Title 14, chapter
 741, hearing officers, while they are carrying out their official

2 duties as hearing officers, shall--be are considered state
employees and shall--be are entitled to the immunity provided
4 state employees under the Maine Tort Claims Act.

6 **Sec. 25. 20-A MRSA §7209** is enacted to read:

8 **§7209. Transition; board of directors**

10 **1. Department of Education.** During the period from July 1,
2006 to June 30, 2008, the department shall serve as the lead
12 agency for the statewide system pursuant to 20 United States
Code, Section 1435, including the identification and coordination
14 of all available resources within the State for services to
eligible children from birth to under 3 years of age, and shall
16 exercise general supervisory authority over child find as
provided in 20 United States Code, Section 1412 (a) (3) and the
18 provision of a free, appropriate public education to children at
least 3 years of age and under 6 years of age. The commissioner
or the commissioner's designee is responsible for:

20 **A. Developing and adopting rules necessary to carry out the**
22 **provisions of the federal Individuals with Disabilities**
24 **Education Act, Part B, Section 619 and Part C, 20 United**
States Code, Section 1400 et seq.;

26 **B. Ensuring legal and policy compliance throughout the**
28 **early childhood special education program by reviewing or**
performing regular audits of program records; and

30 **C. Ensuring fiscal compliance throughout the early**
32 **childhood special education program by reviewing or**
performing regular audits of program records.

34 **2. Early Childhood Special Education Board of Directors.**
The Early Childhood Special Education Board of Directors, as
36 established by Title 5, section 12004-C, subsection 8 and
referred to in this section as "the board of directors," is
38 established for the period from July 1, 2006 to June 30, 2008.

40 **A. The board of directors is appointed by the commissioner**
42 **and consists of one member of the state board, 2 special**
44 **education directors, 2 parents of children with disabilities**
from birth to 5 years of age and 2 representatives of the
Department of Health and Human Services, including a
representative of the MaineCare program.

46 **B. Members of the board of directors are entitled to**
48 **compensation in accordance with the provisions of Title 5,**
chapter 379.

50

2 C. The board of directors has the following specific powers
3 and duties:

4 (1) To administer the provisions of this section;

6 (2) To make recommendations to the commissioner on
7 legislation and rules as may be necessary to improve
8 the early childhood special education program;

10 (3) To ensure provision of childfind activities as
11 defined in 20 United States Code, Section 1412 (a) (3)
12 for children from birth to under 6 years of age as
13 required by the federal Individuals with Disabilities
14 Education Act, 20 United States Code, Section 1400 et
15 seq., as amended;

16 (4) To ensure that eligible children from birth to
17 under 3 years of age receive early intervention
18 services as required by the federal Individuals with
19 Disabilities Education Act, 20 United States Code,
20 Section 1400 et seq., as amended;

22 (5) To ensure that eligible children from 3 years of
23 age to under 6 years of age receive a free, appropriate
24 public education in collaboration with school
25 administrative units whenever possible;

26 (6) To employ, through the State Intermediate
27 Educational Unit established under subsection 3 and
28 subject to the approval of the commissioner,
29 professional and other staff necessary to carry out the
30 functions required by this section; and

31 (7) To enter into contracts, leases and agreements in
32 the name of the State Intermediate Educational Unit
33 established under subsection 3 that are necessary,
34 incidental or convenient to the performance of its
35 duties and the execution of its powers under this
36 section, except that the board of directors shall use a
37 uniform provider contract approved by the commissioner
38 and may not enter into any contracts or agreements that
39 extend beyond June 30, 2008.

40 3. State Intermediate Educational Unit. For the period
41 from July 1, 2006 to June 30, 2008, the State Intermediate
42 Educational Unit is established as a body corporate and politic
43 and as a public instrumentality of the State for the purpose of
44 conducting child find activities as provided in 20 United States
45 Code, Section 1412 (a) (3) for children from birth to under 6
46 years of age, coordinating the provision of early intervention

2 services for eligible children from birth to under 3 years of age
3 and providing a free, appropriate public education to eligible
4 children at least 3 years of age and under 6 years of age.

5 **4. Director of early childhood special education.** For the
6 period from July 1, 2006 to June 30, 2008, the commissioner shall
7 appoint a director of early childhood special education. The
8 director has the following powers and duties:

10 A. To administer the State Intermediate Educational Unit
11 established under subsection 3. The director shall develop
12 operating policies and establish organizational and
13 operational procedures;

14 B. To develop statewide policies and procedures for
15 carrying out federal and state laws and rules relating to
16 childfind as defined in section 7725, early intervention
17 services and the provision of a free, appropriate public
18 education to children from birth to under 6 years of age; and

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

28 **5. School administrative units.** Notwithstanding subsection
29 4, paragraph A, school administrative units that are willing and
30 able may assume responsibility for the children with disabilities
31 within their jurisdiction prior to the fall of 2008, if the
32 unit's program is approved by the commissioner.

33 **6. Repeal.** This section is repealed June 30, 2008.

34 **Sec. 26. 20-A MRSA §7251,** as amended by PL 1987, c. 395, Pt.
35 A, §73, is further amended to read:

36 **§7251. Local early intervention and special education programs**

37 A school administrative unit may establish an appropriate
38 early intervention or special education program.

39 **Sec. 27. 20-A MRSA §7251-A,** as enacted by PL 1987, c. 395,
40 Pt. A, §74, is amended to read:

41 **§7251-A. Local early intervention and special education services**

2 A school administrative unit may offer or contract for early
3 intervention or special education services.

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

8 **§7252-A. Early intervention; special education programs; approval**

10 ~~Special~~ Early intervention and special education programs
11 may be established for the delivery of early intervention and
12 special education services to exceptional-students children with
13 disabilities in accordance with section 7204, subsection 4. A An
14 early intervention or special education program may be offered by
15 a school administrative unit, an approved private school or a
16 state licensed agency. All early intervention and special
17 education programs offered by approved private schools or state
18 licensed agencies shall must:

20 **1. Supervision.** Be provided under the supervision of the
21 school administrative unit responsible for the education of the
22 ~~exceptional--student~~ child with a disability enrolled in the
23 program;

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

27 **3. Approval.** Be approved in advance of the enrollment of
28 any ~~exceptional-student~~ child with a disability.

30 **Sec. 29. 20-A MRSA §7252-B**, as enacted by PL 1987, c. 395,
31 Pt. A, §76, is amended to read:

32 **§7252-B. Early intervention; special education services; approval**

33 The commissioner shall adopt or amend rules to define
34 allowable early intervention and special education services and
35 the qualifications of individuals who provide early intervention
36 or special education services. Each school administrative unit,
37 approved private school or licensed state agency providing early
38 intervention or special education services shall submit a report
39 at such time and in such form as the commissioner may require.

40 **Sec. 30. 20-A MRSA §7253**, as enacted by PL 1981, c. 693, §§5
41 and 8, is amended to read:

42 **§7253. Regional programs; approval**

2 Two or more school administrative units may enter into
3 cooperative agreement to provide regional early intervention or
4 special education programs and support services.

5 **1. General criteria.** Programs and services established
6 through this agreement shall must meet the requirements set forth
7 in section 7204, subsection 4.

8 **2. Special provisions.** A program shall must specify that:

9 A. One of the school administrative units shall--serve
10 serves as fiscal agent;

11 B. No requirement exists for separate budget approval and
12 taxation; and

13 C. School construction may not be proposed for early
14 intervention or special education purposes.

15 **3. Plan.** A plan for a regional program shall--be is subject
16 to approval by the commissioner prior to its implementation. The
17 plan shall must specify:

18 A. The objectives and functions to be performed by the
19 regional program;

20 B. The method of fiscal operation and cost sharing;

21 C. The method of entering into and withdrawing from the
22 agreement;

23 D. The method of administering the regional program;

24 E. The method of involving parent and community
25 participation; and

26 F. The school administrative unit that shall--act acts as
27 fiscal agent for the regional program.

28 **4. Funding.** The regional program shall must be supported
29 by funds included in the early intervention and special education
30 appropriations of each of the member school administrative units.

31 **Sec. 31. 20-A MRSA §7254**, as enacted by PL 1981, c. 693, §§5
32 and 8, is amended to read:

33 **§7254. Contractual programs for nonresident children**

34 Another state, subdivision or private person, firm or agency
35 may contract with a private school in this State to provide early
36

2 intervention or special education for children who are not
3 residents of this State. A program for these nonresident
4 children ~~shall-be~~ is subject to approval by the commissioner only
with respect to the requirements of section 7204, subsection 4.

6 **Sec. 32. 20-A MRSA §7255**, as enacted by PL 1981, c. 693, §§5
and 8, is amended to read:

8

§7255. Other programs

10

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

16 **Sec. 33. 20-A MRSA §7256**, as enacted by PL 1981, c. 693, §§5
and 8, is amended to read:

18

§7256. State licensed agencies

20

A An early intervention or special education facility may be
22 operated in conjunction with or as a part of a state licensed
agency.

24

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

28 **§7257. General supervision**

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

34

Sec. 35. 20-A MRSA c. 307-A, as amended, is repealed.

36

38 **Sec. 36. 20-A MRSA §13024, sub-§1, ¶C**, as enacted by PL 2005,
c. 457, Pt. FF, §3, is amended to read:

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

42

44 **Sec. 37. 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:

46

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

50

