

# MAINE STATE LEGISLATURE

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# 126th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2014

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Legislative Document

No. 1617

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H.P. 1189

House of Representatives, December 30, 2013

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**An Act To Amend the Laws Governing the Approval Process for  
and the Operation of Virtual Public Charter Schools in the State**

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 23, 2013. Referred to the Committee on Education and Cultural Affairs pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative MacDONALD of Boothbay.  
Cosponsored by Senator JOHNSON of Lincoln and  
Representatives: CHENETTE of Saco, DEVIN of Newcastle, GRANT of Gardiner,  
HUBBELL of Bar Harbor, KORNFIELD of Bangor, MASTRACCIO of Sanford, NADEAU of  
Winslow, SCHNECK of Bangor.

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

2 **Sec. 1. 20-A MRSA §2401, sub-§§1-A and 8-A** are enacted to read:

3 **1-A. Assessment center.** "Assessment center" means a private for-profit, nonprofit  
4 or public facility that provides administration of multiple standardized examinations.

5 **8-A. Proctored environment.** "Proctored environment" means a student assessment  
6 location that ensures the integrity of students' work by having the work supervised by a  
7 certified teacher or an instructor from a postsecondary educational institution. "Proctored  
8 environment" includes:

9 A. An assessment center;

10 B. A postsecondary educational institution, such as a community college or  
11 university, in this State; or

12 C. An elementary or secondary school.

13 **Sec. 2. 20-A MRSA §2405, sub-§8, ¶D,** as enacted by PL 2011, c. 414, §5, is  
14 amended to read:

15 D. The commission is the sole authorizer in this State for virtual public charter  
16 schools, except that a local school board may authorize a public charter school within  
17 its jurisdiction that integrates online and on-site instruction. A virtual public charter  
18 school must be approved by the Legislature before it may operate.

19 **Sec. 3. 20-A MRSA §2416** is enacted to read:

20 **§2416. Virtual public charter schools**

21 **1. Accreditation.** The following provisions govern accreditation of a virtual public  
22 charter school.

23 A. A virtual public charter school must be accredited by an organization approved by  
24 the department based on a demonstration that the organization's accreditation process  
25 is rigorous and aligned with state policy. An organization that is approved by the  
26 department to accredit virtual public charter schools shall report annually to the  
27 department on any changes to its accreditation process. The department shall  
28 annually reapprove or remove the approval of the organization after due  
29 consideration of any concerns or complaints arising during the year.

30 B. The department may prohibit the use of a particular accreditation organization for  
31 a specific virtual public charter school upon a showing of:

32 (1) A conflict of interest;

33 (2) Previous, persistent quality concerns; or

34 (3) Other good cause.

35 **2. Approval of virtual public charter schools.** The commission shall evaluate an  
36 application for a virtual public charter school. The criteria for evaluation of an application

1 must be determined by the department. The criteria must include, but are not limited to,  
2 the following.

3 A. The applicant must:

4 (1) Be a nonprofit entity that is incorporated and has an administrative office in  
5 this State;

6 (2) If contracting with other entities, contract with those entities for no more than  
7 30% of the school budget;

8 (3) Be nonsectarian in its programs, admissions, employment practices and  
9 operations;

10 (4) Contract only with other entities that are also nonsectarian in their programs,  
11 admissions, employment practices and operations;

12 (5) Comply with all state and federal antidiscrimination laws, rules and  
13 regulations;

14 (6) Provide accommodations and services as required by the federal Individuals  
15 with Disabilities Education Act, 20 United States Code, Section 1400 et seq. to  
16 meet the needs of students with special needs;

17 (7) Provide accommodations and services as required by the federal Equal  
18 Educational Opportunities Act of 1974, 20 United States Code, Sections 1701 to  
19 1758 to meet the needs of students who are English learners;

20 (8) Provide its services without charging tuition, student registration fees or  
21 other fees;

22 (9) Demonstrate that all members of the instructional staff are educators certified  
23 to teach in this State; and

24 (10) Ensure that no instructional or grading functions are outsourced to persons  
25 or companies outside the United States.

26 B. The applicant must provide for review and public inspection:

27 (1) Its mission, vision and goals;

28 (2) Its organizational structure and governance, including its governing board  
29 and school policies and procedures;

30 (3) A detailed curriculum plan, including a description of how the content of  
31 courses meets state requirements;

32 (4) A technology utilization and training plan for students and faculty;

33 (5) A plan for providing access to and training on library and digital media for  
34 all students and staff;

35 (6) A detailed assessment plan, including:

36 (a) Management of student records;

37 (b) Data analysis and reporting; and

- 1                   (c) How the school will meet the requirements in subsection 8;
- 2                   (7) Its student admissions policies;
- 3                   (8) Its policies for the verification of student attendance;
- 4                   (9) Its human resources management policies;
- 5                   (10) Its marketing plan;
- 6                   (11) Its communication plan for parents, including how the school will provide
- 7                   for language accessibility for nonnative speakers; and
- 8                   (12) A detailed financial plan for each year of probationary operation as set forth
- 9                   in subsection 3. Based on estimated enrollment trends, the financial plan must
- 10                  specify projected revenues and expenses. The plan also must specify all financial
- 11                  controls that will safeguard the received public funds.

12                  **3. Approved and probationary status.** The following provisions govern approved  
13                  and probationary status of virtual public charter schools.

14                  A. A virtual public charter school approved to operate in this State must be classified  
15                  as either a probationary or approved provider. A new provider, including a provider  
16                  that has been previously approved in the State, must be classified as probationary.  
17                  The probationary period lasts for 3 years. Upon approval by the commission in the  
18                  3rd year, the provider must be considered an approved provider. The approved  
19                  provider must be issued a 2-year, renewable contract. The approved provider is  
20                  subject to biennial reviews by the commission and biennial independent financial  
21                  audits as specified in subsection 6. An approved provider shall continue to submit the  
22                  annual performance report as provided in subsection 4 and the annual operations  
23                  report as provided in subsection 5.

24                  B. If the commission determines in consideration of the reports provided for in this  
25                  section and any other relevant information that an approved provider under paragraph  
26                  A does not meet the performance or operations goals, the provider must be placed  
27                  back into probationary status and again complete a 3-year probationary period. If, at  
28                  the end of this probationary period, the provider has met the performance and  
29                  operations goals as determined by the commission, the provider must be returned to  
30                  approved provider status. If, at the end of this 3-year probationary period, the  
31                  provider has not met the performance or operations goals as determined by the  
32                  commission, the provider may not provide services to students in this State and the  
33                  charter or contract with the nonprofit entity must be terminated and that nonprofit  
34                  entity may not submit an application for a virtual public charter school for 3 years.

35                  C. Nothing in this subsection may be interpreted to limit the ability of the  
36                  commission or the Legislature to terminate the charter or contract of a provider at any  
37                  time for a showing of just cause.

38                  **4. Annual performance report.** The following provisions govern the annual  
39                  performance report for a virtual public charter school.

40                  A. The governing board of a virtual public charter school shall annually submit to  
41                  the commission and the joint standing committee of the Legislature having

1 jurisdiction over education matters a complete and detailed performance report  
2 setting forth:

3 (1) The student achievement levels and growth that the school demonstrates on  
4 all academic standards, as measured by the system of learning results established  
5 in chapter 222;

6 (2) Average student daily attendance, as measured by participation in the  
7 instructional program;

8 (3) Graduation rates, as applicable;

9 (4) Enrollment of students with special needs and students who are English  
10 language learners;

11 (5) Academic activities and programs designed to serve diverse students;

12 (6) The academic and disciplinary policies in effect for the previous year,  
13 including a copy of the student handbook;

14 (7) All student disciplinary incidents and punishments, aggregated by each  
15 student, and the response of the school to each, including all incidents of cheating  
16 or plagiarism, as described in subsection 8;

17 (8) The use of specific learning management and delivery tools;

18 (9) The teacher evaluation plan in effect;

19 (10) The name and certification status of each member of the instructional staff,  
20 including the member's state of residence; and

21 (11) The name and state of residence of each noncertified person employed by  
22 the virtual public charter school, including any persons involved in the  
23 assessment of student work.

24 B. A virtual public charter school shall comply with all reporting and data  
25 submission requirements required of other public schools.

26 C. With the exception of the disciplinary data in paragraph A, subparagraph 7, the  
27 annual performance report is a public record and must be made available to the  
28 public.

29 **5. Annual operations report.** The governing board of a virtual public charter  
30 school shall annually submit to the commission and the joint standing committee of the  
31 Legislature having jurisdiction over education matters a complete and detailed operations  
32 report, which is a public record and must be made available to the public, setting forth:

33 A. The accomplishments of the virtual public charter school;

34 B. Efforts made to improve the programs and the delivery of instruction, including  
35 new technologies examined or implemented;

36 C. The marketing and operational plan for the virtual public charter school, including  
37 recommendations regarding methods for improving the delivery of education through  
38 the Internet and other distance learning technologies;

1 D. The financial assets and liabilities of the virtual public charter school at the end of  
2 the fiscal year;

3 E. The sufficiency of the funding received;

4 F. The purpose, monetary amount and quality assurance mechanisms for all contracts  
5 with any outside entities totaling over \$10,000; and

6 G. Any other information considered by the governing board of the virtual public  
7 charter school to be relevant to the successful operation of the virtual public charter  
8 school.

9 **6. Independent financial audit.** A virtual public charter school shall submit an  
10 independent financial audit to the commission and the joint standing committee of the  
11 Legislature having jurisdiction over education matters.

12 A. An audit under this subsection must:

13 (1) Be conducted and submitted annually for the first 3 years of operation of the  
14 virtual public charter school within the State;

15 (2) Be conducted and submitted every 2 years thereafter, beginning with the 5th  
16 year of operation of the virtual public charter school within the State; and

17 (3) Be conducted by an independent certified public accountant in accordance  
18 with the rules adopted by the Office of the State Auditor. The audit may not be  
19 administered by any audit provider who has a conflict of interest.

20 B. An audit under this subsection must include, but is not limited to:

21 (1) A detailed account of all instruction-related revenue and expenses;

22 (2) A detailed account of all instruction-related contracts with outside entities;

23 (3) A detailed account of all noninstruction-related revenue and expenses;

24 (4) A detailed account of all noninstruction-related contracts with outside  
25 entities;

26 (5) Detailed information on all courses provided in the period under review,  
27 including:

28 (a) The names of teachers of record and any other instructional personnel;

29 (b) The number of students enrolled;

30 (c) The average daily attendance of each course, as measured by student  
31 participation in the instructional program;

32 (d) How the school is measuring and keeping accurate records of average  
33 daily attendance; and

34 (e) The state funding reimbursement generated by each course;

35 (6) The assets and liabilities of the virtual public charter school at the end of the  
36 fiscal year;

1                   (7) A detailed account of all donations, grants and other income received by the  
2                   virtual public charter school and its parent company during the fiscal year; and

3                   (8) Any other information on the financial health and welfare of the virtual  
4                   public charter school commonly reported in accordance with the rules adopted by  
5                   the Office of the State Auditor.

6                   C. The commission shall use the audits under this subsection from all virtual public  
7                   charter schools in determining the annual funding reimbursement rate for virtual  
8                   public charter schools.

9                   D. An audit under this subsection is a public record and must be made available to  
10                  the public.

11                  **7. Teachers and staff.** The following provisions govern teachers and staff of virtual  
12                  public charter schools.

13                  A. A virtual public charter school teacher responsible for student instruction must:

14                   (1) Be a certified teacher in this State;

15                   (2) Hold a valid teaching certificate in each content area being taught; and

16                   (3) Possess documentation of completion of a state-approved program providing  
17                   knowledge and skills in online instruction.

18                  B. A virtual public charter school shall:

19                   (1) Conduct a national criminal history record check on all employees;

20                   (2) Provide all instructional staff with a contract detailing their salaries, benefits  
21                   and other conditions of employment and responsibilities, including  
22                   responsibilities regarding online instruction and digital tools;

23                   (3) Maintain a confidential personnel record on each employee;

24                   (4) Provide annual professional development to all employees, including  
25                   professional development on the use of virtual education technology;

26                   (5) Provide an experienced mentor teacher who has online instruction expertise  
27                   for the first year of instruction of all new instructional staff hired by the virtual  
28                   public charter school; and

29                   (6) Comply with all other state public teacher and public employment laws.

30                  C. A teacher in a virtual public charter school must be:

31                   (1) Subject to evaluation as provided in chapter 508;

32                   (2) Subject to termination as provided in section 13202;

33                   (3) Provided terms and conditions of employment comparable to other public  
34                   school teachers, including, but not limited to, tenure and due process protections,  
35                   leaves of absence, sabbaticals, remuneration and collective bargaining, to the  
36                   extent such employment terms and conditions are not inconsistent with other  
37                   state law; and



1                   (4) Provided employee benefits, including health coverage and participation in  
2                   the Maine Public Employees Retirement System as provided in Title 5, Part 20.

3                   **8. Integrity of student learning and assessment.** A student in a virtual public  
4                   charter school must be held to the same standards prohibiting cheating and plagiarism as  
5                   a student in a traditional classroom environment. A virtual public charter school shall  
6                   ensure:

7                   A. That the compulsory attendance requirements in section 5001-A are met by each  
8                   student;

9                   B. That, for every credit-bearing course, a student takes at least one examination or  
10                  completes at least one assignment in a proctored environment;

11                  C. That a student participating in the statewide assessment program established in  
12                  section 6202 takes the assessment with that student's peers at a school in the school  
13                  administrative unit in which the student resides. A virtual public charter school shall  
14                  notify a school administrative unit regarding the number of participating students  
15                  within that unit's attendance boundaries and the level at which the students are to be  
16                  assessed no later than October 1st. A school administrative unit shall ensure that a  
17                  student at a virtual public charter school is permitted to take the assessment with that  
18                  student's peers;

19                  D. That, for every credit-bearing course, a student is provided multiple opportunities  
20                  for synchronous learning with that student's teacher in which that student is required  
21                  to participate and share that student's knowledge;

22                  E. That each student is provided with a policy prohibiting cheating and plagiarism  
23                  for each course;

24                  F. That each student is provided instruction on avoiding cheating and plagiarism  
25                  prior to enrolling in a course in each academic year; and

26                  G. That each instance of identified cheating or plagiarism is disciplined in  
27                  accordance with appropriate due process procedures and reported to the commission  
28                  in accordance with subsection 4.

29                  **9. Rules.** The department shall amend its rules governing public charter schools to  
30                  establish standards for virtual public charter schools pursuant to this section. Rules  
31                  adopted pursuant to this subsection are major substantive rules as described in Title 5,  
32                  chapter 375, subchapter 2-A. The rules must include, but are not limited to, the  
33                  establishment of standards in the following areas:

34                  A. Concerning students:

35                    (1) Internet security;

36                    (2) Student academic performance and improvement;

37                    (3) Monitoring and assessment of student academic performance and  
38                    improvement;

39                    (4) Course completion measurements;

40                    (5) Attendance tracking procedures;

- 1                   (6) Student discipline procedures, including policies regarding expulsion and  
2                   suspension;
- 3                   (7) Data analysis, management and reporting;
- 4                   (8) Guidance counseling;
- 5                   (9) Participation guidelines for extracurricular activities;
- 6                   (10) Engagement of parents and communities in online programs;
- 7                   (11) Provisions for students with special needs, including gifted and talented  
8                   students and English language learners; and
- 9                   (12) Training in how to use both the hardware and software associated with the  
10                  online program;
- 11                  B. Concerning teachers:
- 12                   (1) The required amount of teacher participation in the instructional program for  
13                   each course;
- 14                   (2) The qualifications of mentor teachers, as described in subsection 7, paragraph  
15                   B, subparagraph (5);
- 16                   (3) The required elements of a program in online instruction necessary to  
17                   become a teacher, as described in subsection 7, paragraph A, subparagraph (3);
- 18                   (4) The required amount of professional development in technology-based  
19                   instructional design required yearly;
- 20                   (5) The elements of an alternative certification program for previously certified  
21                   teachers in other states, territories of the United States or the District of  
22                   Columbia; and
- 23                   (6) The required qualifications of noncertified personnel involved in any  
24                   assessment of student work;
- 25                  C. Concerning programs:
- 26                   (1) An online program’s governance, vision and organization;
- 27                   (2) Standards-based curricula and data-driven instructional practices;
- 28                   (3) Technology capacity and support;
- 29                   (4) Sound financial and accounting practices and resources;
- 30                   (5) Program evaluation and improvement;
- 31                   (6) Details of the annual review process;
- 32                   (7) Approved private or public proctor options;
- 33                   (8) Appeal procedures for probationary status and contract termination  
34                   determinations; and
- 35                   (9) Professional development support mechanisms; and
- 36                  D. Concerning funding the cost of virtual public charter schools:

