

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

SECOND REGULAR SESSION-2016

Legislative Document

No. 1576

H.P. 1069

House of Representatives, January 26, 2016

An Act To Amend Certain Education Laws

(AFTER DEADLINE)

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative HUBBELL of Bar Harbor.
Cosponsored by Senator LANGLEY of Hancock and
Representative: MAKER of Calais.

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

3 **Whereas,** the changes made by this legislation could affect budget meetings of
4 school administrative units and town budgets; and

5 **Whereas,** it is necessary that this legislation take effect prior to the expiration of the
6 90-day period to allow towns to benefit from the legislation during the next annual budget
7 process; and

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

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

13 **Sec. 1. 20-A MRSA §254, sub-§19** is enacted to read:

14 **19. Designation of school to enroll certain students.** The commissioner may
15 designate a school administrative unit as the receiving school administrative unit for a
16 student who resides in a school administrative unit that neither maintains a school nor
17 contracts for school privileges pursuant to chapter 115 and is unable to find a school
18 administrative unit willing to enroll the student in one of its schools, upon a written
19 request from the superintendent of the school administrative unit where the student
20 resides setting forth the student's circumstances giving rise to the request.

21 A. If the commissioner makes a designation under this subsection, the school
22 administrative unit where the student resides shall pay tuition for that student to the
23 receiving school administrative unit as calculated in accordance with this subsection
24 and chapter 219.

25 B. If a student subject to a designation under this subsection is receiving special
26 education services, the receiving school administrative unit designated by the
27 commissioner under this subsection is responsible for providing a free, appropriate
28 public education to the student, subject to the provisions of this subsection. The
29 receiving school administrative unit shall invite the school administrative unit where
30 the student resides to participate in individualized education program team meetings
31 for the student, but the authorized representative of the receiving school
32 administrative unit shall make the decision on any issue on which consensus is not
33 reached. The school administrative unit where the student resides shall, in addition to
34 tuition payable pursuant to chapter 219, pay to the receiving school administrative
35 unit:

36 (1) Special education tuition;

37 (2) Any costs not included in the computation of special education tuition
38 directly related to the student's special education program; and

1 (3) Any costs associated with due process proceedings in connection with the
2 student's special education program.

3 **Sec. 2. 20-A MRSA §1001, sub-§8**, as amended by PL 2013, c. 581, §2, is
4 further amended to read:

5 **8. Operate public preschool programs, kindergarten and grades one to 12.** They
6 shall either operate programs in kindergarten and grades one to 12 or otherwise provide
7 for students to participate in those grades as authorized elsewhere in this Title. To the
8 extent the State provides adequate start-up funding, they may operate public preschool
9 programs or provide for students to participate in such programs in accordance with the
10 requirements of this Title. They shall determine which students attend each school,
11 classify them and transfer them from school to school where more than one school is
12 maintained at the same time. If a school administrative unit neither maintains a school
13 nor contracts for school privileges pursuant to chapter 115 and a student who resides in
14 the school administrative unit is unable to enroll in another school administrative unit, the
15 school board shall direct the superintendent of the school administrative unit where the
16 student resides to make a written request to the commissioner to designate a place of
17 enrollment for the student, pursuant to section 254, subsection 19.

18 **Sec. 3. 20-A MRSA §2404, sub-§2, ¶¶C and D**, as enacted by PL 2011, c. 414,
19 §5, are amended to read:

20 C. Except as provided in paragraphs H ~~and~~ I and K, if capacity is insufficient to
21 enroll all students who wish to attend the school, the public charter school shall select
22 students through a random selection process. A list maintained to fill potential
23 vacancies may be carried over to the succeeding year.

24 D. For a school administrative unit with an enrollment of 500 or fewer students, a
25 public charter school, unless authorized by a school administrative unit, may not
26 enroll more than 5% of a school administrative unit's noncharter public school
27 students per grade level in each of the first 3 years of the public charter school's
28 operation, except that if 5% of a school administrative unit's noncharter public school
29 students per grade level is less than one, a public charter school may enroll one
30 student of the school administrative unit per grade level in each of the first 3 years.

31 **Sec. 4. 20-A MRSA §2404, sub-§2, ¶K** is enacted to read:

32 K. A public charter school authorized by a local school board or by a collaborative
33 among local school boards may give enrollment preference to children who reside
34 within the school administrative unit or units governed by the local school board or
35 collaborative among local school boards.

36 **Sec. 5. 20-A MRSA §2405, sub-§4**, as amended by PL 2015, c. 54, §1, is further
37 amended to read:

38 **4. Reporting and evaluation.** An authorizer shall submit to the commissioner and
39 the Legislature an annual report within ~~60~~ 90 days of the end of each school fiscal year
40 summarizing:

- 1 A. The authorizer's strategic vision for chartering and progress toward achieving that
2 vision;
- 3 B. The performance of all operating public charter schools overseen by the
4 authorizer, according to the performance measures and expectations specified in the
5 charter contracts;
- 6 C. The status of the authorizer's public charter school portfolio of approved charter
7 applications, identifying all public charter schools within that portfolio as:
 - 8 (1) Approved, but not yet open;
 - 9 (2) Operating;
 - 10 (3) Renewed;
 - 11 (4) Transferred;
 - 12 (5) Terminated;
 - 13 (6) Closed; or
 - 14 (7) Never opened;
- 15 D. The oversight and services provided by the authorizer to the public charter
16 schools under the authorizer's purview; and
- 17 E. The total amount of funds collected from each public charter school the authorizer
18 authorized pursuant to subsection 5, paragraph B and the costs incurred by the
19 authorizer to oversee each public charter school.

20 **Sec. 6. 20-A MRSA §2406, sub-§2, ¶F**, as amended by PL 2011, c. 570, §9, is
21 further amended to read:

- 22 F. A request for proposals must require applications to provide or describe
23 thoroughly, at a minimum, all of the following essential elements of the proposed
24 public charter school plan:
 - 25 (1) The proposed public charter school's vision, including:
 - 26 (a) An executive summary;
 - 27 (b) The mission and vision of the proposed public charter school, including
28 identification of the targeted student population and the community the
29 school hopes to serve; and
 - 30 (c) Evidence of need and community support for the proposed public charter
31 school, including information on discussions with the school administrative
32 unit where the public charter school will be located concerning recruitment
33 and operations of the public charter school and possible collaboration with
34 nearby school administrative units;
 - 35 (2) The proposed public charter school's governance plan, including:
 - 36 (a) Background information on proposed board members and any assurances
37 or certifications required by the authorizer;
 - 38 (b) Proposed governing bylaws;

- 1 (c) An organization chart that clearly presents the school's organizational
2 structure, including lines of authority and reporting between the governing
3 board, staff and any related bodies such as advisory bodies or parent and
4 teacher councils, and any external organizations that will play a role in
5 managing the school;
- 6 (d) A clear description of the roles and responsibilities for the governing
7 board, the school's leadership and management team and any other entities
8 shown on the organization chart;
- 9 (e) Identification of the proposed founding governing board members and, if
10 identified, the proposed school leader or leaders; and
- 11 (f) Background information on the school's leadership and management
12 team, if identified;
- 13 (3) The proposed public charter school's plan of organization, including:
- 14 (a) The location or geographic area of the school and the proposed
15 catchment area of the school, which may not be designed to exclude areas
16 with high rates of poverty, English language learners, at-risk students or
17 students with disabilities;
- 18 (b) The grades to be served each year for the full term of the charter;
- 19 (c) Minimum, planned and maximum enrollment per grade per year for the
20 term of the charter;
- 21 (d) The school's proposed calendar and sample daily schedule;
- 22 (e) Plans and timelines for student recruitment and enrollment, including
23 lottery procedures;
- 24 (f) Explanations of any partnerships or contractual relationships central to
25 the school's operations or mission;
- 26 (g) The school's proposals for providing transportation, food service and
27 other significant operational or ancillary services;
- 28 (h) A facilities plan, including backup or contingency plans if appropriate;
- 29 (i) A detailed school start-up plan, identifying tasks, timelines and
30 responsible individuals; and
- 31 (j) A closure protocol, outlining orderly plans and timelines for transitioning
32 students and student records ~~to new schools~~ as described in section 2411,
33 subsection 8, paragraph C and for appropriately disposing of school funds,
34 property and assets in the event of school closure;
- 35 (4) The proposed public charter school's finances, including:
- 36 (a) A description of the school's financial plan and policies, including
37 financial controls and audit requirements;
- 38 (b) Start-up and 3-year budgets with clearly stated assumptions;

- 1 (c) Start-up and first-year cash-flow projections with clearly stated
2 assumptions;
- 3 (d) Evidence of anticipated fund-raising contributions, if claimed in the
4 application; and
- 5 (e) A description of the insurance coverage the school proposes to obtain;
- 6 (5) The proposed public charter school's student policy, including:
 - 7 (a) The school's plans for identifying and successfully serving students with
8 the wide range of learning needs and styles typically found in noncharter
9 public schools of the sending area;
 - 10 (b) The school's plans for compliance with applicable laws, rules and
11 regulations; and
 - 12 (c) The school's student discipline plans and policies, including those for
13 special education students;
- 14 (6) The proposed public charter school's academic program, including:
 - 15 (a) A description of the academic program aligned with the statewide system
16 of learning results under section 6209;
 - 17 (b) A description of the school's instructional design, including the type of
18 learning environment, such as classroom-based or independent study, class
19 size and structure, curriculum overview, teaching methods and research
20 basis;
 - 21 (c) The school's plan for using internal and external assessments to measure
22 and report student progress on the measures and metrics of the performance
23 framework developed by the authorizer in accordance with section 2409; and
 - 24 (d) A description of cocurricular or extracurricular programs and how they
25 will be funded and delivered; and
- 26 (7) The proposed public charter school's staff policy, including:
 - 27 (a) A staffing chart for the school's first year and a staffing plan for the term
28 of the charter;
 - 29 (b) Plans for recruiting and developing school leadership and staff;
 - 30 (c) The school's leadership and teacher employment policies, including
31 performance evaluation plans; and
 - 32 (d) Opportunities and expectations for parent involvement.

33 **Sec. 7. 20-A MRS §2411, sub-§8**, as enacted by PL 2011, c. 414, §5, is
34 amended to read:

- 35 **8. School closure and dissolution.** If a public charter school closes for any reason:
- 36 A. The authorizer shall oversee and work with the closing public charter school to
37 ensure timely notification to parents, orderly transition of students and student

1 records ~~to new schools~~ and proper disposition of school funds, property and assets in
2 accordance with the requirements of this chapter; ~~and~~

3 B. The assets of the public charter school must be distributed first to satisfy
4 outstanding payroll obligations for employees of the public charter school and then to
5 creditors of the public charter school. Any remaining funds must be paid to the
6 Treasurer of State to the credit of the General Fund. If the assets of the public charter
7 school are insufficient to pay all parties to whom the public charter school owes
8 compensation, the prioritization of the distribution of assets may be determined by
9 decree of a court of law; and

10 C. Education records for students transitioning to new schools must be transferred as
11 required in section 6001-B. Education records for a person who for any reason,
12 including graduation, will not be attending a public school in the State after closure of
13 the public charter school must be transferred to the last school administrative unit of
14 residence on record at the public charter school for that student and must be
15 maintained by that school administrative unit in the same manner as education
16 records of other resident students.

17 **Sec. 8. 20-A MRSA §2412, sub-§5, ¶L** is enacted to read:

18 L. Public charter schools are subject to the educator effectiveness requirements in
19 chapter 508 applicable to noncharter public schools in the State.

20 **Sec. 9. 20-A MRSA §5001-A, sub-§2, ¶E**, as enacted by PL 2009, c. 330, §3, is
21 amended to read:

22 E. A person enrolled in an online learning program or course, unless the person is
23 enrolled in a virtual public charter school as defined in section 2401, subsection 11.

24 **Sec. 10. 20-A MRSA §5205, sub-§6, ¶G** is enacted to read:

25 G. Notwithstanding paragraph D, if the commissioner or state board approves a
26 transfer under this subsection and the student subject to the transfer is receiving
27 special education services, the state subsidy of special education costs for the
28 transferred student may not be reduced as a result of the transfer.

29 **Sec. 11. 20-A MRSA §7204, sub-§§5 and 6**, as amended by PL 2005, c. 662,
30 Pt. A, §25, are further amended to read:

31 **5. Due process.** Shall:

32 A. Adopt or amend rules to assure and protect the rights of due process for children
33 with disabilities; and

34 B. Inform and train each school administrative unit on the rights of children with
35 disabilities to due process under state laws and rules and federal law and regulations;
36 ~~and~~

37 **6. Technical assistance.** May, on the request of a school administrative unit,
38 provide technical assistance in the formulation of a plan or subsequent report required of

1 all administrative units. Assistance may not be designed to transfer the responsibility for
2 or actual development of the plan or report; and

3 **Sec. 12. 20-A MRSA §7204, sub-§7** is enacted to read:

4 **7. Out-of-state placement of a state ward.** May, when a child with a disability
5 who is a state ward is placed in an out-of-state residential treatment center by the
6 Department of Health and Human Services, designate the school administrative unit that
7 has responsibility for oversight of the child's individualized education program to ensure
8 that the child receives a free, appropriate public education.

9 **Sec. 13. 20-A MRSA §15689-G** is enacted to read:

10 **§15689-G. Special education budgetary hardship adjustment**

11 **1. Budgetary hardship adjustment.** The following provisions apply to adjustments
12 for special education budgetary hardships.

13 A. If a school administrative unit determined eligible pursuant to paragraph B
14 petitions the commissioner and demonstrates that the unexpected education costs of
15 placement of a student in a special education program will cause a budgetary
16 hardship, the commissioner may provide to the unit an amount not to exceed the
17 allowable costs of the placement less 3 times the statewide special education EPS
18 per-pupil rate for in-district placements or less 4 times the statewide special education
19 EPS per-pupil rate for out-of-district placements. The allowable costs are those
20 special education costs described in section 15672, subsection 30-A, paragraphs A
21 and B.

22 B. The commissioner shall determine that a school administrative unit is eligible for
23 an adjustment under paragraph A if:

24 (1) The student's placement is a result of an appeal approved by the
25 commissioner pursuant to section 5205, subsection 6; and

26 (2) The school administrative unit's unexpected allowable costs result in a 5% or
27 more increase in the percentage of the unit's special education budget category to
28 the unit's total budget excluding the debt service budget category.

29 C. The funds for adjustments under paragraph A are limited to the amount
30 appropriated by the Legislature for that purpose and any unexpended balance from
31 another program's appropriated amounts under section 15689-E that may be applied
32 by the commissioner toward the adjustments.

33 D. A school administrative unit may expend the funds from the adjustment under
34 paragraph A without seeking approval by the unit's legislative body.

35 **2. Application.** This section applies to funding for the 2016-2017 school year only.

36 **Emergency clause.** In view of the emergency cited in the preamble, this
37 legislation takes effect when approved.

1 **SUMMARY**

2 This bill provides that if a superintendent's decision regarding the transfer of a student
3 receiving special education services to a school out of the student's school administrative
4 unit is appealed to the Commissioner of Education or the State Board of Education and
5 the commissioner or state board approves the transfer of the student, the state subsidy of
6 special education costs for the transferred student may not be reduced as a result of the
7 transfer.

8 This bill gives the Commissioner of Education the authority to designate a school
9 administrative unit to enroll a student when the student's school administrative unit
10 neither maintains a school nor contracts with another school administrative unit and no
11 school administrative unit enrolls the student voluntarily. For a student receiving special
12 education services, the bill requires a resident school administrative unit to pay to the
13 receiving school administrative unit tuition, special education tuition, other costs directly
14 related to the student's special education and costs associated with due process
15 proceedings for providing a free, appropriate public education.

16 This bill allows the Commissioner of Education to designate the school
17 administrative unit that is responsible for oversight of the individualized education
18 program of a child with a disability who is a state ward and is placed in an out-of-state
19 residential treatment center by the Department of Health and Human Services.

20 This bill authorizes the Commissioner of Education to provide additional funds to a
21 school administrative unit based on a budgetary hardship resulting from a special
22 education placement.

23 This bill makes the following changes to the laws relating to public charter schools.

24 1. The bill allows charter schools authorized by a local school board or a
25 collaborative among local school boards to give enrollment preference to residents of the
26 school administrative unit or units whose school board or school boards authorized the
27 charter school.

28 2. The bill extends the submission deadline for a charter school authorizer's annual
29 report to the Commissioner of Education from 60 to 90 days after the end of the school
30 fiscal year and adds language to address the disposition of graduation records and records
31 of other students not transitioning to another Maine public school if a charter school
32 closes.

33 3. The bill adds language to reflect that charter schools are subject to educator
34 effectiveness requirements.

35 4. The bill provides that the compulsory attendance laws apply to virtual charter
36 schools.

37 5. For a charter school in a school administrative unit with an enrollment of 500 or
38 fewer students, current law caps the number of students from the school administrative
39 unit that the charter school may enroll during its first 3 years of operation at 5% of the
40 school administrative unit's noncharter public school students per grade level. The bill

1 provides that if 5% of the school administrative unit's noncharter public school students
2 per grade level is less than one, the charter school may enroll one student from the school
3 administrative unit per grade level in each of the charter school's first 3 years of
4 operation.