

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FIFTEENTH LEGISLATURE

SECOND SPECIAL SESSION
December 12, 1991 to January 7, 1992

SECOND REGULAR SESSION
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THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
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PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

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1992

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

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ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

of Representatives, except that the vote of the Senate on the recommendations of the joint standing committee of the Legislature having jurisdiction over judiciary matters on judicial nominations and Workers' Compensation Commission nominations must be taken no later than 50 days after the Governor's written notice.

See title page for effective date.

CHAPTER 843

S.P. 921 - L.D. 2360

An Act Regarding Maine's Comprehensive Early Intervention System for Infants and Children Ages 0 to School-age 5

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

Whereas, there is an immediate need for the Department of Education and the boards of directors of the 16 regional sites in the Child Development Services System to develop a method of allocating funds to the regional sites for fiscal year 1992-93; and

Whereas, failure to develop a method of allocating funds to the regional sites by April 30, 1992 would result in a delay in disbursement of funds needed to serve infants and children with disabilities; and

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

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

Sec. 1. 5 MRSA §12004-G, sub-§8-A, as amended by PL 1991, c. 622, Pt. G, §2 and affected by §33, is further amended to read:

8-A.	Interde-	Expenses	20-A
Education	partmental	Only	MRSA
	Coordinating		§7704
	Council for		§7733
	Early Inter-		
	vention		

Sec. 2. 20-A MRSA c. 307, as amended, is repealed.

Sec. 3. 20-A MRSA c. 307-A is enacted to read:

CHAPTER 307-A

INFANTS AND CHILDREN, AGES 0 TO SCHOOL-AGE 5, WITH DISABILITIES

§7724. System

1. Establishment. The Child Development Services System is established for the purpose of maintaining a coordinated service delivery system for the provision of childfind activities for children, ages 0 to school-age 5, and free, appropriate and public education services for eligible children, ages 3 to school-age 5, who have a disability. The Child Development Services System consists of 16 regional sites organized as intermediate education units or as private nonprofit corporations, one state level intermediate education unit and the Interdepartmental Coordinating Council for Early Intervention advisory board. The Child Development Services System shall ensure the provisions of this chapter statewide through a contractual or grant relationship between the Department of Education and each regional site.

2. Governmental purpose. The Child Development Services System is established as a body corporate and politic and as a public instrumentality of the State, and the exercise of the powers conferred by this section is deemed to be the performance of essential governmental functions.

§7725. Definitions

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

1. Child Development Services System. "Child Development Services System," or "CDS," means 16 regional sites, a state level intermediate education unit and the Interdepartmental Coordinating Council for Early Intervention established to ensure the provision of childfind activities and free, appropriate and public education services to eligible children.

2. Childfind. "Childfind" means the identification, location and evaluation, at no cost to the family, of children, ages 0 to school-age 5, with disabilities.

3. Departments. "Departments" means 2 or more of the participating state agencies, the Department of Education, the Department of Human Services and the Department of Mental Health and Mental Retardation.

4. Disability. "Disability" means:

A. A condition of children, ages 0 to school-age 5, who are in need of early intervention or special education services due to a delay in one or more of the following areas: cognitive development;

physical development, including vision and hearing; communication development; social or emotional development; and adaptive development; or

B. For children, ages 0 to 2, a diagnosed, established condition or biological factors that have a high probability of resulting in developmental delay.

5. Free, appropriate public education services. “Free, appropriate public education services” or “FAPE” means those services that are designed to meet the developmental needs of eligible children, ages 3 to school-age 5, who have a disability. These services include:

A. Early identification, screening and assessment services;

B. Medical services for diagnostic or evaluation purposes only;

C. Occupational therapy;

D. Parent counseling and training;

E. Physical therapy;

F. Psychological services;

G. Special instruction;

H. Speech pathology and audiology; and

I. Transportation.

6. Council. “Council” means the Interdepartmental Coordinating Council for Early Intervention established in section 7733.

7. Intermediate educational unit. “Intermediate educational unit,” as defined in federal Public Law 94-142, means any public authority, other than a local educational agency, under the general supervision of a state educational agency, that is established for the purpose of providing free public education on a regional basis and that provides special education and related services to handicapped children within the State.

8. Regional site. “Regional site” means one of the 16 locally governed regional intermediate educational units or private nonprofit corporations established to ensure provision of services to infants and children under this chapter.

§7727. Department of Education

1. Responsibility. The department is designated as the state education agency responsible for carrying out the State’s obligations under the federal Individuals with Disabilities Education Act of 1991, Public Law 101-476.

2. Plan. The department shall submit the State’s plan for meeting the requirements of federal Public Law 101-476 to the Federal Government.

3. Rule-making authority. The commissioner may adopt rules necessary to implement this chapter in accordance with the Maine Administrative Procedure Act.

4. Contracts. The department may enter into contracts, leases and agreements and any other instruments and arrangements that are necessary, incidental or convenient to the performance of its duties and the execution of its powers under this chapter.

The department shall contract with the board of directors of a private nonprofit corporation for no fewer than 3 years and approve an annual entitlement plan with the board of directors of a regional intermediate education unit for the purpose of assuring coordinated service delivery in each region of the State.

Contracts with boards of directors of private nonprofit corporations or plans of regional intermediate education units must ensure:

A. That screening, evaluation and referral services, at no cost to the family, are accessible to all children, ages 0 to school-age 5; and

B. That preschool children with disabilities, ages 3 to school-age 5, have free, appropriate public education services available to them at no cost to the family.

5. Implementation of free, appropriate public education services. The department, through the Child Development Services System, shall ensure:

A. That screening, evaluation and referral services, at no cost to the family, are accessible to all children, ages 0 to school-age 5. The commissioner shall adopt rules describing these services;

B. That preschool children with disabilities, ages 3 to school-age 5, have free, appropriate public education services available to them at no cost to the family; and

C. That rules are developed, adopted and implemented describing minimum standards for the following:

(1) Least restrictive environment;

(2) Nondiscrimination;

(3) Rights of parents;

(4) Free and appropriate public services;

- (5) Eligibility criteria;
- (6) The federal "childfind" program;
- (7) Program development, service descriptors and service delivery;
- (8) Early childhood team;
- (9) Individualized family service plan;
- (10) Statements of assurances;
- (11) Procedural safeguards and appeals processes;
- (12) Due process hearings;
- (13) Confidentiality of information;
- (14) Data collection, reporting and utilization; and
- (15) Surrogate parents.

6. Regional site compliance. The department, in consultation with regional sites and the Interdepartmental Coordinating Council for Early Intervention, shall develop an action plan with timelines to achieve compliance for regional sites that are not in compliance with federal or state law. The department may assume temporary responsibility for operations at a site that fails to meet compliance requirements.

§7728. State intermediate education unit; establishment; powers; duties and obligations

The commissioner shall establish and supervise a state intermediate education unit to perform the following duties:

1. Federal obligations. Develop and adopt state-wide policies and rules for carrying out the provisions of this chapter to meet federal obligations under the federal Individuals with Disabilities Education Act of 1991, Public Law 101-476, Part B, Section 619 and Part H. These obligations must include but are not limited to:

- A. Personnel standards;
- B. Comprehensive system of personnel development;
- C. Program monitoring;
- D. Data collection;
- E. Interagency agreements at the state level; and
- F. Public awareness;

2. Program and policy compliance. Provide training and technical assistance in the policies and procedures necessary to meet all federal and state guidelines required by this chapter.

3. Fiscal compliance. Ensure regional site fiscal compliance by reviewing or performing regular audits of site records;

4. Free, appropriate public education training. Provide training and certification to regional site employees and others in commitment of funds used to provide free, appropriate public education;

5. Administrative case management. Provide billing services to each regional site for administrative case management;

6. Employees. Employ professional and other staff necessary to carry out the state level functions required by this chapter;

7. Suits. Sue and be sued in its own name;

8. Acquire supplies. Acquire supplies, materials and incidental services through cash purchases, sole-source purchase orders and bids or contracts as necessary or convenient to fulfill the purposes of this chapter;

9. Acquire property. Acquire by purchase, gift, lease or rent any property, lands, buildings, structures, facilities or equipment necessary to fulfill the purposes of this chapter;

10. Other duties. Perform other duties assigned by the Legislature, delegate duties and authority, but not responsibility, as necessary for the efficient operation of this chapter and do any other acts or things necessary or convenient to carry out the powers expressly granted or reasonably implied in this chapter; and

11. Dissemination of information. Apply the federal Family Educational Rights and Privacy Act of 1974, Public Law 93-380, as amended by Public Law 93-568, and the federal Education for All Handicapped Children Act of 1975, Public Law 94-142, to the dissemination of information about infants and children, ages 0 to school-age 5, with disabilities who are served by the Child Development Services System.

All state intermediate education unit employees are employees for purposes of the Maine Tort Claims Act.

§7729. Regional site governance; choice

Boards of directors of the local coordinating committees under former chapter 307, established to ensure childfind activities for children, ages 0 to 5, and to coordinate free, appropriate public education services for chil-

dren ages 3 to 5 who have a disability shall organize, at the discretion of each board, as a private nonprofit corporation or an intermediate education unit.

§7730. Regional site board of directors

Each board of directors of a regional intermediate education unit or a private nonprofit corporation is responsible for governance of its activities, including the management and oversight of its general operations as established in section 7728. Membership must include representatives of the regional offices of the Department of Human Services and the Department of Mental Health and Mental Retardation, representatives of participating school administrative units, parents of infants and children with disabilities and other community members as determined appropriate. Terms of membership and methods of appointment or election must be determined by board of directors bylaws, subject to approval of the department.

§7731. Regional site; administration

The regional site board of directors shall:

1. Fiscal services. Provide fiscal management of money allocated to it, in compliance with state and federal laws and subject to proof of an annual audit. Fiscal services may be secured as a contracted or in-kind service;

2. Employees. Employ qualified professional and other staff at the local site. The board of directors has the authority to hire, fire and supervise the staff of the regional site and to develop and adopt personnel policies for its employees;

3. Collective bargaining. Bargain collectively if employees choose to be represented by a collective bargaining agent. The board of directors of a local intermediate education unit is a public employer within the meaning of Title 26, section 962, subsection 7. Employees of the board of directors are public employees within the meaning of Title 26, section 962, subsection 6;

4. Fringe benefits. Determine which fringe benefits may be offered to employees, dependent on cost, ease of administration and competitiveness in recruiting and retaining qualified personnel;

5. Retirement plan. Select an employee retirement plan option that meets all applicable federal and state requirements;

6. Contracts. Subject to the approval of the department, enter into contracts, leases and agreements and any other instruments and arrangements that are necessary, incidental or convenient to the performance of its duties and the execution of its powers under this chapter;

7. Suits. Sue and be sued in its own name;

8. Acquire supplies. Acquire supplies, materials and incidental services, through cash purchases, sole-source purchase orders, bids or contracts, as necessary or convenient to fulfill the purposes of this chapter;

9. Acquire property. Acquire by purchase, gift, lease or rent any property, lands, buildings, structures, facilities or equipment necessary to fulfill the purposes of this chapter;

10. Other duties. Fulfill other duties as necessary for the efficient operation of this chapter and do any other acts or things necessary or convenient to carry out the powers expressly granted or reasonably implied in this chapter; and

11. Dissemination of information. Apply the federal Family Educational Rights and Privacy Act of 1974, Public Law 93-380, as amended by Public Law 93-568, and the federal Individuals with Disabilities Education Act of 1991, Public Law 101-476, to the dissemination of information about infants and children, 0 to school-age 5, with disabilities who are served through the regional site.

All regional site employees and board of directors members of a regional intermediate education unit are employees for purposes of the Maine Tort Claims Act.

§7732. Regional site; duties and obligations

The board of directors of a private nonprofit corporation or a regional local intermediate education unit shall:

1. Part H. Perform appropriate data collection, training and staff development in accordance with federal Public Law 101-476, Part H;

2. Childfind. Ensure provision of childfind activities as required by federal Public Law 101-476;

3. Childcount. Ensure provision of childcount activities as required by federal Public Law 101-476;

4. Free, appropriate public education. Ensure that eligible children, ages 3 to school-age 5, receive free, appropriate public education services;

5. Individual family service plan. Coordinate development of individual family service plans with eligible families;

6. Service providers. Contract with providers of targeted case management services approved by the Bureau of Medical Services within the Department of Human Services;

7. Designate personnel for training. Designate local personnel for training to commit funds for free, appropriate public education. Personnel who commit funds for free, appropriate public education must be trained and certified by the state intermediate education unit. The board of directors shall determine which trained and certified personnel may commit funds; and

8. Targeted case management. Following certification by the Bureau of Medical Services within the Department of Human Services, seek reimbursement for targeted case management.

§7733. Interdepartmental coordination

The Interdepartmental Coordinating Council for Early Intervention as established in Title 5, section 12004-G, subsection 8-A is established as an advisory body to the commissioner regarding the coordination of policies and programs aimed at implementing federal Public Law 99-457.

Membership of the council must be in keeping with federal Public Law 101-476, Subparts F and G, contingent upon state participation in these programs. Appointments to the council must be made by the Governor for terms defined in rules adopted by the commissioner. The council shall meet at least quarterly.

The commissioner shall adopt rules describing the composition of the council, selection process and duties of the members consistent with the purposes of this chapter.

The council shall designate from among its members a steering committee responsible to the council for carrying out the duties described in this section. The commissioner shall adopt rules describing the composition, selection process and responsibilities of the steering committee.

1. Recommendations. The council shall recommend to the department, with the advice of the regional site boards of directors, legislation that is needed to maintain or further develop the statewide system of quality early intervention services.

2. Consider issues. The council shall consider, with the advice of the regional site boards of directors and the state intermediate education unit, contemporary issues affecting early intervention services in the State, including, but not limited to, the following:

A. Successful early intervention strategies;

B. Personnel preparation and continuing education;

C. Childfind activities and methods as required by federal Public Law 101-476, as amended;

D. Public awareness as required by federal Public Law 101-476, as amended;

E. Contemporary research;

F. Conflict resolution between departments;

G. Accountability, accessibility and equitability issues within CDS;

H. Costs and implications of case management entitlement and provision of FAPE services;

I. Costs and implications of inclusion of at-risk children and of providing entitlement for children ages 0 to 2;

J. Implications of continued state participation in federal Public Law 101-476, Part H;

K. Development of common language between departments participating in CDS;

L. Costs and implications of delivery of services under this chapter by local schools;

M. Effectiveness of private nonprofit and local intermediate education unit models for delivery of local services under this chapter. The council shall study the costs of administration, quality and stability of service delivery and other pertinent questions raised during review of the 2 service delivery models; and

N. Equitable parameters for salaries and benefits at local sites.

3. Bylaws. The council shall develop and adopt bylaws for its conduct.

4. Advise. The council shall advise the department in the development and implementation of rules, to be carried out by the department, as necessary to carry out the duties and purposes of this chapter.

5. Chair. The council shall annually elect one member to serve as chair.

6. Compensation. The members of the council are entitled to compensation in accordance with Title 5, section 12004-G. Agency representatives on the council are entitled to reimbursement for expenses incurred in the performance of their council duties by the appointing agencies in accordance with the provisions for state employees. Consumer members are entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties.

7. Staffing. The department and the state intermediate education unit shall provide to the council the equivalent of one full-time professional staff person from

funds allocated to operation of the state intermediate education unit.

8. Committee and advisory activities. The council may establish committees composed of parents, professionals, advocacy group representatives, board representatives and employees in keeping with the bylaws adopted by the council.

9. Voting. A majority must be present for any action taken by the council. Actions must be approved by a majority vote of the members present and voting.

10. Conflict resolution. The council shall identify areas of conflict for resolution by the Committee for the Interdepartmental Coordination of Services to Children and Families.

§7734. Allocation of federal and state funds for fiscal year 1992-93

1. State level share. For fiscal year 1992-93 only, the total of all federal, state and other funds that may be expended under this chapter for department expenses and state intermediate education unit expenses, including staff support to the Interdepartmental Coordinating Council for Early Intervention, is \$400,000.

2. Allocation of funds by the department to regional sites. Allocation of funds by the department to regional sites is governed by this subsection.

A. Public Law 101-476, Part B, Section 619 funds must be distributed in accordance with federal law.

B. Public Law 101-476, Part H funds must be distributed based upon a regional site application describing activity permitted under Public Law 101-476.

C. State and other funds granted to a regional site for fiscal year 1992-93 must be awarded based on a method developed jointly by the commissioner and the boards of directors with advice from the Interdepartmental Coordinating Committee for Early Intervention and must include a base allocation for operations. The funding method must be in place by April 30, 1992.

§7735. Conflict of interest

Notwithstanding Title 5, section 18, subsection 1, paragraph B, each member of the Interdepartmental Coordinating Council for Early Intervention and each employee, contractor, agent or other representative of the Child Development Services System is deemed an "executive employee" solely for the purposes of Title 5, section 18. The department shall provide training to participants to ensure compliance with conflict of interest requirements. Regional site boards of directors shall de-

velop conflict of interest policies for employees and board members and may request assistance from the department in developing those policies.

§7736. Insurer or 3rd-party obligation

Nothing in this chapter relieves an insurer or similar 3rd party from an otherwise valid obligation to provide or pay for services.

Sec. 4. 26 MRSA §962, sub-§7, ¶A, as enacted by PL 1991, c. 576, is amended to read:

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

- (1) Any municipality or any subdivision of a municipality;
- (2) Any school, water, sewer or other district;
- (3) The Maine Turnpike Authority;
- (4) ~~The Child Development Services System~~ Any board of directors functioning as a regional intermediate education unit pursuant to Title 20-A, section 7730; or
- (5) Any county or subdivision of a county; or

Sec. 5. Study; agreements. The Interdepartmental Coordinating Council for Early Intervention shall study the history and current status of distribution of available federal, state and Medicaid funds within the Child Development Services System and make recommendations for a new funding formula. The council shall submit a preliminary report by December 1, 1992 and a final report, together with any necessary implementing legislation, by February 15, 1993 to the joint standing committee of the Legislature having jurisdiction over education matters.

The Department of Education, the Department of Human Services and the Department of Mental Health and Mental Retardation shall develop interagency agreements on sharing federal mandate responsibilities under federal Public Law 99-457, develop early intervention standards and address Child Development Services System eligibility issues by July 1, 1992.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 9, 1992.