

# 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 electronic originals  
(may include minor formatting differences from printed original)

**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND TWENTY-FIRST LEGISLATURE**

**FIRST SPECIAL SESSION**  
**August 21, 2003 to August 22, 2003**

**The General Effective Date For**  
**First Special Session**  
**Non-Emergency Laws Is**  
**November 22, 2003**

**SECOND REGULAR SESSION**  
**January 7, 2004 to January 30, 2004**

**The General Effective Date For**  
**Second Regular Session**  
**Non-Emergency Laws Is**  
**April 30, 2004**

**SECOND SPECIAL SESSION**  
**February 3, 2004 to April 30, 2004**

**The General Effective Date For**  
**Second Special Session**  
**Non-Emergency Laws Is**  
**July 30, 2004**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

---

---

**Penmor Lithographers**  
**Lewiston, Maine**  
**2004**

ists, the payment of the disability retirement benefit ceases.

(5) The executive director shall notify the person in writing of the decision to discontinue the disability retirement allowance under subparagraph (2) or (4).

(a) The decision is subject to appeal under section 17451.

(b) If the person appeals the executive director's decision, the disability retirement allowance may not be discontinued until all appeals have been exhausted.

See title page for effective date.

---



---

## CHAPTER 676

S.P. 801 - L.D. 1960

### An Act Regarding the Continued Provision of Free and Appropriate Public Education for Eligible Children of Kindergarten Age

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

**Sec. 1. 20-A MRSA §7001, sub-§2,** as amended by PL 2003, c. 477, §6, is further amended by adding a new paragraph at the end to read:

Notwithstanding paragraph A, "exceptional student" does not include a child who reaches 5 years of age between September 1st and October 15th who is already receiving free, appropriate 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.

**Sec. 2. 20-A MRSA §7001, sub-§4, ¶B-1** is enacted to read:

B-1. Notwithstanding paragraph B, has reached 5 years of age between September 1st and October 15th, is already receiving free, appropriate 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.

**Sec. 3. 20-A MRSA §7725, sub-§1,** as amended by PL 1993, c. 625, §3, is further amended to read:

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

**Sec. 4. 20-A MRSA §7727, sub-§3,** as amended by PL 2001, c. 510, §1, is further amended to read:

**3. Rule-making authority.** The commissioner may adopt rules necessary to implement this chapter in accordance with the Maine Administrative Procedure Act. Rules adopted pursuant to this chapter that establish and maintain a statewide network that ensures the provisions of ~~Childfind~~ childfind for families and children from birth to ~~5 years of age~~ under 6 years of age and rules governing the eligibility for and delivery of free, appropriate public education services to children with disabilities from birth to ~~5 years of age~~ under 6 years of age and their families are major substantive rules as defined in Title 5, chapter 375, subchapter ~~H-A~~ 2-A.

**Sec. 5. 20-A MRSA §7727, sub-§5, ¶¶B and C,** as renumbered by PL 2001, c. 471, Pt. C, §4 and affected by §10, are amended to read:

B. That preschool children with disabilities, from age 3 to under age 6, including those children who reach 5 years of age between September 1st and October 15th who are already receiving free, appropriate public education services through the Child Development Services System and whose parents choose, in accordance with rules adopted by the commissioner, not to enroll those children in kindergarten until the start of the following school year, have free, appropriate public education services available to them at no cost to the family;

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

- (1) Least restrictive environment;
- (2) Nondiscrimination;
- (3) Rights of parents, including, beginning in school year 2004-2005, the right to choose to not enroll in kindergarten until the start of the following school year a child with disabilities who is already receiving free, appropriate public education services through the Child Development Services

System and who will reach 5 years of age between September 1st and October 15th;

- (4) Free ~~and~~, appropriate public education 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;
- (15) Surrogate parents;
- (16) Standardized procedures and rates of payment for early intervention and free appropriate public education services; and
- (17) Frequency and intensity of developmental therapy and special instruction services;

**Sec. 6. Deappropriation from General Purpose Aid for Local Schools account to provide state funds for 5-year-old children who continue to receive free, appropriate public education services through Child Development Services System.** Notwithstanding any provision of the Maine Revised Statutes, Title 20-A, chapter 606 or 606-A, the Commissioner of Education shall determine the adjustment necessary to the statewide adjustment factor under section 15654, subsection 1, paragraph B in order to adjust for the amount of state funds that are deappropriated from the General Purpose Aid for Local Schools account in fiscal year 2004-05 to reflect the savings attributable to the delayed entry of the eligible 5-year-olds into kindergarten for the 2004-2005 school year.

**Sec. 7. Department of Education emergency rules; state and federal funding to provide free, appropriate public education services for eligible children of kindergarten age.** The Department of Education shall engage in emergency rulemaking under the Maine Administra-

tive Procedure Act in order to implement the continued provision of free, appropriate public education services authorized in this Act on or before August 6, 2004. Emergency rules must also include provisions regarding the continued payment and apportionment of state funds provided for free, appropriate public education services for eligible children, including the state and federal MaineCare payment for providing free, appropriate public education services to any child who is already receiving these services through the Child Development Services System or its successor system, and whose parent chooses not to enroll the child in kindergarten until the start of the 2005-2006 school year. For the purposes of this section, "free, appropriate public education services" means those services as described under the Maine Revised Statutes, Title 20-A, section 7725, subsection 5, and it is the intent of the Legislature that such services must continue to be provided to eligible children at no cost to the family. The Department of Education shall take steps to request and obtain any federal approval necessary to amend the State's plan for meeting requirements of the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1400, et seq. for the state fiscal year 2004-05.

**Sec. 8. Department of Human Services emergency rules; MaineCare reimbursement for free, appropriate public education services for eligible children of kindergarten age.** The Department of Human Services shall engage in emergency rulemaking under the Maine Administrative Procedure Act in order to implement the continued payment and apportionment of state and federal MaineCare funds authorized in this Act on or before August 6, 2004. The Department of Human Services shall obtain any federal approval necessary to amend the state plan for the utilization of state and federal Medicaid funds for the state fiscal year 2004-05.

**Sec. 9. Emergency major substantive rules; effective dates.** The major substantive rules adopted pursuant to this Act must be presented by the Department of Education and the Department of Human Services for legislative review in the First Regular Session of the 122nd Legislature, except that the Commissioner of Education and the Commissioner of Human Services may adopt emergency rules pursuant to the Maine Revised Statutes, Title 5, section 8073 for fiscal year 2004-05. Notwithstanding Title 5, section 8073 the emergency rules adopted in accordance with section 8 and this section may be effective until the Legislature has completed review of the provisionally adopted rules submitted by the Department of Education and the Department of Human Services in the manner provided by Title 5, section 8072.

**Sec. 10. Commissioner of Education plan to ensure greater equity of education opportu-**

**nities and efficiency in use of state and federal resources for eligible children from 3 years of age to under 6 years of age who have disabilities.** The Commissioner of Education shall develop and present a plan to ensure greater equity of education opportunities and greater efficiency in the use of early childhood education and preschool handicapped program resources, beginning no later than fiscal year 2005-06, for the continued implementation of free, appropriate public education services authorized in this Act for eligible children from 3 years of age to under 6 years of age who have a disability, pursuant to the Individuals with Disabilities Education Act, 20 United States Code, section 1400, et seq. In examining equity and efficiency in the use of state and federal resources for early childhood education and preschool handicapped programs, the commissioner shall take into consideration relevant factors, which may include, but are not limited to, data related to 5-year-old children in the general population who are eligible to enroll in kindergarten, child count, Medicaid eligibility rate and the reports of early childhood teams regarding the eligibility status of children with disabilities who will reach 5 years of age between September 1st and October 15th of each school year in the 2006-2007 state fiscal biennium. The commissioner shall present the plan described in this section to the joint standing committee of the Legislature having jurisdiction over education and cultural affairs during the 122nd Legislature on or before December 31, 2004. The joint standing committee of the Legislature having jurisdiction over education and cultural affairs is authorized to introduce legislation regarding the continued implementation of free, appropriate public education services authorized in this Act during the first regular session of the 122nd Legislature.

**Sec. 11. Appropriations and allocations.**

The following appropriations and allocations are made.

**EDUCATION, DEPARTMENT OF**

**General Purpose Aid for Local Schools 0308**

Initiative: Deappropriates funds in fiscal year 2004-05 to recognize the savings to local schools as a result of parents choosing to delay the entry of children who are currently receiving free, appropriate public education services through the Child Development Services System into kindergarten until the start of the following school year.

<b>General Fund</b>	<b>2003-04</b>	<b>2004-05</b>
All Other	\$0	(\$791,955)
General Fund Total	\$0	(\$791,955)

**Child Development Services 0449**

Initiative: Appropriates funds in fiscal year 2004-05 for the provision of services to children who are currently receiving free, appropriate public education services through the Child Development Services System and whose parents choose not to enroll them in kindergarten until the start of the following school year.

ment Services System and whose parents choose not to enroll them in kindergarten until the start of the following school year.

<b>General Fund</b>	<b>2003-04</b>	<b>2004-05</b>
All Other	\$0	\$475,519
General Fund Total	\$0	\$475,519
<b>EDUCATION, DEPARTMENT OF</b>		
<b>DEPARTMENT TOTALS</b>		
<b>General Fund</b>	<b>\$0</b>	<b>(\$316,436)</b>
<b>DEPARTMENT TOTAL -</b>		
<b>ALL FUNDS</b>	<b>\$0</b>	<b>(\$316,436)</b>

**HUMAN SERVICES, DEPARTMENT OF**

**Medical Care - Payments to Providers 0147**

Initiative: Appropriates funds in fiscal year 2004-05 for the provision of services to MaineCare-eligible children who are currently receiving free, appropriate public education services through the Child Development Services System and whose parents choose not to enroll them in kindergarten until the start of the following school year.

<b>General Fund</b>	<b>2003-04</b>	<b>2004-05</b>
All Other	\$0	\$223,119
General Fund Total	\$0	\$223,119
<b>Federal Expenditures Fund</b>	<b>2003-04</b>	<b>2004-05</b>
All Other	\$0	\$421,184
Federal Expenditures Fund Total	\$0	\$421,184

**HUMAN SERVICES, DEPARTMENT OF**

<b>DEPARTMENT TOTALS</b>		
<b>General Fund</b>	<b>\$0</b>	<b>\$223,119</b>
<b>Federal Expenditures Fund</b>	<b>0</b>	<b>421,184</b>
<b>DEPARTMENT TOTAL -</b>		
<b>ALL FUNDS</b>	<b>\$0</b>	<b>\$644,303</b>
<b>SECTION TOTALS</b>		
<b>General Fund</b>	<b>\$0</b>	<b>(\$93,317)</b>
<b>Federal Expenditures Fund</b>	<b>0</b>	<b>421,184</b>
<b>SECTION TOTAL -</b>		
<b>ALL FUNDS</b>	<b>\$0</b>	<b>\$327,867</b>

See title page for effective date.

**CHAPTER 677**

**S.P. 286 - L.D. 891**

**An Act To Require Law Enforcement Agencies To Adopt Policies Concerning Recording and Preservation of Interviews**

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