



# 128th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2018

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Legislative Document

No. 1902

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H.P. 1339

House of Representatives, April 9, 2018

**An Act To Implement Certain Recommendations of the Task Force  
To Identify Special Education Cost Drivers and Innovative  
Approaches to Services**

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Reported by Representative KORNFIELD of Bangor for the Joint Standing Committee on Education and Cultural Affairs pursuant to Resolve 2017, chapter 26, section 7.

Reference to the Committee on Education and Cultural Affairs suggested and ordered printed pursuant to Joint Rule 218.

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

ROBERT B. HUNT  
Clerk

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

2 **Sec. 1. 20-A MRSA §4502, sub-§5**, as amended by PL 2009, c. 313, §2, is  
3 further amended to read:

4 **5. Other requirements.** The state board and the commissioner shall jointly adopt  
5 basic school approval rules governing school administrative units and elementary and  
6 secondary schools. Beginning July 1, 2019, rules adopted by the state board and the  
7 commissioner pursuant to this subsection are major substantive rules as defined in Title 5,  
8 chapter 375, subchapter 2-A. These rules must set minimum requirements in the  
9 following areas, incorporating such requirements as are established by statute:

- 10 A. Instructional time, including a minimum school day and week;
- 11 B. Staffing, including student-teacher ratios that permit maximum student-teacher  
12 ratios of 25:1 school-wide for kindergarten to grade 8 and maximum student-teacher  
13 ratios of 30:1 school-wide for grades 9 to 12;
- 14 C. Physical facilities, incorporating the school construction rules of the state board;
- 15 D. Requirements for equipment and libraries;
- 16 E. Minimum school size, but including recognition of geographically isolated  
17 schools;
- 18 F. Grade and program organization;
- 19 G. Assessment and evaluation of student performance;
- 20 H. Student personnel services, including guidance and counseling and,  
21 notwithstanding any rules adopted by the department, comprehensive guidance plans  
22 to be approved by the commissioner;
- 23 I. Records, record keeping and reporting requirements;
- 24 J. Health, sanitation and safety requirements, including compliance with section  
25 6302;
- 26 K. School improvement;
- 27 L-1. A plan for training and development of all personnel that is aligned with the  
28 system of learning results as established in section 6209;
- 29 M. The use of time-out areas, administered in accordance with requirements adopted  
30 by the department and with this paragraph. The use of a time-out area is subject to  
31 the following:
  - 32 (1) The time-out area must be well ventilated and sufficiently lighted. The time-  
33 out area may not be locked; and
  - 34 (2) The time-out area must be designed to ensure the safety of the student so that  
35 the student is supervised by a professional staff member in the room or can be  
36 observed from outside of the time-out area and can be heard by a person  
37 supervising the time-out area;

1 N. Preparation of a written local policy and implementation of training for all  
2 unlicensed personnel who administer medication in accordance with the requirements  
3 under section 254, subsection 5;

4 O. Preparation of a written local policy and implementation of training for all  
5 guidance counselors and school personnel who administer reintegration planning  
6 pursuant to section 254, subsection 12, who participate in a reintegration team and  
7 who have access to confidential criminal justice information regarding juveniles  
8 pursuant to section 1055, subsection 12; ~~and~~

9 P. Provision of family outreach and support programs designed to improve parent-  
10 school relations and parenting skills consistent with section 4252, subsection 8; ~~and~~

11 Q. Response to intervention systems to ensure an all-encompassing, tiered system of  
12 support for general and special education students in accordance with section 4710.

13 **Sec. 2. 20-A MRSA §4710**, as enacted by PL 2009, c. 313, §10, is amended to  
14 read:

15 **§4710. Kindergarten to grade 12 response to intervention; tiered system of support**

16 By the school year that begins in the fall of 2012, all school administrative units shall  
17 develop and implement a system of ~~interventions~~ response to intervention for  
18 kindergarten to grade 12 that ~~provide~~ provides each student who is not progressing  
19 toward meeting the content standards of the parameters for essential instruction and  
20 graduation requirements with different learning experiences or assistance to achieve the  
21 standard. The ~~interventions~~ response to intervention must be specific, timely and based  
22 upon ongoing formative assessments that continuously monitor student progress.

23 **1. Tiered system of support.** By the school year that begins in the fall of 2019, all  
24 school administrative units shall enhance and upgrade the system of response to  
25 intervention for prekindergarten to grade 12 to become an all-encompassing, tiered  
26 system of support that provides each general and special education student who is not  
27 progressing toward meeting the content standards of the parameters for essential  
28 instruction and graduation requirements with different learning experiences or assistance  
29 to achieve the standards.

30 **Sec. 3. 20-A MRSA §13019-H, sub-§2**, as enacted by PL 2017, c. 235, §25 and  
31 affected by §41, is amended to read:

32 **2. Qualifications.** The state board shall adopt rules establishing the qualifications  
33 and supervision for an educational technician certificate. The rules must recognize  
34 applicable work experience credits earned by educational technicians through completion  
35 of any work apprenticeship program offered by the Department of Labor. Rules adopted  
36 under this subsection are routine technical rules pursuant to Title 5, chapter 375,  
37 subchapter 2-A.

38 **Sec. 4. 20-A MRSA §15681-A, sub-§2, ¶D**, as amended by PL 2017, c. 284, Pt.  
39 C, §37 and affected by §66, is further amended to read:

1 D. Beginning July 1, 2018, to ensure the school administrative unit meets the federal  
2 maintenance of effort requirement for receiving federal Individuals with Disabilities  
3 Education Act funds in accordance with recommendations of any legislative task  
4 force established in the First Regular Session of the 128th Legislature to identify  
5 special education cost drivers and innovative approaches to services; and.

6 This paragraph is repealed July 1, 2019;

7 **Sec. 5. 20-A MRSA §15681-A, sub-§2, ¶D-1** is enacted to read:

8 D-1. Beginning July 1, 2019, to assist school administrative units in meeting the  
9 federal maintenance of effort requirement for receiving federal Individuals with  
10 Disabilities Education Act funds. The additional allocation under this paragraph is  
11 limited by a statewide average per-pupil special education under-allocation rate  
12 calculated as follows:

13 (1) First, for each school administrative unit, the difference between the EPS  
14 special education allocation, not including any funds received under this  
15 paragraph, and that school administrative unit's most recent adjusted special  
16 education expenditures must be calculated;

17 (2) Second, the sum of the calculations made under subparagraph (1) for all  
18 school administrative units must be calculated; and

19 (3) Third, the sum arrived at under subparagraph (2) must be divided by the  
20 statewide special education child count to arrive at the statewide average per-  
21 pupil special education under-allocation rate.

22 The statewide average per-pupil special education under-allocation rate must be  
23 updated to reflect appropriate trends in the Consumer Price Index or other  
24 comparable index, plus 1%. If the difference between a school administrative unit's  
25 EPS special education allocation, not including any funds received under this  
26 paragraph, and the school administrative unit's most recent adjusted special education  
27 expenditures, divided by the school administrative unit's special education child count  
28 results in a per-pupil amount that is greater than the statewide average per-pupil  
29 special education under-allocation rate, then the additional allocation under this  
30 paragraph is limited to the statewide average per-pupil special education under-  
31 allocation rate times the school administrative unit's special education child count. If  
32 the difference between a school administrative unit's EPS special education  
33 allocation, not including any funds received under this paragraph, and the school  
34 administrative unit's most recent adjusted special education expenditures, divided by  
35 the school administrative unit's special education child count results in a per-pupil  
36 amount that is equal to or less than the statewide average per-pupil special education  
37 under-allocation rate, that unit's additional allocation under this paragraph is the  
38 amount of the difference between the school administrative unit's EPS special  
39 education allocation, not including any funds received under this paragraph, and the  
40 school administrative unit's most recent adjusted special education expenditures; and

41 **Sec. 6. Collaboration between general education and special education.**

42 The Department of Education shall facilitate a process to help schools apply for targeted  
43 assistance through federal Title I funds in order to become eligible for shared funding for

1 the development of school-wide programs designated under the federal Every Student  
2 Succeeds Act, 20 United States Code, Section 6315(a), and related regulations to support  
3 the continued and increased collaboration for comprehensive reform strategies to raise the  
4 achievement levels of all general education and special education students. The  
5 Department of Education, with input from state and local education policy experts and  
6 stakeholders, shall inform school administrative units about the potential advantages of  
7 applying for targeted assistance and the procedures for receiving Title I funds by  
8 including the program information on the department's publicly accessible website.

9 **Sec. 7. Dual certification programs.** The Department of Education and the  
10 State Board of Education shall address special education staffing shortages by reviewing  
11 the certification processes in order to reduce barriers to obtaining special education and  
12 related certifications, including, without limitation, certifications for special education  
13 teachers, reading and math specialists and paraprofessionals. The department and the  
14 state board shall collaborate with both state and local education policy makers to design  
15 and promote the use of dual certification programs at the university level whereby Maine  
16 students are able to graduate and obtain certification in both general and special  
17 education. The department and the state board shall investigate the opportunities for  
18 promoting dual certification programs and shall jointly report their feedback, findings and  
19 recommendations to the joint standing committee of the Legislature having jurisdiction  
20 over education and cultural affairs no later than January 15, 2019. After receipt and  
21 review of the report, the joint standing committee may report out legislation regarding the  
22 establishment of dual certification programs to the First Regular Session of the 129th  
23 Legislature.

24 **Sec. 8. Alternative pathway approaches for educational technicians.** The  
25 Department of Education shall design a program of alternative pathway approaches to  
26 special education certification for educational technicians based on the Department of  
27 Labor's apprenticeship program. If such an apprenticeship program is not in place, the  
28 Department of Labor shall collaborate with the Department of Education to advance the  
29 special education certification program. The departments shall jointly report their  
30 findings and recommendations to the joint standing committee of the Legislature having  
31 jurisdiction over education and cultural affairs no later than January 15, 2019. After  
32 receipt and review of the report, the joint standing committee may report out legislation  
33 regarding the requirements for alternative pathway approaches for educational  
34 technicians to the First Regular Session of the 129th Legislature.

35 **Sec. 9. Recodification of the Maine Revised Statutes, Title 20-A, Part 4,**  
36 **subpart 1.** The Office of Policy and Legal Analysis and the Office of the Revisor of  
37 Statutes, referred to in this section as "legislative staff," shall prepare a recodification of  
38 the Maine Revised Statutes, Title 20-A, Part 4, subpart 1, concerning special education,  
39 for introduction in the Second Regular Session of the 129th Legislature. Legislative staff  
40 may consult with the Department of Education, the State Board of Education, the  
41 Department of Health and Human Services, the Office of the Attorney General and other  
42 interested parties in preparing the recodification.

1 Legislative staff shall submit the recodification under this section to the joint standing  
2 committee of the Legislature having jurisdiction over education and cultural affairs no  
3 later than January 15, 2020.

4 **Sec. 10. Review and revision of the state special education rules to**  
5 **improve usefulness, readability and clarity.** The Department of Education shall  
6 review and revise Rule Chapter 101, the Maine Unified Special Education Regulations, in  
7 order to streamline and realign the rule to make the provisions more organized and  
8 readable so that they provide the proper grammar, consistency and clarity for the  
9 regulatory framework for the appropriate administration and delivery of special education  
10 programs and services in Maine.

11 **Sec. 11. Streamline special education paperwork requirements.** The  
12 Department of Education shall streamline and reduce state requirements related to special  
13 education paperwork so that teachers can dedicate more time to direct student instruction  
14 by:

15 1. Reviewing the regulations in Rule Chapter 101, the Maine Unified Special  
16 Education Regulations, to identify where paperwork and documentation requirements  
17 may exceed federal regulations and proposing changes to streamline the state  
18 requirements in order to reduce redundancy and bring state and federal regulations into  
19 alignment;

20 2. Reviewing the standardized forms to identify duplication and implementing  
21 changes to reduce redundancy; and

22 3. Collecting data on time spent on special education paperwork and meetings by  
23 general education and special education teachers, under current state baseline  
24 requirements.

25 Following its investigation of the opportunities for streamlining and reducing special  
26 education paperwork requirements, the department shall report its findings and  
27 recommendations to implement proposed rule changes to the joint standing committee of  
28 the Legislature having jurisdiction over education and cultural affairs no later than  
29 January 15, 2019. After receipt and review of the report, the joint standing committee  
30 may report out legislation regarding the requirements related to special education  
31 paperwork to the First Regular Session of the 129th Legislature.

32 **Sec. 12. Review of allocation to assist school administrative units in**  
33 **meeting the federal maintenance of effort requirement for receiving federal**  
34 **Individuals with Disabilities Education Act funds.** The Department of Education  
35 shall review the federal and state funding formulas to increase the equity of special  
36 education allocations across all school administrative units. The department shall  
37 specifically review the allocation provided under the Maine Revised Statutes, Title 20-A,  
38 section 15681-A, subsection 2, paragraph D-1 to determine whether any adjustments are  
39 appropriate. The department shall report its findings and recommendations for any  
40 statutory changes to the joint standing committee of the Legislature having jurisdiction  
41 over education and cultural affairs not later than January 15, 2019. After receipt and

1 review of the report, the committee may report out a bill related to increasing the equity  
2 of special education allocations across all school administrative units.

3 **Sec. 13. Review and improvement of MaineCare billing systems and**  
4 **procedures.** The Department of Education shall collaborate with the Department of  
5 Health and Human Services to create a regional pilot program that uses a state agency  
6 navigator to provide seed money to school administrative units for MaineCare billing  
7 purposes for medically necessary services. In order to gather input from the regional  
8 pilot program's stakeholders, the departments shall establish a working group to review  
9 and address the problems in the current MaineCare billing systems and processes for  
10 medically necessary services including:

11 1. Improving the distribution of seed money to remove barriers for school  
12 administrative units to provide medically necessary services, particularly with respect to  
13 students sent to special purpose private schools;

14 2. Considering regional collaborative billing for public schools or for regional  
15 service centers that are beyond a billing center; and

16 3. Having a state agency navigator provide support for accessing funds for medically  
17 necessary services.

18 Following the conclusion of the regional pilot program, the Department of Education  
19 and the Department of Health and Human Services working group shall establish a time  
20 frame to implement policies and rules to improve the quality of MaineCare billing  
21 services and the reduction of risks and administrative burdens for school administrative  
22 units by fiscal year 2019-20. The departments shall jointly report their findings and  
23 recommendations to the joint standing committees of the Legislature having jurisdiction  
24 over education and cultural affairs and health and human services matters no later than  
25 January 15, 2019. After receipt and review of the report, the joint standing committees  
26 may report out legislation regarding the requirements for the MaineCare billing systems  
27 to the First Regular Session of the 129th Legislature.

28 **Sec. 14. Explore and address the costs associated with special education**  
29 **litigation and educational program materials.** The joint standing committee of the  
30 Legislature having jurisdiction over education and cultural affairs shall submit a request  
31 for consideration by the steering committee of the Maine Education Policy Research  
32 Institute to include a research project in the cooperative project agreement approved for  
33 fiscal year 2018-19 to investigate and address the costs associated with special education  
34 litigation and educational program materials to determine the actual cost to school  
35 districts and how to reduce those costs. The Maine Education Policy Research Institute  
36 shall gather additional information on what is driving special education litigation and on  
37 the actual costs of the litigation to school administrative units. The research project must  
38 analyze the drivers and associated costs of litigation with a goal of reducing litigation  
39 costs while still providing special education services that meet the needs of the students.  
40 Should the research project be included in the cooperative project agreement approved for  
41 fiscal year 2018-19, the Maine Education Policy Research Institute shall report the

1 findings and recommendations to the joint standing committee of the Legislature having  
2 jurisdiction over education and cultural affairs no later than January 15, 2019.

3 **SUMMARY**

4 This bill is reported out by the Joint Standing Committee on Education and Cultural  
5 Affairs pursuant to Resolve 2017, chapter 26, section 7. The bill includes certain  
6 recommendations proposed in the report submitted by the Task Force To Identify Special  
7 Education Cost Drivers and Innovative Approaches to Services established for  
8 consideration by the 128th Legislature.

9 The joint standing committee has not taken a position on the substance of the report  
10 or this bill; and by submitting this bill the committee is not suggesting and does not  
11 intend to suggest that it agrees or disagrees with any aspect of the recommendations and  
12 the necessary changes to the Maine Revised Statutes, Title 20-A included in the report or  
13 this bill. The joint standing committee is submitting the bill for the sole purpose of  
14 turning certain proposals in the report into a printed bill that can be referred to the  
15 committee for an appropriate public hearing and subsequent processing in the normal  
16 course of business. The joint standing committee is taking this action to ensure clarity and  
17 transparency in the legislative review of the proposals included in the report submitted by  
18 the Task Force To Identify Special Education Cost Drivers and Innovative Approaches to  
19 Services.