



128th MAINE LEGISLATURE

SECOND REGULAR SESSION-2018

Legislative Document

No. 1870

S.P. 713

In Senate, March 20, 2018

**An Act To Reorganize the Provision of Services for Children with
Disabilities from Birth to 5 Years of Age**

Submitted by the Department of Education pursuant to Joint Rule 203.
Reference to the Committee on Education and Cultural Affairs suggested and ordered
printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator LANGLEY of Hancock.

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

2 **Sec. 1. 5 MRSA §285, sub-§1, ¶F-7**, as corrected by RR 2009, c. 1, §5, is
3 repealed.

4 **Sec. 2. 5 MRSA §12021, sub-§6, ¶A**, as enacted by PL 2011, c. 616, Pt. A, §1, is
5 repealed.

6 **Sec. 3. 20-A MRSA §1001, sub-§9-B**, as amended by PL 2005, c. 662, Pt. A, §6,
7 is further amended to read:

8 **9-B. Disciplinary sanctions for children with disabilities.** They retain the
9 authority to sanction a child with a disability as defined in section 7001, subsection ~~4-A~~
10 1-B for misconduct that violates school rules. Notwithstanding the duties of school
11 administrative units as described in section 7202, the school board may authorize the
12 superintendent, principal or assistant principal to enforce this subsection by allowing the
13 superintendent, principal or assistant principal to suspend a child with a disability up to a
14 maximum of 10 days individually or cumulatively for infractions of school rules. When a
15 child with a disability is suspended for 10 days or less individually or cumulatively within
16 a school year for a violation of school rules, the school board is not required to provide a
17 tutor, transportation or any other aspect of the student's special education program.
18 Discipline of children with disabilities must be consistent with the requirements of the
19 federal Individuals with Disabilities Education Act, 20 United States Code, Section
20 1415(k).

21 **Sec. 4. 20-A MRSA §5201, sub-§3, ¶E**, as amended by PL 2005, c. 662, Pt. A,
22 §12, is further amended to read:

23 E. The eligibility for a child with a disability is governed by section 7001, subsection
24 ~~4-A~~ 1-B.

25 **Sec. 5. 20-A MRSA §6202, first ¶**, as amended by PL 2015, c. 40, §4, is further
26 amended to read:

27 The commissioner shall establish a statewide assessment program to measure and
28 evaluate on a continuing basis the academic achievements of students in grades 3 to 12 on
29 the accountability standards set forth in section 6209 and in department rules
30 implementing that section and other curricular requirements. The commissioner may
31 elect to provide for the use of alternative measures of student achievement in grades 9 to
32 12. This assessment applies to students in the public elementary and secondary schools,
33 in public charter schools, as that term is defined in section 2401, subsection 9, and in all
34 private schools approved for tuition whose school enrollments include at least 60%
35 publicly funded students, as determined by the previous school year's October and April
36 average enrollment. The assessment program must be adapted to meet the needs of
37 children with disabilities as defined in section 7001, subsection ~~4-A~~ 1-B or other students
38 as defined under rules by the commissioner.

39 **Sec. 6. 20-A MRSA §7001, sub-§1-A**, as amended by PL 2011, c. 655, Pt. OO,
40 §1, is repealed.

1 **Sec. 7. 20-A MRSA §7001, sub-§1-B**, as amended by PL 2011, c. 542, Pt. A,
2 §21, is further amended to read:

3 **1-B. Child with a disability.** "Child with a disability" means:

4 ~~A. For children from birth to under 3 years of age:~~

5 ~~(1) A child who needs early intervention services because the child has a~~
6 ~~significant developmental delay, as measured by both diagnostically appropriate~~
7 ~~instruments and procedures, in one or more of the following areas: cognitive~~
8 ~~development; physical development, including vision and hearing;~~
9 ~~communication development; social or emotional development; and adaptive~~
10 ~~development; or~~

11 ~~(2) A child with a diagnosed physical or mental condition that has a high~~
12 ~~probability of resulting in a developmental delay, with the condition being such~~
13 ~~that the child needs early intervention services; or~~

14 B. For children at least 3 years of age and under 20 years of age evaluated in
15 accordance with the federal Individuals with Disabilities Education Act, 20 United
16 States Code, Section 1414, subsections (a) to (c) as measured by both standardized,
17 norm-referenced diagnostic instruments and appropriate procedures with delays or
18 impairments such that the children need special education:

19 (1) A child at least 3 years of age and under 6 years of age with a significant
20 developmental delay, at the discretion of the ~~intermediate educational unit or~~
21 school administrative unit, as defined in rules adopted by the department, in one
22 or more of the following areas: cognitive development; physical development,
23 including vision and hearing; communication development; social or emotional
24 development; and adaptive development; or

25 (2) A child with at least one of the following:

- 26 (a) Intellectual disability;
- 27 (b) Hearing impairment, including deafness;
- 28 (c) Speech or language impairment;
- 29 (d) Visual impairment, including blindness;
- 30 (e) Serious emotional disturbance;
- 31 (f) Orthopedic impairment;
- 32 (g) Autism;
- 33 (h) Traumatic brain injury;
- 34 (i) Other health impairment;
- 35 (j) Specific learning disabilities;
- 36 (k) Deafness and blindness; and
- 37 (l) Multiple disabilities.

1 **Sec. 8. 20-A MRSA §7001, sub-§1-C**, as enacted by PL 2005, c. 662, Pt. A, §15,
2 is amended to read:

3 **1-C. Early intervention services.** "Early intervention services" means
4 developmental services that are provided under public supervision; are provided at no
5 cost except where federal or state law provides for a system of payments by families,
6 including a schedule of sliding fees; are designed to meet the developmental needs of a
7 ~~child~~ an infant or toddler with a disability, as identified by the individualized family
8 service plan team, in one or more areas including physical development, cognitive
9 development, communication development, social or emotional development and
10 adaptive development; meet the standards of the State; are provided by qualified
11 personnel; to the maximum extent appropriate, are provided in natural environments,
12 including the home, and community settings in which ~~children~~ infants or toddlers without
13 disabilities participate; and are provided in conformity with an individualized family
14 service plan.

15 **Sec. 9. 20-A MRSA §7001, sub-§2-A**, as amended by PL 2011, c. 477, Pt. F, §1,
16 is further amended to read:

17 **2-A. Free, appropriate public education.** "Free, appropriate public education"
18 means special education and related services that are provided at public expense, under
19 public supervision and direction and without charge; meet the standards of the
20 department; include an appropriate preschool, elementary school or secondary school
21 education in the State; and are provided in conformity with the individualized family
22 service plan or individualized education program. ~~The Child Development Services~~
23 ~~System shall provide free, appropriate public education to a preschool child with~~
24 ~~disabilities who reaches 5 years of age between July 1st and October 15th if that child is~~
25 ~~already receiving free, appropriate public education through the Child Development~~
26 ~~Services System and the child's individualized education program team determines, in~~
27 ~~accordance with rules adopted by the commissioner, that it is in the best interest of the~~
28 ~~child not to enroll that child in kindergarten until the start of the following school year.~~

29 **Sec. 10. 20-A MRSA §7001, sub-§2-B**, as amended by PL 2011, c. 655, Pt. OO,
30 §2, is repealed.

31 **Sec. 11. 20-A MRSA §7001, sub-§2-D** is enacted to read:

32 **2-D. Infant or toddler with a disability.** "Infant or toddler with a disability" means
33 a child from birth to under 3 years of age:

34 A. Who needs early intervention services because the child has a significant
35 developmental delay, as measured by both diagnostically appropriate instruments and
36 procedures, in one or more of the following areas: cognitive development; physical
37 development, including vision and hearing; communication development; social or
38 emotional development; and adaptive development; or

39 B. With a diagnosed physical or mental condition that has a high probability of
40 resulting in a developmental delay, with the condition being such that the child needs
41 early intervention services.

1 **Sec. 12. 20-A MRSA §7006**, as enacted by PL 2005, c. 662, Pt. A, §20, is
2 amended to read:

3 **§7006. Responsibility**

4 The Department of Education is designated as the state education agency responsible
5 for carrying out the State's obligations under the federal Individuals with Disabilities
6 Education Act, 20 United States Code, Section 1400 et seq., as amended. The department
7 and every school administrative unit, ~~intermediate educational unit~~, public school or other
8 public agency that receives federal or state funds to provide early intervention or free,
9 appropriate public education services to children with disabilities shall comply with the
10 federal Individuals with Disabilities Education Act, as amended, and all federal
11 regulations adopted under the Act.

12 **Sec. 13. 20-A MRSA §7204, sub-§4**, as amended by PL 2005, c. 662, Pt. A, §25,
13 is further amended to read:

14 **4. Program approval.** Shall approve plans for all ~~early intervention and~~ special
15 education programs. The criteria for approval must include:

- 16 A. Requirements for admission;
- 17 B. Qualification or certification of staff;
- 18 C. Plan of instruction;
- 19 D. Adequacy of facilities;
- 20 E. Adequacy of supportive services;
- 21 F. Professional supervision; and
- 22 G. Teacher-student ratio;

23 **Sec. 14. 20-A MRSA §7209**, as amended by PL 2017, c. 284, Pt. SSS, §1 and Pt.
24 AAAAAA, §§1 and 2, is further amended to read:

25 **§7209. General administration and supervision**

26 **1. Department of Education.** The department shall serve as the lead agency for the
27 statewide system pursuant to 20 United States Code, Section 1435, including the
28 identification and coordination of all available resources within the State for services to
29 eligible ~~children from birth to under 3 years of age, and shall exercise general supervisory~~
30 ~~authority over child find as provided in 20 United States Code, Section 1412 (a) (3) and~~
31 ~~the provision of a free, appropriate public education to children at least 3 years of age and~~
32 ~~under 6 years of age~~ infants and toddlers with disabilities.

- 33 A. The commissioner is responsible for developing and adopting rules necessary to
34 carry out the provisions of Part C of the federal Individuals with Disabilities
35 ~~Education Act, Part B, Section 619 and Part C~~, 20 United States Code, Section 1400
36 et seq.

1 B-1. The commissioner or the commissioner's designee is responsible for developing
2 and implementing a funding mechanism for the operation of the state intermediate
3 educational unit established pursuant to subsection 3 and the delivery of services to
4 eligible children with disabilities from birth to under 6 years of age.

5 C. The commissioner or the commissioner's designee is responsible for ensuring
6 legal and policy compliance throughout the early childhood special education
7 program by reviewing or performing regular audits of program records.

8 D. The commissioner or the commissioner's designee is responsible for ensuring
9 fiscal compliance throughout the early childhood special education program by
10 reviewing or performing regular audits of program records.

11 E. The department shall develop a corrective action plan with timelines to achieve
12 compliance with federal or state law. The department shall report at least quarterly to
13 the state interagency coordinating council described in 20 United States Code,
14 Section 1441, to the state advisory panel described in 34 Code of Federal
15 Regulations, Sections 300.167 to 300.169 and to other advisory bodies that may be
16 appropriate about individual regional sites that are under a corrective action plan.
17 These reports must describe any progress or slippage by individual regional sites in
18 meeting compliance requirements. For an individual regional site under a corrective
19 action plan, the reports must describe how long the department expects the regional
20 site to remain under a corrective action plan.

21 F. The department is responsible for the provision of early intervention services to
22 eligible infants and toddlers with disabilities and their families. The department shall
23 employ or contract with appropriate qualified personnel to provide these early
24 intervention services.

25 **3. State intermediate educational unit establishment; administrative functions.**

26 The commissioner shall establish and supervise the state intermediate educational unit.
27 The state intermediate educational unit is established as a body corporate and politic and
28 as a public instrumentality of the State for the purpose of conducting child find activities
29 as provided in 20 United States Code, Section 1412 (a) (3) for children from birth to
30 under 6 years of age, ensuring the provision of early intervention services for eligible
31 children from birth to under 3 years of age and ensuring a free, appropriate public
32 education for eligible children at least 3 years of age and under 6 years of age. The state
33 intermediate educational unit shall perform the following statewide coordination and
34 administration functions:

35 A. Establish standard policies and procedures for a statewide salary and benefits
36 administration system, including personnel classifications, position descriptions and
37 salary ranges, and a standard package of health, retirement and other fringe benefits
38 for Child Development Services System personnel, beginning in fiscal year 2006-07;

39 B. Develop a statewide salary and benefits administration system and perform the
40 payroll functions for Child Development Services System personnel;

41 B-1. Bargain collectively under Title 26, chapter 9-A if the employees of the
42 regional sites choose to be represented by an agent for purposes of collective

- 1 bargaining. In such circumstances, the state intermediate educational unit must be
2 considered the public employer for purposes of collective bargaining;
- 3 C. Establish a centralized system for statewide fiscal administration to be
4 implemented by September 1, 2006. The state intermediate educational unit shall
5 establish internal controls and implement accounting policies and procedures in
6 accordance with standards set forth by the State Controller;
- 7 D. Develop and implement a centralized data management system to be fully
8 operational beginning July 1, 2007;
- 9 E. Establish a standard, statewide template for regional site contracts with
10 therapeutic service providers, including policies and procedures for the review of
11 contracts, beginning in fiscal year 2006-07;
- 12 F. Refine program accountability standards for compliance with federal mandates,
13 including the development of a performance review system to monitor and improve
14 regional site performance through the use of efficiency ratings aligned with the
15 accountability standards and through a compliance plan that requires the regional site
16 to address the unmet needs of eligible children in accordance with specific targets and
17 time frames;
- 18 G. Design and implement a statewide plan to provide professional development and
19 training to Child Development Services System personnel;
- 20 H. Employ professional and other personnel at the state level and at the regional
21 sites, including those necessary to ensure the implementation of the centralized fiscal
22 and data management systems. All state intermediate educational unit employees are
23 employees for the purposes of the Maine Tort Claims Act; and
- 24 I. Enter into contracts, leases and agreements and any other instruments and
25 arrangements that are necessary, incidental or convenient to the performance of its
26 duties and the execution of its powers under this chapter.
- 27 **3-A. State intermediate educational unit; program functions.** The state
28 intermediate educational unit established pursuant to subsection 3, through a network of
29 regional sites as appropriate, shall:
- 30 A. Engage in child find activities as required by the federal Individuals with
31 Disabilities Education Act, 20 United States Code, Section 1400 et seq.;
- 32 B. Engage in child count activities as required by the federal Individuals with
33 Disabilities Education Act, 20 United States Code, Section 1400 et seq.;
- 34 C. Engage in appropriate data collection, training, staff development and direct
35 service provision to eligible children with disabilities, from birth to under 3 years of
36 age, in accordance with Part C of the federal Individuals with Disabilities Education
37 Act, 20 United States Code, Section 1400 et seq.;
- 38 D. Ensure that eligible children with disabilities, from birth to under 3 years of age,
39 receive early intervention services, in accordance with the payment provisions
40 established by the State;

1 E. Ensure that eligible children with disabilities, from 3 years of age to under 6 years
2 of age, receive free, appropriate public education services;

3 F. Coordinate with eligible families the development of individualized family service
4 plans for children with disabilities from birth to 2 years of age or coordinate an
5 individualized education program for a child 3 years of age to under 6 years of age;

6 G. Ensure that children from birth until 6 years of age who are referred to the Child
7 Development Services System also receive appropriate referrals for support outside
8 of the system, including appropriate public and private programmatic resources,
9 regardless of a child's eligibility for early intervention or free, appropriate public
10 education; and

11 H. Engage in appropriate training and staff development for identification of and to
12 provide intervention services for children with autism.

13 **4. Director of early childhood special education and intervention services.** The
14 commissioner or the commissioner's designee director of the office of special services
15 within the department shall appoint hire and supervise a director of early childhood
16 special education and intervention services. The director of early childhood special
17 education and intervention services has the following powers and duties:

18 A. To administer the state intermediate educational unit established under subsection
19 3 and programs established pursuant to subsection 3-A oversee the provision of early
20 intervention services to all eligible infants and toddlers with disabilities and their
21 families in the State. The director shall develop operating policies and establish
22 organizational and operational procedures that include supervision of service
23 providers, monitoring, data and accountability structures to meet the requirements of
24 the federal Individuals with Disabilities Education Act, Part B, Section 619 and Part
25 C, 20 United States Code, Section 1400 et seq.; and

26 A-1. To oversee the operation of the regional sites;

27 B. To develop statewide policies and procedures for carrying out federal and state
28 laws and rules relating to ~~child find~~, early intervention services and the provision of a
29 free, appropriate public education to children from birth to under 6 years of age; the
30 provisions of the federal Individuals with Disabilities Education Act, Part C, 20
31 United States Code, Section 1400 et seq.

32 C. To provide training in federal and state laws, regulations, rules and policies
33 relating to ~~child find~~ as provided in 20 United States Code, Section 1412 (a) (3), early
34 intervention services and the provision of a free, appropriate public education to
35 children from birth to under 6 years of age and to conduct regular file reviews to
36 determine compliance with federal and state laws, regulations, rules and policies and
37 conduct training and provide technical assistance where deficiencies are found;

38 E. To report annually by February 15th to the joint standing committee of the
39 Legislature having jurisdiction over education and cultural affairs, the joint standing
40 committee of the Legislature having jurisdiction over health and human services
41 matters and the joint standing committee of the Legislature having jurisdiction over
42 appropriations and financial affairs on the performance of the Child Development

1 Services System. This report must be posted on the publicly accessible website of the
2 department. The report must include:

3 (1) The following financial information for the Child Development Services
4 System in total and separately for the services provided to eligible children from
5 birth to under 3 years of age and at least 3 years of age and under 6 years of age
6 when the information can be separated for these age categories:

7 (a) Actual expenditures compared to the budget for each of the last 3 fiscal
8 years for each regional site, the central office and the total Child
9 Development Services System by function, including case management,
10 direct services and administration;

11 (b) Actual expenditures compared to the budget for each of the last 3 fiscal
12 years for each regional site, the central office and the total Child
13 Development Services System by expense type, including salaries, benefits,
14 contracted services and transportation;

15 (c) Actual revenues received compared to the budget for each of the last 3
16 fiscal years by revenue source; and

17 (d) The total dollar value of MaineCare claims paid through the Department
18 of Health and Human Services for each of the last 3 fiscal years for services
19 provided pursuant to children's individualized education programs or
20 individualized family service plans that were billed directly to the MaineCare
21 program by contracted service providers;

22 (2) The following data for the Child Development Services System in total and
23 separately for the services provided to eligible children from birth to under 3
24 years of age and at least 3 years of age and under 6 years of age, including
25 descriptions of any notable variations in these data among regional sites and any
26 notable year to year trends over the past 5 years:

27 (a) The number of children referred to the Child Development Services
28 System in the prior year by referral source, including the screening programs
29 in Title 22, sections 1532, 8824 and 8943, and the percentage of children
30 referred found eligible for services;

31 (b) The number of children who entered the Child Development Services
32 System in the prior year, categorized by primary disability;

33 (c) The number of children who exited the Child Development Services
34 System in the prior year, categorized by primary disability and the reason for
35 exit;

36 (d) The number of children who transitioned in the prior year from early
37 intervention services for children from birth to under 3 years of age to special
38 education and related services for children at least 3 years of age and under 6
39 years of age;

40 (e) The unduplicated count of children who received direct services as of
41 December 1st in the prior year;

- 1 (f) The number of children who received direct services in the prior year by
2 regional site and in total for the Child Development Services System,
3 categorized by primary disability;
- 4 (g) For each primary disability category, the number of children who
5 received, in the prior year, each primary type of therapy or service;
- 6 (h) The percentage of children who received direct services in the prior year
7 who had MaineCare coverage for all or some of the services specified in their
8 individualized education programs or individualized family service plans and
9 the percentage of children who received direct services in the prior year who
10 had private insurance coverage for all or some of the services specified in
11 their individualized education programs or individualized family service
12 plans;
- 13 (i) Beginning January 1, 2015, the number of children who received direct
14 services in the prior year who were born in the State and the number of
15 children who received direct services in the prior year who were born in the
16 State and who were delivered at home;
- 17 (j) Beginning January 1, 2015, the total number of children who were
18 referred in the prior year for support outside of the Child Development
19 Services System under subsection 3-A, paragraph G and the number of
20 children who received direct services in the prior year who were referred for
21 support outside of the Child Development Services System under subsection
22 3-A, paragraph G; and
- 23 (k) Beginning January 1, 2015, the number of children who received direct
24 services in the prior year who received all of the services in their
25 individualized family service plan or individualized education program and
26 the number of children who received direct services in the prior year who
27 received less than 90% of the services in their individualized family service
28 plan or individualized education program;
- 29 (3) A listing of the regional sites and their locations and the following data for
30 the Child Development Services System in total and by regional site, including
31 descriptions of any notable variations in these statistics among regional sites and
32 any notable year-to-year trends over the past 5 fiscal years:
- 33 (a) The total number of employees by function and the number of new
34 employees hired in the prior fiscal year by function;
- 35 (b) The number of private providers that contracted with the Child
36 Development Services System to provide direct services, including
37 transportation services, and the number of contracted providers delivering
38 each type of service in the prior fiscal year;
- 39 (c) The number of children who received direct services provided by Child
40 Development Services System employees in the prior fiscal year and the
41 number of children who received direct services provided by contracted
42 private providers in the prior fiscal year;

- 1 (d) The number of preschool or day care programs operated by each regional
2 site, the average enrollment in each program, the percentage of enrollees that
3 are children receiving services under individualized education programs or
4 individualized family service plans and expenses and revenues for the prior
5 fiscal year associated with the programs in each site; and
- 6 (e) The number of children who received direct services in the prior fiscal
7 year while placed in preschool programs operated by public school systems;
- 8 (4) Statistics and analysis of the following Child Development Services System
9 performance measures for the prior fiscal year, including descriptions of any
10 notable variations in these measures among regional sites and any notable year-
11 to-year trends over the past 5 fiscal years:
- 12 (a) Measures of compliance with key federal requirements related to
13 timeliness, quality and effectiveness of service as set out in required annual
14 federal reporting under the federal Individuals with Disabilities Education
15 Act;
- 16 (b) Measures of compliance with key state requirements related to
17 timeliness, quality and effectiveness of service as set out in statute and rules;
- 18 (c) Measures of productivity for Child Development Services System
19 employees providing case management and direct services to children;
- 20 (d) Measures of per unit costs, including the average cost of delivered
21 services per child by primary disability type, the average cost per unit of each
22 type of therapy or service delivered by Child Development Services System
23 staff and the average cost per unit of each type of therapy or service delivered
24 by contracted providers;
- 25 (e) Beginning January 1, 2015, the average age, both in aggregate and by
26 primary disability type, at which children who were born in the State began
27 receiving services from the Child Development Services System and the
28 average age, both in aggregate and by primary disability type, at which
29 children who were born in the State and who were delivered at home began
30 receiving services from the Child Development Services System; and
- 31 (f) Any other performance goals and measures established by the Child
32 Development Services System to monitor effectiveness, efficiency and the
33 cost of the Child Development Services System, which may include results
34 of surveys of parents and guardians on the quality and effectiveness of
35 services;
- 36 (5) Beginning January 1, 2015, a report by each regional site in the Child
37 Development Services System demonstrating trends of Child Development
38 Services System employee costs and the results of coordination, utilization and
39 development of services with a broad base of community resources, including
40 private providers and public schools, midwives, resources from other agencies
41 and other resources serving families and children from birth to under 6 years of
42 age, consistent with the provisions of Title 22, section 3571, subsection 3; and

1 (6) A description of current and emerging trends and challenges that are having
2 an effect on or are expected to have an effect on costs, services or service
3 delivery methods of the Child Development Services System; and

4 F. ~~To provide the following data by the 20th day of each month to the Office of~~
5 ~~Fiscal and Program Review, either in a monthly report or by providing the office~~
6 ~~electronic access to the computer systems and applications by which the raw data are~~
7 ~~stored, for each regional site and the central office:~~

8 (1) ~~Monthly actual and budgeted revenue by funding source for the prior month;~~
9 ~~and~~

10 (2) ~~Monthly actual and budgeted expenditures by funding source and by~~
11 ~~expenditure category for the prior month.~~

12 ~~For the purposes of this subsection, "direct services" includes evaluations; therapies;~~
13 ~~special instruction; the use of specially designed materials for instruction, screening and~~
14 ~~testing; the use of assistive technology devices; and transportation and use of physical~~
15 ~~space associated with providing other direct services.~~

16 **Sec. 15. 20-A MRSA §7210**, as enacted by PL 2005, c. 662, Pt. A, §30, is
17 repealed.

18 **Sec. 16. 20-A MRSA §7211** is enacted to read:

19 **§7211. Early childhood special education services**

20 Notwithstanding section 7209, pursuant to 34 Code of Federal Regulations, Section
21 300.39(a), early childhood special education and related services, as defined in the federal
22 Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq.,
23 may be provided for children at least 3 years of age and under 6 years of age in
24 accordance with this section. For the purposes of this section, "early adopter" means a
25 school administrative unit that agrees to take responsibility for free, appropriate public
26 education for children with disabilities at least 3 years of age and under 6 years of age
27 prior to July 1, 2020. The school administrative unit may take responsibility for only its
28 own resident children or may agree to also be responsible for children outside its
29 catchment area if approved by the department. A school administrative unit may be an
30 early adopter for the fiscal years 2018-19 and 2019-20.

31 **1. Fiscal years 2018-19 and 2019-20.** A school administrative unit may apply to the
32 department to begin providing early childhood special education and related services
33 under this section beginning in fiscal year 2018-19 or 2019-20. An early adopter is
34 responsible for providing early childhood special education and related services to
35 children at least 3 years of age and under 6 years of age.

36 **2. Support for early adopters.** The department may provide support to school
37 administrative units that implement early adopter programs approved by the
38 commissioner. Support may include first-year start-up funds from available state and
39 federal resources as well as reallocation of available Child Development Services System
40 funds. Support may also include paying the cost of administrative support approved by
41 the department.

1 **3. Other resources for early adopter programs.** The following resources are
2 available for early adopters.

3 A. The commissioner shall consider any school administrative unit facility upgrades
4 and renovations necessary for providing special education and related services for
5 children at least 3 years of age and under 6 years of age to have Priority 1 status
6 under the School Revolving Renovation Fund under Title 30-A, section 6006-F.

7 B. The commissioner shall consider any school administrative unit space necessary
8 for providing early childhood special education and related services for children at
9 least 3 years of age and under 6 years of age as instructional space or regional
10 programs and services space under section 15672, subsection 2-A, paragraph B.

11 C. For the purposes of transporting students at least 3 years of age and under 5 years
12 of age pursuant to this section, the commissioner shall include seat belts and car seats
13 as an allowable component for bus purchases pursuant to approvals under chapter
14 215 and for the purposes of school funding under chapter 606-B.

15 D. The commissioner shall consider any administrative and technical support that
16 would enhance consistent delivery of services to children at least 3 years of age and
17 under 20 years of age.

18 **4. Rulemaking.** The department may adopt rules to implement this section. Rules
19 adopted pursuant to this subsection are routine technical rules as defined in Title 5,
20 chapter 375, subchapter 2-A.

21 **Sec. 17. 20-A MRS §7252-A,** as amended by PL 2005, c. 662, Pt. A, §31, is
22 further amended to read:

23 **§7252-A. Special education programs; approval**

24 ~~Early intervention and special~~ Special education programs may be established for the
25 delivery of ~~early intervention and~~ special education services to children with disabilities
26 in accordance with section 7204, subsection 4. ~~An early intervention program may be~~
27 ~~provided by an intermediate educational unit, an approved private school or a state~~
28 ~~licensed agency.~~ A special education program may be offered by a school administrative
29 unit, an approved private school or a state licensed agency. All ~~early intervention and~~
30 special education programs offered by approved private schools or state licensed agencies
31 must:

32 **1. Supervision.** Be provided under the supervision of the school administrative unit
33 responsible for the education of the child with a disability enrolled in the program;

34 **2. Description.** Be described in a master contractual agreement between the agency
35 or private school and the commissioner; and

36 **3. Approval.** Be approved in advance of the enrollment of any child with a
37 disability.

38 **Sec. 18. 20-A MRS §7252-B,** as amended by PL 2005, c. 662, Pt. A, §32, is
39 further amended to read:

1 **§7252-B. Early intervention; special education services; approval**

2 The commissioner shall adopt or amend rules to define allowable early intervention
3 and special education services and the qualifications of individuals who provide early
4 intervention or special education services. ~~Each intermediate educational unit, approved~~
5 ~~private school or state licensed agency providing early intervention services shall submit~~
6 ~~a report at such time and in such form as the commissioner may require.~~ Each school
7 administrative unit, approved private school or state licensed agency providing special
8 education services shall submit a report at such time and in such form as the
9 commissioner may require.

10 **Sec. 19. 20-A MRSA §13022, sub-§1-A**, as enacted by PL 2011, c. 386, §2, is
11 amended to read:

12 **1-A. Scope of services.** A school psychologist delivers services to children from
13 birth to grade 12 who are eligible to be enrolled in educational ~~and intermediate~~
14 ~~educational~~ units, special education programs and approved private schools. The services
15 delivered are the services articulated under the domains of practice in the current Model
16 for Comprehensive and Integrated School Psychological Services developed and
17 published by the National Association of School Psychologists.

18 **Sec. 20. 20-A MRSA §13024, sub-§1, ¶D**, as amended by PL 2017, c. 235, §28
19 and affected by §41, is further amended to read:

20 D. Personnel for whom certification is not required prior to being hired or being
21 placed under contract by a public school ~~or an intermediate educational unit.~~

22 **Sec. 21. 22 MRSA §1532, sub-§2**, as enacted by PL 2013, c. 397, §1, is amended
23 to read:

24 **2. Referrals.** The department shall in a timely fashion refer newborn infants with
25 confirmed treatable congenital, genetic or metabolic conditions or critical congenital
26 heart disease to the ~~Child Development Services System as defined in Title 20-A, section~~
27 ~~7001, subsection 1-A~~ Department of Education. The department shall in a timely fashion
28 refer a newborn infant to the ~~Child Development Services System~~ Department of
29 Education if at least 6 months have passed since an initial positive test result of a treatable
30 congenital, genetic or metabolic condition without the specific nature of the condition
31 having been confirmed. The department and the Department of Education shall execute
32 an interagency agreement to facilitate all referrals made pursuant to this section. In
33 accordance with the interagency agreement, the Department of Education shall offer a
34 single point of contact for the Department of Health and Human Services to use in
35 making referrals. Also in accordance with the interagency agreement, the ~~Child~~
36 ~~Development Services System~~ Department of Education may make direct contact with
37 the families who are referred. The referrals may be made electronically. For purposes of
38 quality assurance and improvement, the ~~Child Development Services System~~ Department
39 of Education shall supply aggregate data to the department at least annually on the
40 numbers of children referred to the ~~Child Development Services System~~ Department of
41 Education under this section who were found eligible and ineligible for early intervention
42 services. The department shall supply data at least annually to the ~~Child Development~~

1 ~~Services System~~ Department of Education on how many children in the newborn blood
2 spot screening program as established by rule of the department under section 1533,
3 subsection 2, paragraph G were screened and how many were found to have a disorder.

4 **Sec. 22. 22 MRSA §3174-PP**, as enacted by PL 2009, c. 643, §1, is amended to
5 read:

6 **§3174-PP. Medicaid reimbursement for eligible services provided through school**
7 **administrative units**

8 **1. Consultation.** Prior to adopting or amending any rule that pertains to the
9 administration of a program of Medicaid coverage established by the department pursuant
10 to this chapter for services that qualify for reimbursement and are provided through the
11 auspices of ~~the Child Development Services System~~ and school administrative units in
12 accordance with the federal Individuals with Disabilities Education Act, 20 United States
13 Code, Section 1400 et seq., the Office of MaineCare Services shall consult with the
14 following interested parties on the proposed adoption or amendment of rules:

- 15 A. The Commissioner of Education or the commissioner's designee;
- 16 B. The Executive Director of the Maine School Management Association or the
17 executive director's designee;
- 18 C. The executive director of a statewide organization of administrators of services
19 for children with disabilities or the executive director's designee;
- 20 D. The executive director of a statewide organization for disability rights or the
21 executive director's designee; and
- 22 E. The Executive Director of the Maine Developmental Disabilities Council or the
23 executive director's designee.

24 **2. Monthly report.** The Office of MaineCare Services shall prepare and submit at
25 the beginning of each month a report that includes a detailed statement of the status of
26 any proposed adoption or amendment of rules that pertain to the Medicaid programs
27 specified in subsection 1 to the joint standing committee of the Legislature having
28 jurisdiction over education matters and the joint standing committee of the Legislature
29 having jurisdiction over health and human services matters.

30 **Sec. 23. 22 MRSA §3739, sub-§2**, as amended by PL 2011, c. 657, Pt. AA, §63,
31 is further amended to read:

32 **2. Membership.** The council has a minimum of ~~28~~ 27 members, appointed as
33 follows:

- 34 A. One employee of the department's office of integrated access and support who is
35 responsible for child care services, appointed by the commissioner;
- 36 B. The employee of the Department of Health and Human Services, Office of Child
37 Care and Head Start who serves as the state child care administrator, or the state child
38 care administrator's designee;

- 1 C. One employee of the division within the department concerned with children's
2 behavioral health services, appointed by the commissioner;
- 3 D. Two employees of the Department of Education, one of whom represents special
4 education programs and one of whom oversees public programs for children 4 years
5 of age, appointed by the Commissioner of Education;
- 6 E. One employee who serves as the state Head Start collaboration director, or the
7 state Head Start collaboration director's designee;
- 8 F. The State Fire Marshal or the State Fire Marshal's designee;
- 9 G. One employee of the organizational unit of the department that provides programs
10 and services for substance abuse prevention and treatment, appointed by the
11 commissioner;
- 12 H. One employee of the Department of Economic and Community Development,
13 appointed by the Commissioner of Economic and Community Development;
- 14 I. One member of the Senate, appointed by the President of the Senate;
- 15 J. Two members of the House of Representatives, at least one of whom may not be
16 from the party with the most members in the House of Representatives, appointed by
17 the Speaker of the House of Representatives;
- 18 K. One parent or other consumer who receives a child care subsidy at the time of that
19 parent's or consumer's appointment, appointed by the Governor;
- 20 L. One parent or other consumer of child care services who does not receive a child
21 care subsidy, appointed by the Governor;
- 22 M. One business representative nominated by the Maine Chamber of Commerce and
23 Industry, appointed by the Governor;
- 24 N. One center-based care representative nominated by the Maine Child Care
25 Directors' Association, appointed by the Governor;
- 26 O. One Head Start provider nominated by the Maine Head Start Directors'
27 Association, appointed by the Governor;
- 28 P. One family child care provider nominated by an association of family child care
29 providers in the State, appointed by the Governor;
- 30 Q. One person representing Native Americans, appointed by the Governor;
- 31 R. One child care provider who does not receive public funds, appointed by the
32 Governor;
- 33 S. One person representing a nonprofit advocacy organization dedicated to
34 improving the lives of children, youth and their families, appointed by the Governor;
- 35 ~~T. One person associated with a Child Development Services System site, appointed~~
36 ~~by the Governor;~~
- 37 U. One person representing a collaborative partnership between the University of
38 Maine and the Department of Health and Human Services, Office of Child Care and

1 Head Start, nominated by the University of Maine Center for Community Inclusion
2 and Disability Studies, appointed by the Governor;

3 V. One representative of women nominated by the Maine Women's Lobby,
4 appointed by the Governor;

5 W. One direct service provider of child care for school-age children, nominated by
6 the University of Maine at Farmington, Maine Afterschool Network, or a successor
7 program, appointed by the Governor;

8 X. One person representing the University of Southern Maine, Edmund S. Muskie
9 School of Public Service, Maine Roads to Quality, or a successor program, appointed
10 by the Governor;

11 Y. A person representing an association of resource development centers in the State,
12 appointed by the Governor; and

13 Z. One person representing home-based child care providers, appointed by the
14 Governor.

15 Senators and members of the House of Representatives serve for the duration of the
16 legislative terms that they are serving when appointed. Members from state departments
17 serve at the pleasure of their appointing authorities. All other members serve 3-year
18 terms and may continue to serve beyond their terms until their successors are appointed.
19 If a vacancy occurs before a term has expired, the vacancy must be filled for the
20 remainder of the unexpired term by the authority who made the original appointment. If
21 a member is absent for 2 consecutive meetings and has not been excused by the chair
22 from either meeting, the council may remove the member by majority vote. If a
23 nominating organization does not submit nominations within a reasonable period of time,
24 the appointing authority may fill that organization's seat with a member of the public at
25 large.

26 The council shall determine whether more than ~~28~~ 27 members would assist it in its work
27 under subsections 1 and 5. If a majority of the council votes to request the appointment
28 of additional members, the council shall specify the number of additional members
29 needed and shall convey a request for the appointment of those additional members to the
30 Governor, who shall make the appointments.

31 **Sec. 24. 22 MRSA §8301-A, sub-§1-A, ¶B,** as amended by PL 2009, c. 211, Pt.
32 B, §20, is further amended to read:

33 B. "Child care facility" means a child care center, small child care facility or nursery
34 school. "Child care facility" does not include a facility operated by a family child
35 care provider, a youth camp licensed under section 2495, programs offering
36 instruction to children for the purpose of teaching a skill such as karate, dance or
37 basketball, a formal public or private school in the nature of a kindergarten or
38 elementary or secondary school approved by the Commissioner of Education in
39 accordance with Title 20-A or a private school recognized by the Department of
40 Education as a provider of equivalent instruction for the purpose of compulsory
41 school attendance. Any program for children under 5 years of age that is located in a
42 private school ~~and programs that contract with one or more Child Development~~
43 ~~Services System sites are~~ is required to be licensed as a child care facility.

1 **Sec. 25. 22 MRSA §8824, sub-§1-A**, as amended by PL 2007, c. 695, Pt. A, §28,
2 is further amended to read:

3 **1-A. Referral to Department of Education.** The department shall adopt rules
4 according to which it shall in a timely fashion refer children identified in subsection 1 as
5 having a high likelihood of having a hearing impairment to the ~~Child Development~~
6 ~~Services System~~ Department of Education. The rules must also describe the timetables
7 under which the department shall refer to the ~~Child Development Services System~~
8 Department of Education children identified by the department in accordance with
9 subsection 1 as having possible hearing impairment but for whom hearing impairment has
10 been neither confirmed nor disconfirmed by 6 months of age. The Department of
11 Education and the Department of Health and Human Services shall execute an
12 interagency agreement to facilitate the referrals in this subsection. In accordance with the
13 interagency agreement, the Department of Education shall offer a single point of contact
14 for the Department of Health and Human Services to use in making referrals. Also in
15 accordance with the interagency agreement, the ~~Child Development Services System~~
16 Department of Education may make direct contact with the families who are referred.
17 The referrals may take place electronically. For purposes of quality assurance and
18 improvement, the ~~Child Development Services System~~ Department of Education shall
19 supply to the Department of Health and Human Services aggregate data at least annually
20 on the number of children referred under this subsection who are found eligible for early
21 intervention services and on the number of children found not eligible for early
22 intervention services.

23 **Sec. 26. 22 MRSA §8943**, as amended by PL 2007, c. 450, Pt. A, §9, is further
24 amended to read:

25 **§8943. Central registry**

26 The department shall establish and maintain a central registry for cases of birth
27 defects to accomplish the purposes of this chapter and facilitate research on birth defects.
28 The submission of information to and distribution of information from the central registry
29 are subject to the requirements of this chapter and other provisions of law. Information
30 that directly or indirectly identifies individual persons contained within the registry is
31 confidential and must be distributed from the registry in accordance with rules adopted by
32 the department. The department shall adopt rules according to which it will in a timely
33 fashion refer to the ~~Child Development Services System~~ Department of Education
34 children with confirmed birth defects who may be eligible for early intervention. The
35 department and the Department of Education shall execute an interagency agreement to
36 facilitate the referrals under this section. In accordance with the interagency agreement,
37 the Department of Education shall offer a single point of contact for the Department of
38 Health and Human Services to use in making referrals. Also in accordance with the
39 interagency agreement, the ~~Child Development Services System~~ Department of
40 Education may make direct contact with the families who are referred. The referrals may
41 take place electronically. For purposes of quality assurance and improvement, the ~~Child~~
42 ~~Development Services System~~ Department of Education shall supply to the department
43 aggregate data at least annually on the number of children referred under this section who
44 were found eligible for early intervention services and on the number of children found

1 not eligible for early intervention services. In addition, the department shall supply data
2 at least annually to the ~~Child Development Services System~~ Department of Education on
3 how many children had data entered into the registry. For a child whose parent or legal
4 guardian objects on the basis of sincerely held religious belief, the department may not
5 require the reporting of information about that child to the central registry or enter into
6 the central registry information regarding birth defects of that child.

7 **Sec. 27. Rulemaking.** The Department of Education shall adopt rules to
8 implement this Act. Rules adopted pursuant to this section are routine technical rules as
9 defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

10 **Sec. 28. Transition provisions.** The following provisions govern the transition
11 of responsibility for providing special education and related services to children with
12 disabilities who are at least 3 years of age and under 6 years of age from the Child
13 Development Services System, state intermediate educational unit to the school
14 administrative units of residence and the closure of the Child Development Services
15 System, state intermediate educational unit.

16 **1. Implementation schedule.** Notwithstanding the Maine Revised Statutes, Title
17 20-A, section 7209, subsection 3-A, the school administrative unit of residence is
18 responsible for providing special education and related services to children with
19 disabilities at least 3 years of age and under 6 years of age in accordance with the
20 following.

21 A. Early adopter school administrative units under Title 20-A, section 7211 begin
22 serving these children in fiscal year 2018-19 or 2019-20.

23 B. School administrative units shall fully meet their responsibilities under Part B,
24 Section 619 of the federal Individuals with Disabilities Education Act by July 1,
25 2020.

26 **2. Regional sites.** The Department of Education shall adjust the Child Development
27 Services System regional sites during the implementation of the schedule in subsection 1.
28 The Child Development Services System, state intermediate educational unit will no
29 longer be responsible for the provision of early childhood special education services to
30 children with disabilities within the early adopter school administrative units.

31 **3. Funds.** The funds appropriated to the Child Development Services System, state
32 intermediate educational unit for early adopters under Title 20-A, section 7211 must be
33 transferred to the office of special services within the department as the school
34 administrative units become early adopters.

35 **4. State intermediate educational unit.** The department shall ensure that any
36 transition issues relating to the elimination of the Child Development Services System,
37 state intermediate educational unit by July 1, 2020 are addressed.

38 **5. Budget.** The department shall develop a budget to include costs for state positions
39 only for case coordinators for Part C of the federal Individuals with Disabilities
40 Education Act, for school administrative units to serve children with disabilities at least 3
41 years of age and under 6 years of age and for Part C early intervention funding and

1 develop any additional statutory language necessary for the transition of the Part C
2 program to the department. All existing contracts and leases are void with the
3 deappropriation of funds from the Child Development Services System, state
4 intermediate educational unit.

5 **6. Certificates.** During the transition period of July 1, 2018 to July 1, 2020, the
6 department shall consider certificates for birth to 5 years of age and 5 years of age to 20
7 years of age special education to be birth to 20 years of age certificates.

8 **7. Infants and toddlers with disabilities.** On July 1, 2020, the responsibility for
9 early intervention services for infants and toddlers with disabilities transfers to a subunit
10 of the department's office of special services.

11 **8. Positions.** Child Development Services System positions must be eliminated on
12 or before July 1, 2020 as school administrative units adopt responsibility for children with
13 disabilities at least 3 years of age and under 6 years of age.

14 **Sec. 29. Effective date.** Those sections of this Act that amend, enact or repeal any
15 provision in the Maine Revised Statutes, Title 5, Title 20-A or Title 22 take effect July 1,
16 2020, except that that section of this Act that enacts Title 20-A, section 7211 takes effect
17 90 days after the adjournment of the Second Regular Session of the 128th Legislature.

18 SUMMARY

19 Over a 2-year transition period, this bill moves responsibility for providing special
20 education and related services for children who are at least 3 years of age and under 6
21 years of age from the Child Development Services System, state intermediate educational
22 unit to the school administrative units of residence of the children. Under the bill,
23 beginning July 1, 2018, a school administrative unit that is the unit of residence for a
24 child with a disability who is at least 3 years of age and under 6 years of age may become
25 responsible for providing special education and related services to that child through the
26 implementation of an early adopter program. The bill amends several sections of law by
27 removing references to the Child Development Services System.

28 This bill eliminates the Child Development Services System and moves the entire
29 responsibility for providing services to children from birth to under 3 years of age to the
30 Department of Education's office of special services. The funding plan continues the
31 present arrangement of full responsibility for costs being shared by state funds, federal
32 funds, the MaineCare program and private insurers.

33 The intent of the changes to the Child Development Services System statutes are
34 based on the belief that children with disabilities are best served by their local
35 communities; children do better when there are fewer transition points; there are
36 efficiencies that can be achieved by eliminating duplicative state functions and by
37 maximizing existing services and facilities at the local level; and the State should
38 continue its current practice of funding all services for preschool children with disabilities
39 that are not paid for with federal funds, through the MaineCare program or from private
40 sources.