

CHAPTER 303

CHILDREN WITH DISABILITIES

SUBCHAPTER 1

GENERAL PROVISIONS

§7201. Policy and purpose

The policy of the State for the education of children with disabilities is as follows. [PL 2005, c. 662, Pt. A, §22 (AMD).]

1. Equal educational opportunities. All students must be provided with equal educational opportunities and all school administrative units shall provide equal educational opportunities for all children with disabilities.

[PL 2005, c. 662, Pt. A, §22 (AMD).]

2. Least restrictive education alternative.

[PL 2005, c. 662, Pt. A, §22 (RP).]

2-A. Natural or least restrictive environment. To the maximum extent appropriate:

A. Early intervention services must be provided in natural environments, including the home, and community settings in which children from birth to under 3 years of age without disabilities participate; and [PL 2005, c. 662, Pt. A, §22 (NEW).]

B. Children with disabilities at least 3 years of age and under 20 years of age, including children in public or private institutions or other care facilities, must be educated with children without disabilities. Special classes, separate schooling or other removal of children with disabilities from the regular educational environment may occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. [PL 2005, c. 662, Pt. A, §22 (NEW).]

[PL 2005, c. 662, Pt. A, §22 (NEW).]

3. Students diagnosed as deaf. A student diagnosed as deaf must be educated with students without disabilities whenever possible and must be educated under the principle of the least restrictive educational environment as set forth in state laws and rules and federal laws and regulations.

[PL 2005, c. 662, Pt. A, §22 (AMD).]

4. Parent's right to be a member of the team. Parents, surrogate parents or guardians have the right to be a member of the team that will carry out duties and responsibilities in accordance with rules established by the commissioner.

[PL 2005, c. 662, Pt. A, §22 (AMD).]

5. Accessible instructional materials; visual impairment including blindness; Braille instruction. All students must have access to accessible instructional materials and may receive instruction in Braille as part of their individualized family service plans or individualized education programs. A student may not be denied the opportunity of instruction in Braille solely because the student has some remaining vision. If Braille is not provided to a child who is blind, the reason for not incorporating Braille in the individualized family service plan or individualized education program must be documented in the individualized family service plan or individualized education program. Accessible instructional materials and provisions for the accessibility of online learning programs for individuals with disabilities must be in alignment with the accessible instructional materials provisions

of the federal Individuals with Disabilities Education Improvement Act of 2004, Public Law 108-446, 118 Stat. 2647 and in alignment with the universal design provisions of the 1998 amendments to the federal Higher Education Act of 1965, 20 United States Code, Chapter 28 contained in the federal Higher Education Amendments of 1998, Public Law 105-244, 112 Stat. 1581.

[PL 2009, c. 508, §3 (AMD).]

6. Participation in cocurricular activities. Eligibility for a child with a disability to participate in cocurricular activities may not be denied solely because the student is enrolled in a reduced course load when the reduced course load is due to the student's disability, as long as the student is satisfactorily completing the requirements of the educational components of an individualized family service plan or individualized education program and is otherwise in compliance with the program. If the student is not satisfactorily completing the educational components of an individualized family service plan or individualized education program or is not otherwise in compliance with the program, the student's eligibility may be determined in the same manner as the eligibility of a child without disabilities who is not satisfying the applicable academic standards.

[PL 2007, c. 466, Pt. C, §7 (AMD).]

SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW). PL 1991, c. 292, §2 (AMD). PL 1995, c. 95, §1 (AMD). RR 2005, c. 2, §13 (COR). PL 2005, c. 662, §A22 (AMD). PL 2007, c. 466, Pt. C, §7 (AMD). PL 2009, c. 508, §3 (AMD).

§7202. Duties of school administrative units

Each school administrative unit operating schools shall: [PL 1981, c. 693, §§5, 8 (NEW).]

1. Identification. Identify all children within its jurisdiction who require special education; [PL 1981, c. 693, §§5, 8 (NEW).]

2. Records. Make and keep current records of children with disabilities within its jurisdiction, as required by rules established by the commissioner and institute procedures that guarantee the confidentiality of these records in accordance with state and federal law;

[PL 2005, c. 662, Pt. A, §23 (AMD).]

2-A. Assist advocates for developmentally disabled. Assist the advocacy agency designated under Title 5, section 19502 in conducting an investigation, pursuant to Title 5, section 19505, subsection 4, by providing access to relevant case records, notifying parents or guardians of these investigations and requesting parental consent for access to case records by the agency. Parents or guardians may refuse to consent to the examination of these records;

[PL 2005, c. 662, Pt. A, §23 (AMD).]

3. Diagnosis and evaluation. Provide the evaluations and assessments required by the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq., as amended, to plan and implement a special education program for children with disabilities at least 3 years of age and under 20 years of age within its jurisdiction;

[PL 2005, c. 662, Pt. A, §23 (AMD).]

4. Plan. Submit a plan for its special education programs to the commissioner for approval in accordance with rules established by the commissioner;

[PL 1981, c. 693, §§5, 8 (NEW).]

5. Special education. Provide special education for each eligible child with a disability within its jurisdiction;

[RR 2017, c. 2, §4 (COR).]

5-A. Diploma requirements. Award a high school diploma to each child with a disability who successfully meets the content standards of the system of learning results, in addition to any other

diploma requirements applicable to all secondary school students pursuant to section 4722, as specified by the goals and objectives of the child's individualized education program; [PL 2005, c. 662, Pt. A, §23 (AMD).]

6. Compliance. Provide the commissioner with the information the commissioner may require to determine compliance with this chapter; [PL 1983, c. 806, §63 (AMD).]

7. Notice of parent's right to be a member of the team. Notify in writing the parent, surrogate parent or guardian of the child with a disability of that person's right to be a member of the team and place a copy of the notice in the student's permanent records; [PL 2005, c. 662, Pt. A, §23 (AMD).]

8. Facility construction, renovation and repair. Seek approval in advance from the commissioner for construction, renovation or repair, with or aided by public funds, of facilities intended for the education of children with disabilities, or give assurances that other facilities in the school administrative unit are adequate to meet the needs of those students; [PL 2005, c. 662, Pt. A, §23 (AMD).]

9. Securing parental permission. For the agency conducting studies pursuant to Title 5, chapter 511:

A. Assist the agency in its studies; and [PL 1983, c. 327, §2 (NEW).]

B. Facilitate access to relevant case records by:

(1) Notifying parents or guardians of the study; and

(2) Requesting parental consent for the agency to have access to case records; [PL 2011, c. 348, §4 (AMD); PL 2011, c. 363, §1 (AMD).]

[PL 2011, c. 348, §4 (AMD); PL 2011, c. 363, §1 (AMD).]

10. Department of Health and Human Services; authority to request convening of individualized education program team meeting. Notify in writing the individual designated by the Department of Health and Human Services that the Department of Health and Human Services has the authority to request the school administrative unit to convene an individualized education program team meeting and to attend and participate in any individualized education program team meetings concerning a child with a disability who is a state ward. The written notice must indicate the time and place of the individualized education program team meeting and a copy of the notice must be placed in the child's permanent record; [RR 2011, c. 1, §27 (COR).]

11. Transitional services for students with disabilities. Plan, coordinate and implement services for students with disabilities who are in transition from school to community in accordance with rules adopted by the department. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A; and [RR 2011, c. 1, §28 (COR).]

REVISOR'S NOTE: (Subsection 11 as enacted by PL 2011, c. 363, §3 is REALLOCATED TO TITLE 20-A, SECTION 7202, SUBSECTION 12)

12. (REALLOCATED FROM T. 20-A, §7202, sub-§11) Attorney's presence at team meeting. Provide that the school administrative unit may not have an attorney present at an individualized education program team meeting unless the school administrative unit has provided the parents of a child with a disability at least 7 days' written notice prior to the individualized education program team meeting that the school administrative unit will have an attorney present at the individualized education program team meeting. If the parent of a child with a disability has an attorney present at the

individualized education program team meeting, the school administrative unit may have an attorney present without providing prior written notice.

[RR 2011, c. 1, §29 (RAL).]

SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW). PL 1983, c. 327, §§1,2 (AMD). PL 1983, c. 539, §1 (AMD). PL 1983, c. 806, §63 (AMD). PL 1989, c. 857, §§53-55 (AMD). PL 2003, c. 689, §B6 (REV). PL 2005, c. 446, §7 (AMD). PL 2005, c. 662, §A23 (AMD). RR 2011, c. 1, §§27-29 (COR). PL 2011, c. 348, §§4-6 (AMD). PL 2011, c. 363, §§1-3 (AMD). RR 2017, c. 2, §4 (COR).

§7203. Medical examination or treatment

(REPEALED)

SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW). PL 2005, c. 662, §A24 (RP).

§7204. Duties of the commissioner

The commissioner: [PL 1981, c. 693, §§5, 8 (NEW).]

1. Related services. Shall provide, or cause to be provided by administrative units operating schools, all related services, as defined in rules the commissioner establishes, required by a child with a disability so that the child may benefit from equal educational opportunities;

[PL 2005, c. 662, Pt. A, §25 (AMD).]

2. State plan. Shall make and annually review a state plan for education of all children with disabilities in the State. The State's plan may not require services that exceed minimum federal requirements. The plan must be available to the public on request. The department is the entity responsible for assigning financial responsibility among appropriate agencies as required under Part C of the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1401 (8), Section 1412 (a)(12)(A,B,C) and Section 1435 (a)(10)(C) and continues to serve pursuant to Section 1435 (a)(10) as the single line of responsibility for carrying out the general administration and supervision of programs and activities receiving assistance under Part C of the federal Individuals with Disabilities Education Act and the monitoring of programs and activities used to carry out that Part;

[PL 2005, c. 662, Pt. A, §25 (AMD).]

3. School year. May approve special education programs for:

A. The usual public school year as defined in section 4801, subsection 1; [PL 1981, c. 693, §§5, 8 (NEW).]

B. An extended school year; or [PL 1981, c. 693, §§5, 8 (NEW).]

C. Other periods the commissioner determines appropriate; [PL 1983, c. 806, §64 (AMD).]

[PL 1983, c. 806, §64 (AMD).]

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

A. Requirements for admission; [PL 1981, c. 693, §§5, 8 (NEW).]

B. Qualification or certification of staff; [PL 1981, c. 693, §§5, 8 (NEW).]

C. Plan of instruction; [PL 1981, c. 693, §§5, 8 (NEW).]

D. Adequacy of facilities; [PL 1981, c. 693, §§5, 8 (NEW).]

E. Adequacy of supportive services; [PL 1981, c. 693, §§5, 8 (NEW).]

F. Professional supervision; and [PL 1981, c. 693, §§5, 8 (NEW).]

G. Teacher-student ratio; [PL 2005, c. 662, Pt. A, §25 (AMD).]
[PL 2005, c. 662, Pt. A, §25 (AMD).]

5. Due process. Shall:

A. Adopt or amend rules to assure and protect the rights of due process for children with disabilities; and [PL 2005, c. 662, Pt. A, §25 (AMD).]

B. Inform and train each school administrative unit on the rights of children with disabilities to due process under state laws and rules and federal law and regulations; [PL 2015, c. 448, §11 (AMD).]

[PL 2015, c. 448, §11 (AMD).]

6. Technical assistance. May, on the request of a school administrative unit, provide technical assistance in the formulation of a plan or subsequent report required of all administrative units. Assistance may not be designed to transfer the responsibility for or actual development of the plan or report;

[PL 2019, c. 429, §1 (AMD).]

7. Out-of-state placement of a state ward. May, when a child with a disability who is a state ward is placed in an out-of-state residential treatment center by the Department of Health and Human Services, designate the Department of Education as having responsibility for oversight of the child's individualized education program to ensure that the child receives a free, appropriate public education; and

[PL 2019, c. 429, §2 (AMD).]

8. Report on language and literacy development of children who are deaf and hard of hearing from birth to 5 years of age. Beginning July 31, 2020 and annually thereafter, shall submit a report to the joint standing committee of the Legislature having jurisdiction over education and cultural affairs of:

A. The data reported in compliance with the state performance plan required by the federal Individuals with Disabilities Education Act that are specific to language and literacy development of children who are deaf or hard of hearing from birth to 5 years of age, including children who are deaf or hard of hearing and have other disabilities, that demonstrate language and literacy development of children who are deaf or hard of hearing relative to the children's peers who are not deaf or hard of hearing; and [PL 2019, c. 429, §3 (NEW).]

B. Any language developmental milestones or parent resources used or disseminated by the department to parents, educators, early interventionists or therapists for use in tracking or assessing the expressive and receptive language acquisition of children from birth to 5 years of age who are deaf and hard of hearing and their development stages toward literacy in American Sign Language or English, or both. [PL 2019, c. 429, §3 (NEW).]

The commissioner shall post the report on the department's publicly accessible website.

[PL 2019, c. 429, §3 (NEW).]

SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW). PL 1983, c. 806, §64 (AMD). PL 2005, c. 662, §A25 (AMD). PL 2015, c. 448, §§11, 12 (AMD). PL 2019, c. 429, §§1-3 (AMD).

§7205. Review and assistance

It is the intent of the Legislature that a representative of the commissioner visit special education programs for the purpose of review and assistance and as necessary to comply with federal general supervision requirements. Nothing in this section prohibits a school administrative unit from requesting that a representative of the commissioner visit a particular special education program for the purpose

of review and assistance whenever necessary. The commissioner shall comply with each request in a timely fashion. [PL 2009, c. 508, §4 (AMD).]

SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW). PL 1987, c. 395, §A72 (AMD). PL 2009, c. 508, §4 (AMD).

§7206. Investigation of noncompliance

The following provisions apply to an investigation of noncompliance with this chapter. [PL 1981, c. 693, §§5, 8 (NEW).]

1. Complaint. An interested party may file with the commissioner a written complaint alleging that a school administrative unit or private school serving children with disabilities has failed to comply with this chapter. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received or the complaint must request compensatory services for a violation that occurred not more than 2 years prior to the date the complaint is received. [PL 2009, c. 571, Pt. U, §1 (AMD).]

1-A. Determination of jurisdiction.

[PL 1993, c. 483, §1 (RP).]

1-B. Notification.

[PL 1993, c. 483, §1 (RP).]

2. Investigation; written report. The commissioner shall initiate, and complete within 60 days, an investigation and a written report.

A. [PL 1993, c. 483, §2 (RP).]

B. [PL 1993, c. 483, §2 (RP).]

[PL 1993, c. 483, §2 (AMD).]

3. Post-investigation procedure.

[PL 1993, c. 483, §3 (RP).]

4. Appeal.

[PL 2005, c. 70, §1 (RP).]

5. Enforcement. If the unit fails to comply with the commissioner's order, the commissioner:

A. May withhold financial aid from the school administrative unit until it complies with the commissioner's order; and [PL 1983, c. 862, §60 (AMD).]

B. Shall refer the matter to the Attorney General, who shall take appropriate action to bring the school administrative unit into compliance. [PL 1981, c. 693, §§5, 8 (NEW).]

[PL 1983, c. 862, §60 (AMD).]

6. Additional remedies. The remedies provided in this section are in addition to any other remedy in law or equity.

[PL 1981, c. 693, §§5, 8 (NEW).]

7. Complaint investigators; immunity. The State shall train complaint investigators. For the purposes of this section, while carrying out their official duties, complaint investigators are considered state employees and are entitled to the immunity provided state employees under the Maine Tort Claims Act.

[PL 1999, c. 424, Pt. A, §7 (NEW).]

SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW). PL 1983, c. 130, §§1,2 (AMD). PL 1983, c. 806, §§65,66 (AMD). PL 1983, c. 862, §60 (AMD). PL 1989, c. 69, §§1-4 (AMD). PL 1993, c. 483, §§1-4 (AMD). PL 1999, c. 424, §§A5-7 (AMD). PL 2005, c. 70, §1 (AMD). PL 2005, c. 662, §A26 (AMD). PL 2009, c. 571, Pt. U, §1 (AMD).

§7207. Hearing procedures

(REPEALED)

SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW). PL 1985, c. 318, §2 (RP).

§7207-A. Surrogate parents

1. Rules. The commissioner shall adopt rules to determine when a surrogate parent is needed and the criteria for selection of a surrogate parent.

[PL 1989, c. 857, §56 (NEW).]

2. Objection to appointments. When a child with a disability is a state ward and the Department of Health and Human Services has notified the school administrative unit and the Department of Education that the Department of Health and Human Services objects to the appointment of the foster parent as the surrogate parent, the foster parent may not be automatically appointed to serve as surrogate parent for the child with a disability. When a child with a disability is a state ward and the Department of Health and Human Services objects to the appointment of the foster parent as the surrogate parent, the Department of Health and Human Services shall recommend to the Department of Education an individual to serve as surrogate parent.

[PL 2005, c. 662, Pt. A, §27 (AMD).]

SECTION HISTORY

PL 1985, c. 318, §3 (NEW). PL 1989, c. 700, §B46 (AMD). PL 1989, c. 857, §56 (RPR). PL 2003, c. 689, §B6 (REV). PL 2005, c. 662, §A27 (AMD).

§7207-B. Due process hearings

The following provisions apply to due process hearings. [PL 1985, c. 318, §3 (NEW).]

1. Rules. The commissioner shall adopt rules governing the procedures for conducting due process hearings. The rules shall include:

A. A maximum period within which a parent, surrogate parent, guardian or administrative unit may exercise the rights listed in subsection 2; [PL 1985, c. 318, §3 (NEW).]

B. A maximum time within which a final decision must be issued by the hearing officer; [PL 1985, c. 318, §3 (NEW).]

C. The use of mediation; [PL 1999, c. 424, Pt. A, §8 (AMD).]

D. The procedures for conducting the hearings; and [PL 1999, c. 424, Pt. A, §8 (AMD).]

E. The procedures for determining the award of attorney's fees consistent with the requirements of the federal Individuals with Disabilities Education Act. [PL 1999, c. 424, Pt. A, §9 (NEW).]

[PL 1999, c. 424, Pt. A, §§8, 9 (AMD).]

2. Request for hearing. The parent, surrogate parent, guardian or administrative unit may:

A. Request the commissioner to appoint an impartial hearing officer who shall conduct a hearing regarding the identification, evaluation and educational program of the student and shall make findings of fact and issue a decision; and [PL 1985, c. 318, §3 (NEW).]

B. Appeal the decision of the hearing officer to the Superior Court or to a United States District Court. [PL 1985, c. 318, §3 (NEW).]

[PL 1985, c. 318, §3 (NEW).]

3. Subpoenas. The commissioner may issue subpoenas in the name of the department to require the attendance and testimony of the witnesses and the production of any evidence relating to any issue or fact in the due process hearing as requested by any party to the hearing. Any fees for attendance and travel required by the witnesses shall be the responsibility of the party seeking the subpoena. The issuance of subpoenas shall conform in all other ways to the requirements of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV.

[PL 1989, c. 502, Pt. A, §56 (AMD).]

3-A. Notice to local school units.

[PL 2005, c. 662, Pt. A, §28 (RP).]

4. Hearing officers, immunity. The State shall ensure that impartial hearing officers meet the criteria contained in the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq., as amended. For purposes of the Maine Tort Claims Act only, Title 14, chapter 741, hearing officers, while they are carrying out their official duties as hearing officers, are considered state employees and are entitled to the immunity provided state employees under the Maine Tort Claims Act.

[PL 2005, c. 662, Pt. A, §29 (AMD).]

SECTION HISTORY

PL 1985, c. 318, §3 (NEW). PL 1985, c. 797, §41 (AMD). PL 1989, c. 502, §A56 (AMD). PL 1997, c. 441, §1 (AMD). PL 1999, c. 424, §§A8,9 (AMD). PL 2005, c. 662, §§A28,29 (AMD).

§7207-C. Mediations

The following provisions apply to mediations. [PL 1999, c. 424, Pt. A, §10 (NEW).]

1. Rules. The commissioner shall adopt rules governing the procedures for conducting mediations. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[PL 1999, c. 424, Pt. A, §10 (NEW).]

2. Request for mediation. A parent, surrogate parent, guardian or school administrative unit may request the appointment of a mediator to conduct a mediation to resolve a dispute between the parent, surrogate parent or guardian and the school.

[PL 1999, c. 424, Pt. A, §10 (NEW).]

3. Mediators; immunity. The State shall train impartial mediators. For the purposes of this section, while carrying out their official duties, mediators are considered state employees and are entitled to the immunity provided state employees under the Maine Tort Claims Act.

[PL 1999, c. 424, Pt. A, §10 (NEW).]

SECTION HISTORY

PL 1999, c. 424, §A10 (NEW).

§7208. Savings provision

Nothing contained in this chapter shall be construed to prevent or impair the administration or enforcement of any other law of the State. [PL 1981, c. 693, §§ 5, 8 (NEW).]

SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW).

§7209. General administration and supervision

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

A. The commissioner is responsible for developing and adopting rules necessary to carry out the provisions of the federal Individuals with Disabilities Education Act, Part B, Section 619 and Part C, 20 United States Code, Section 1400 et seq. [PL 2011, c. 655, Pt. OO, §4 (AMD).]

B. [PL 2007, c. 307, §1 (AMD); MRSA T. 20-A §7209, sub-§1, ¶B (RP).]

B-1. The commissioner or the commissioner's designee is responsible for developing and implementing a funding mechanism for the operation of the state intermediate educational unit established pursuant to subsection 3 and the delivery of services to eligible children with disabilities from birth to under 6 years of age. [PL 2011, c. 655, Pt. OO, §4 (NEW).]

C. The commissioner or the commissioner's designee is responsible for ensuring legal and policy compliance throughout the early childhood special education program by reviewing or performing regular audits of program records. [PL 2005, c. 662, Pt. A, §30 (NEW).]

D. The commissioner or the commissioner's designee is responsible for ensuring fiscal compliance throughout the early childhood special education program by reviewing or performing regular audits of program records. [PL 2005, c. 662, Pt. A, §30 (NEW).]

E. The department shall develop a corrective action plan with timelines to achieve compliance with federal or state law. The department shall report at least quarterly to the state interagency coordinating council described in 20 United States Code, Section 1441, to the state advisory panel described in 34 Code of Federal Regulations, Sections 300.167 to 300.169 and to other advisory bodies that may be appropriate about individual regional sites that are under a corrective action plan. These reports must describe any progress or slippage by individual regional sites in meeting compliance requirements. For an individual regional site under a corrective action plan, the reports must describe how long the department expects the regional site to remain under a corrective action plan. [PL 2011, c. 655, Pt. OO, §4 (AMD).]

[PL 2011, c. 655, Pt. OO, §4 (AMD).]

2. State-level advisory committee.

[PL 2007, c. 307, §2 (AMD); MRSA T. 20-A §7209, sub-§2 (RP).]

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

A. Establish standard policies and procedures for a statewide salary and benefits administration system, including personnel classifications, position descriptions and salary ranges, and a standard package of health, retirement and other fringe benefits for Child Development Services System personnel, beginning in fiscal year 2006-07; [PL 2011, c. 655, Pt. OO, §4 (AMD).]

B. Develop a statewide salary and benefits administration system and perform the payroll functions for Child Development Services System personnel; [PL 2005, c. 662, Pt. A, §30 (NEW).]

B-1. Bargain collectively under Title 26, chapter 9-A if the employees of the regional sites choose to be represented by an agent for purposes of collective bargaining. In such circumstances, the state intermediate educational unit must be considered the public employer for purposes of collective bargaining; [PL 2007, c. 307, §3 (NEW).]

C. Establish a centralized system for statewide fiscal administration to be implemented by September 1, 2006. The state intermediate educational unit shall establish internal controls and implement accounting policies and procedures in accordance with standards set forth by the State Controller; [PL 2005, c. 662, Pt. A, §30 (NEW).]

D. Develop and implement a centralized data management system to be fully operational beginning July 1, 2007; [PL 2005, c. 662, Pt. A, §30 (NEW).]

E. Establish a standard, statewide template for regional site contracts with therapeutic service providers, including policies and procedures for the review of contracts, beginning in fiscal year 2006-07; [PL 2011, c. 655, Pt. OO, §4 (AMD).]

F. Refine program accountability standards for compliance with federal mandates, including the development of a performance review system to monitor and improve regional site performance through the use of efficiency ratings aligned with the accountability standards and through a compliance plan that requires the regional site to address the unmet needs of eligible children in accordance with specific targets and time frames; [PL 2011, c. 655, Pt. OO, §4 (AMD).]

G. Design and implement a statewide plan to provide professional development and training to Child Development Services System personnel; [PL 2007, c. 307, §3 (AMD).]

H. Employ professional and other personnel at the state level and at the regional sites, including those necessary to ensure the implementation of the centralized fiscal and data management systems. All state intermediate educational unit employees are employees for the purposes of the Maine Tort Claims Act; and [PL 2011, c. 655, Pt. OO, §4 (AMD).]

I. Enter into contracts, leases and agreements and any other instruments and arrangements that are necessary, incidental or convenient to the performance of its duties and the execution of its powers under this chapter. [PL 2007, c. 307, §3 (NEW).]

[PL 2011, c. 655, Pt. OO, §4 (AMD).]

3-A. State intermediate educational unit; program functions. The state intermediate educational unit established pursuant to subsection 3, through a network of regional sites as appropriate, shall:

A. Engage in child find activities as required by the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq.; [PL 2011, c. 655, Pt. OO, §4 (NEW).]

B. Engage in child count activities as required by the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq.; [PL 2011, c. 655, Pt. OO, §4 (NEW).]

C. Engage in appropriate data collection, training, staff development and direct service provision to eligible children with disabilities, from birth to under 3 years of age, in accordance with Part C of the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq.; [PL 2011, c. 655, Pt. OO, §4 (NEW).]

D. Ensure that eligible children with disabilities, from birth to under 3 years of age, receive early intervention services, in accordance with the payment provisions established by the State; [PL 2011, c. 655, Pt. OO, §4 (NEW).]

E. Ensure that eligible children with disabilities, from 3 years of age to under 6 years of age, receive free, appropriate public education services; [PL 2011, c. 655, Pt. OO, §4 (NEW).]

F. Coordinate with eligible families the development of individualized family service plans for children with disabilities from birth to 2 years of age or coordinate an individualized education program for a child 3 years of age to under 6 years of age; [PL 2017, c. 284, Pt. AAAAAA, §1 (AMD).]

G. Ensure that children from birth until 6 years of age who are referred to the Child Development Services System also receive appropriate referrals for support outside of the system, including appropriate public and private programmatic resources, regardless of a child's eligibility for early intervention or free, appropriate public education; and [PL 2017, c. 284, Pt. AAAAAA, §1 (AMD).]

H. Engage in appropriate training and staff development for identification of and to provide intervention services for children with autism. [PL 2017, c. 284, Pt. AAAAAA, §2 (NEW).]
[PL 2017, c. 284, Pt. AAAAAA, §§1, 2 (AMD).]

4. Director of early childhood special education. The commissioner or the commissioner's designee shall appoint and supervise a director of early childhood special education. The director has the following powers and duties:

A. To administer the state intermediate educational unit established under subsection 3 and programs established pursuant to subsection 3-A. The director shall develop operating policies and establish organizational and operational procedures that include supervision, monitoring, data and accountability structures; [PL 2013, c. 338, §1 (AMD).]

A-1. To oversee the operation of the regional sites; [PL 2011, c. 655, Pt. OO, §4 (NEW).]

B. To develop statewide policies and procedures for carrying out federal and state laws and rules relating to child find, early intervention services and the provision of a free, appropriate public education to children from birth to under 6 years of age; [PL 2007, c. 450, Pt. A, §1 (AMD).]

C. To provide training in federal and state laws, regulations, rules and policies relating to child find as provided in 20 United States Code, Section 1412 (a) (3), early intervention services and the provision of a free, appropriate public education to children from birth to under 6 years of age and to conduct regular file reviews to determine compliance with federal and state laws, regulations, rules and policies and conduct training and provide technical assistance where deficiencies are found; [PL 2013, c. 338, §1 (AMD).]

D. [PL 2013, c. 338, §1 (RP).]

E. To report annually by February 15th to the joint standing committee of the Legislature having jurisdiction over education and cultural affairs, the joint standing committee of the Legislature having jurisdiction over health and human services matters and the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs on the performance of the Child Development Services System. This report must be posted on the publicly accessible website of the department. The report must include:

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

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

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

- (c) Actual revenues received compared to the budget for each of the last 3 fiscal years by revenue source; and
- (d) The total dollar value of MaineCare claims paid through the Department of Health and Human Services for each of the last 3 fiscal years for services provided pursuant to children's individualized education programs or individualized family service plans that were billed directly to the MaineCare program by contracted service providers;
- (2) The following data for the Child Development Services System in total and separately for the services provided to eligible children from birth to under 3 years of age and at least 3 years of age and under 6 years of age, including descriptions of any notable variations in these data among regional sites and any notable year-to-year trends over the past 5 years:
- (a) The number of children referred to the Child Development Services System in the prior year by referral source, including the screening programs in Title 22, sections 1532, 8824 and 8943, and the percentage of children referred found eligible for services;
- (b) The number of children who entered the Child Development Services System in the prior year, categorized by primary disability;
- (c) The number of children who exited the Child Development Services System in the prior year, categorized by primary disability and the reason for exit;
- (d) The number of children who transitioned in the prior year from early intervention services for children from birth to under 3 years of age to special education and related services for children at least 3 years of age and under 6 years of age;
- (e) The unduplicated count of children who received direct services as of December 1st in the prior year;
- (f) The number of children who received direct services in the prior year by regional site and in total for the Child Development Services System, categorized by primary disability;
- (g) For each primary disability category, the number of children who received, in the prior year, each primary type of therapy or service;
- (h) The percentage of children who received direct services in the prior year who had MaineCare coverage for all or some of the services specified in their individualized education programs or individualized family service plans and the percentage of children who received direct services in the prior year who had private insurance coverage for all or some of the services specified in their individualized education programs or individualized family service plans;
- (i) Beginning January 1, 2015, the number of children who received direct services in the prior year who were born in the State and the number of children who received direct services in the prior year who were born in the State and who were delivered at home;
- (j) Beginning January 1, 2015, the total number of children who were referred in the prior year for support outside of the Child Development Services System under subsection 3-A, paragraph G and the number of children who received direct services in the prior year who were referred for support outside of the Child Development Services System under subsection 3-A, paragraph G; and
- (k) Beginning January 1, 2015, the number of children who received direct services in the prior year who received all of the services in their individualized family service plan or individualized education program and the number of children who received direct services in the prior year who received less than 90% of the services in their individualized family service plan or individualized education program;

(3) A listing of the regional sites and their locations and the following data for the Child Development Services System in total and by regional site, including descriptions of any notable variations in these statistics among regional sites and any notable year-to-year trends over the past 5 fiscal years:

- (a) The total number of employees by function and the number of new employees hired in the prior fiscal year by function;
- (b) The number of private providers that contracted with the Child Development Services System to provide direct services, including transportation services, and the number of contracted providers delivering each type of service in the prior fiscal year;
- (c) The number of children who received direct services provided by Child Development Services System employees in the prior fiscal year and the number of children who received direct services provided by contracted private providers in the prior fiscal year;
- (d) The number of preschool or day care programs operated by each regional site, the average enrollment in each program, the percentage of enrollees that are children receiving services under individualized education programs or individualized family service plans and expenses and revenues for the prior fiscal year associated with the programs in each site; and
- (e) The number of children who received direct services in the prior fiscal year while placed in preschool programs operated by public school systems;

(4) Statistics and analysis of the following Child Development Services System performance measures for the prior fiscal year, including descriptions of any notable variations in these measures among regional sites and any notable year-to-year trends over the past 5 fiscal years:

- (a) Measures of compliance with key federal requirements related to timeliness, quality and effectiveness of service as set out in required annual federal reporting under the federal Individuals with Disabilities Education Act;
- (b) Measures of compliance with key state requirements related to timeliness, quality and effectiveness of service as set out in statute and rules;
- (c) Measures of productivity for Child Development Services System employees providing case management and direct services to children;
- (d) Measures of per unit costs, including the average cost of delivered services per child by primary disability type, the average cost per unit of each type of therapy or service delivered by Child Development Services System staff and the average cost per unit of each type of therapy or service delivered by contracted providers;
- (e) Beginning January 1, 2015, the average age, both in aggregate and by primary disability type, at which children who were born in the State began receiving services from the Child Development Services System and the average age, both in aggregate and by primary disability type, at which children who were born in the State and who were delivered at home began receiving services from the Child Development Services System; and
- (f) Any other performance goals and measures established by the Child Development Services System to monitor effectiveness, efficiency and the cost of the Child Development Services System, which may include results of surveys of parents and guardians on the quality and effectiveness of services;

(5) Beginning January 1, 2015, a report by each regional site in the Child Development Services System demonstrating trends of Child Development Services System employee costs and the results of coordination, utilization and development of services with a broad base of community resources, including private providers and public schools, midwives, resources

from other agencies and other resources serving families and children from birth to under 6 years of age, consistent with the provisions of Title 22, section 3571, subsection 3; and

(6) A description of current and emerging trends and challenges that are having an effect on or are expected to have an effect on costs, services or service delivery methods of the Child Development Services System; and [PL 2013, c. 338, §1 (NEW).]

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

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

(2) Monthly actual and budgeted expenditures by funding source and by expenditure category for the prior month. [PL 2013, c. 338, §1 (NEW).]

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

[PL 2017, c. 284, Pt. SSS, §1 (AMD).]

5. Regional site board of directors.

[PL 2011, c. 655, Pt. OO, §4 (RP).]

6. Regional site board of directors; annual entitlement plan; site budget approval.

[PL 2011, c. 655, Pt. OO, §4 (RP).]

7. Regional site; administration.

[PL 2011, c. 655, Pt. OO, §4 (RP).]

8. Regional site; duties and obligations.

[PL 2011, c. 655, Pt. OO, §4 (RP).]

SECTION HISTORY

PL 2005, c. 662, §A30 (NEW). RR 2007, c. 1, §9 (COR). PL 2007, c. 307, §§1-7 (AMD). PL 2007, c. 450, Pt. A, §§1-6 (AMD). PL 2007, c. 530, §1 (AMD). PL 2007, c. 572, Pt. B, §§1-4 (AMD). PL 2011, c. 655, Pt. OO, §4 (AMD). PL 2013, c. 338, §1 (AMD). PL 2017, c. 284, Pt. AAAAAA, §§1, 2 (AMD). PL 2017, c. 284, Pt. SSS, §1 (AMD).

§7210. Conflict of interest

Notwithstanding Title 5, section 18, subsection 1, paragraph B, all members of the state-level advisory committee established under section 7209, subsection 2 and all employees, contractors, agents and other representatives of the state intermediate educational unit are deemed executive employees solely for purposes of Title 5, section 18. The department shall provide training to participants to ensure compliance with conflict of interest requirements. [PL 2005, c. 662, Pt. A, §30 (NEW).]

SECTION HISTORY

PL 2005, c. 662, §A30 (NEW).

SUBCHAPTER 2

PROGRAMS

§7251. Local special education programs

A school administrative unit may establish an appropriate special education program. [PL 1987, c. 395, Pt. A, §73 (AMD).]

SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW). PL 1987, c. 395, §A73 (AMD).

§7251-A. Local special education services; related services

A school administrative unit may offer or contract for special education services. A school administrative unit may also offer or contract for related services in accordance with rules adopted by the department pursuant to section 7005. [PL 2011, c. 19, §2 (AMD).]

SECTION HISTORY

PL 1987, c. 395, §A74 (NEW). PL 2011, c. 19, §2 (AMD).

§7252. Contractual programs; approval**(REPEALED)**

SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW). PL 1987, c. 395, §A75 (RP).

§7252-A. Early intervention; special education programs; approval

Early intervention and special education programs may be established for the delivery of early intervention and special education services to children with disabilities in accordance with section 7204, subsection 4. An early intervention program may be provided by an intermediate educational unit, an approved private school or a state licensed agency. A special education program may be offered by a school administrative unit, an approved private school or a state licensed agency. All early intervention and special education programs offered by approved private schools or state licensed agencies must: [PL 2005, c. 662, Pt. A, §31 (AMD).]

1. Supervision. Be provided under the supervision of the school administrative unit responsible for the education of the child with a disability enrolled in the program; [PL 2005, c. 662, Pt. A, §31 (AMD).]

2. Description. Be described in a master contractual agreement between the agency or private school and the commissioner; and [PL 1987, c. 395, Pt. A, §76 (NEW).]

3. Approval. Be approved in advance of the enrollment of any child with a disability. [PL 2005, c. 662, Pt. A, §31 (AMD).]

SECTION HISTORY

PL 1987, c. 395, §A76 (NEW). PL 2005, c. 662, §A31 (AMD).

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

The commissioner shall adopt or amend rules to define allowable early intervention and special education services and the qualifications of individuals who provide early intervention or special education services. Each intermediate educational unit, approved private school or state licensed agency providing early intervention services shall submit a report at such time and in such form as the commissioner may require. Each school administrative unit, approved private school or state licensed agency providing special education services shall submit a report at such time and in such form as the commissioner may require. [PL 2005, c. 662, Pt. A, §32 (AMD).]

SECTION HISTORY

PL 1987, c. 395, §A76 (NEW). PL 2005, c. 662, §A32 (AMD).

§7253. Regional programs; approval

Two or more school administrative units may enter into cooperative agreement to provide regional special education programs and support services. [PL 1981, c. 693, §§ 5, 8 (NEW).]

1. General criteria. Programs and services established through this agreement shall meet the requirements set forth in section 7204, subsection 4.

[PL 1981, c. 693, §§ 5, 8 (NEW).]

2. Special provisions. A program shall specify that:

A. One of the school administrative units shall serve as fiscal agent; [PL 1981, c. 693, §§ 5, 8 (NEW).]

B. No requirement exists for separate budget approval and taxation; and [PL 1981, c. 693, §§ 5, 8 (NEW).]

C. School construction may not be proposed for special education purposes. [PL 1981, c. 693, §§ 5, 8 (NEW).]

[PL 1981, c. 693, §§ 5, 8 (NEW).]

3. Plan. A plan for a regional program shall be subject to approval by the commissioner prior to its implementation. The plan shall specify:

A. The objectives and functions to be performed by the regional program; [PL 1981, c. 693, §§ 5, 8 (NEW).]

B. The method of fiscal operation and cost sharing; [PL 1981, c. 693, §§ 5, 8 (NEW).]

C. The method of entering into and withdrawing from the agreement; [PL 1981, c. 693, §§ 5, 8 (NEW).]

D. The method of administering the regional program; [PL 1981, c. 693, §§ 5, 8 (NEW).]

E. The method of involving parent and community participation; and [PL 1981, c. 693, §§ 5, 8 (NEW).]

F. The school administrative unit that shall act as fiscal agent for the regional program. [PL 1981, c. 693, §§ 5, 8 (NEW).]

[PL 1981, c. 693, §§ 5, 8 (NEW).]

4. Funding. The regional program shall be supported by funds included in the special education appropriations of each of the member school administrative units.

[PL 1981, c. 693, §§ 5, 8 (NEW).]

SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW).

§7254. Contractual programs for nonresident children

Another state, subdivision or private person, firm or agency may contract with a private school in this State to provide special education for children who are not residents of this State. A program for these nonresident children shall be subject to approval by the commissioner only with respect to the requirements of section 7204, subsection 4. [PL 1981, c. 693, §§ 5, 8 (NEW).]

SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW).

§7255. Other programs

In addition to, or in place of, those methods listed in this chapter, a school administrative unit may make other provisions, subject to approval in advance by the commissioner, to ensure the education of all children with disabilities. [PL 2005, c. 662, Pt. A, §33 (AMD).]

SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW). PL 2005, c. 662, §A33 (AMD).

§7256. State licensed agencies

A special education facility may be operated in conjunction with or as a part of a state licensed agency. [PL 1981, c. 693, §§ 5, 8 (NEW).]

SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW).

§7257. General supervision

All educational programs for children with disabilities within the State, including all such programs administered by any other state or local agency, are under the general supervision of the commissioner. [PL 2005, c. 662, Pt. A, §34 (AMD).]

SECTION HISTORY

PL 1983, c. 64 (NEW). PL 2005, c. 662, §A34 (AMD).

§7258. Transition to adult services

1. Attendance at pupil evaluation team meetings. Annually, representatives from appropriate state service agencies, as determined by the pupil evaluation team of the school administrative unit, and in accordance with special education rules, shall designate a transition contact person to participate in transition planning for students with disabilities. The transition contact person shall attend pupil evaluation team meetings or provide relevant information to the pupil evaluation team for transition planning purposes. This requirement applies to students with disabilities who have attained 16 years of age, or 14 years of age when determined by the pupil evaluation team to be appropriate. [PL 1997, c. 345, §1 (NEW).]

1-A. Care manager. Within 2 years before the date that a student with an intellectual disability, serious emotional disturbance or other developmental disabilities will graduate or finish school, the Department of Health and Human Services, in consultation with the pupil evaluation team of the school administrative unit, shall designate a case manager to participate in transition planning for that student. The case manager shall convene an adult services transition team, ensure interagency coordination and access to adult services, serve as a single contact person for the student transitioning into the adult services and attend pupil evaluation team meetings or provide relevant information to the pupil evaluation team for transition planning purposes. [PL 2011, c. 542, Pt. A, §22 (AMD).]

1-B. Annual report. Beginning January 1, 1999 and annually thereafter, the department, in conjunction with the Department of Health and Human Services, shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters and to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs regarding transition planning for the adult services system and the number of persons 16 years of age or older on waiting lists for services for persons with autism or intellectual disabilities provided by or under the authority of the department and the Department of Health and Human Services. [PL 2011, c. 542, Pt. A, §22 (AMD).]

2. Documentation. Annually, the transition planning team shall complete documentation that estimates the amount and type of anticipated services the pupil will require upon aging out or graduation

and submit this annual documentation to the Department of Education. The department shall transmit the data to the appropriate state service agency.

[PL 1997, c. 345, §1 (NEW).]

3. Budget. State service agencies shall show evidence of having used the documentation completed pursuant to subsection 2 to develop their biennial budget beginning with the biennium ending June 30, 1999.

[PL 1997, c. 345, §1 (NEW).]

SECTION HISTORY

PL 1997, c. 345, §1 (NEW). PL 1997, c. 778, §1 (AMD). PL 2001, c. 354, §3 (AMD). PL 2003, c. 689, §B6 (REV). PL 2011, c. 542, Pt. A, §22 (AMD).

SUBCHAPTER 3

FINANCES

§7301. State aid

1. State aid. The State shall provide financial aid to school administrative units for special education programs.

[PL 1981, c. 693, §§ 5, 8 (NEW).]

2. Contributions. The commissioner may receive contributions and donations to be used with appropriations to carry out this chapter.

[PL 1981, c. 693, §§ 5, 8 (NEW).]

SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW).

§7302. Tuition rates

Tuition rates for school administrative units, private special education programs, private general purpose facilities and nonresident children shall be as follows. [PL 1981, c. 693, §§5, 8 (NEW).]

1. School administrative units. A school administrative unit operating a full-time special education program and accepting students on a tuition basis shall compute a tuition rate. The tuition rate shall not exceed the actual per student cost incurred in operation of the special education program. The commissioner shall adopt or amend rules to define allowable expenditures used to determine the per student cost.

[PL 1981, c. 693, §§5, 8 (NEW).]

2. Private special education facilities; private general purpose agencies. Private agencies that operate facilities that exclusively serve children with disabilities and private general purpose agencies that receive state aid for special education programs shall comply with the following in computing tuition rates.

A. All tuition rates are subject to approval by the commissioner. [PL 2005, c. 153, §6 (AMD).]

B. The tuition rates may not exceed the actual per student cost incurred in the operation during the preceding school year. [PL 2005, c. 153, §6 (AMD).]

C. The commissioner shall adopt or amend rules to define allowable expenditures used to determine per student costs. [PL 1981, c. 693, §§5, 8 (NEW).]

D. An agency shall file an annual financial report detailing the allowable expenditures and the computation of the tuition rate at such time and in the form the commissioner may require. [PL 1983, c. 278, §2 (AMD).]

E. Increases in the tuition rate from one year to the next may not exceed the tuition rate established through negotiation unless evidence is presented to the commissioner that a hardship will exist if a higher rate of increase is not approved, and this evidence is determined sufficient by the commissioner. [PL 2005, c. 153, §6 (AMD).]

F. The commissioner shall establish a tuition rate for new special education programs in special purpose private schools and private general purpose agencies based on the estimated allowable costs of these schools. [PL 2005, c. 153, §6 (AMD).]

[PL 2005, c. 662, Pt. A, §35 (AMD).]

3. Private general purpose facilities.

[PL 2005, c. 153, §7 (RP).]

4. **Exempted private agencies.** This section shall not apply to and the commissioner shall have no authority over tuition rates charged for special education programs by private agencies where the tuition is not paid, reimbursed or otherwise funded in whole or in part by this State.

[PL 1981, c. 693, §§5, 8 (NEW).]

SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW). PL 1983, c. 278, §2 (AMD). PL 1997, c. 736, §1 (AMD). PL 2005, c. 153, §§6,7 (AMD). PL 2005, c. 662, §A35 (AMD).

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