

## **122<sup>nd</sup> Legislature LD 1772 SP0689**

### **Education and Cultural Affairs**

An Act To Improve Early Childhood Special Education. (Submitted by the Department of Education pursuant to Joint Rule 204.)

**Presented by** Senator MITCHELL of Kennebec; Cosponsored by Senators: BRENNAN of Cumberland, MARTIN of Aroostook, TURNER of Cumberland, Representatives: CUMMINGS of Portland, DAVIS of Falmouth, MILLETT of Waterford, NORTON of Bangor. **Public Hearing** 01/31/06. Majority (OTP-AM) Accepted 04/12/06. **Amended by:** CA S-585. **Final Disposition:** Emergency Enacted, Signed 05/30/06, PUBLIC LAWS, Chapter 662.

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

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-SECOND LEGISLATURE**

**SECOND SPECIAL SESSION**  
**July 29, 2005**

**SECOND REGULAR SESSION**  
**January 4, 2006 to May 24, 2006**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**OCTOBER 28, 2005**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**AUGUST 23, 2006**

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

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2006**

**County Jail Prisoner Support and Community Corrections  
Fund 0888**

Initiative: Deappropriates funds to achieve savings.

<b>GENERAL FUND</b>	<b>2005-06</b>	<b>2006-07</b>
All Other	\$0	(\$19,690)
<b>GENERAL FUND TOTAL</b>	<b>\$0</b>	<b>(\$19,690)</b>
<b>CORRECTIONS, DEPARTMENT OF</b>		
<b>DEPARTMENT TOTALS</b>	<b>2005-06</b>	<b>2006-07</b>
GENERAL FUND	\$0	(\$36,355)
<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>\$0</b>	<b>(\$36,355)</b>
<b>SECTION TOTALS</b>	<b>2005-06</b>	<b>2006-07</b>
GENERAL FUND	\$0	\$0
<b>SECTION TOTAL - ALL FUNDS</b>	<b>\$0</b>	<b>\$0</b>

**Sec. 9. Effective date.** This Act takes effect January 1, 2007.

Effective January 1, 2007.

**CHAPTER 662**

**S.P. 689 - L.D. 1772**

**An Act To Improve Early Childhood  
Special Education**

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

**Whereas,** there is an immediate need for the Department of Education to begin implementation of the early childhood special education system, including employee salary and benefits administration, fiscal management, data management and service delivery; and

**Whereas,** failure to begin implementation would result in delays or possible disruption of early intervention and special education and related services to eligible children with disabilities and their families; and

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

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

**PART A**

**Sec. A-1. 5 MRSA §4602, sub-§2,** as amended by PL 1991, c. 99, §28, is further amended to read:

**2. Unlawful educational discrimination on the basis of physical or mental disability.** It is unlawful educational discrimination in violation of this Act solely on the basis of physical or mental disability to:

A. Exclude from participation in, deny the benefits of or subject to discrimination under any educational program or activity any otherwise qualified individual with physical or mental disability;

B. Deny any person equal opportunity in athletic programs, provided that no educational institution may be required under this subsection to provide separate athletic programs to serve persons with physical or mental disability;

C. Deny admission to any institution or program or fail to provide equal access to and information about an institution or program through recruitment; or

D. Deny financial assistance availability and opportunity.

Nothing in this subsection may be construed to cover the rights of ~~exceptional students~~ children with disabilities to special education programs under state or federal law.

**Sec. A-2. 5 MRSA §12004-G, sub-§8-A,** as reenacted by PL 2001, c. 471, Pt. C, §1 and affected by §10, is repealed.

**Sec. A-3. 5 MRSA §19508,** as amended by PL 2005, c. 279, §4, is further amended to read:

**§19508. Application to residents in children's homes**

This chapter also applies to ~~exceptional students~~ children with disabilities in children's homes, emergency shelters, family foster homes, specialized children's homes and residential child care facilities, as defined in Title 22, section 8101, and to other residential educational facilities, including the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf and other similar facilities.

**Sec. A-4. 20-A MRSA §1, sub-§3-A** is enacted to read:

**3-A. Child with a disability.** "Child with a disability" has the same meaning as in section 7001.

**Sec. A-5. 20-A MRSA §1, sub-§12**, as enacted by PL 1981, c. 693, §§5 and 8, is repealed.

**Sec. A-6. 20-A MRSA §1001, sub-§9-B**, as amended by PL 1999, c. 424, Pt. A, §1, is further amended to read:

**9-B. Disciplinary sanctions for children with disabilities.** They retain the authority to sanction an ~~exceptional student~~ a child with a disability as defined in section 7001, subsection ~~2 1-A~~ for misconduct that violates school rules. Notwithstanding the duties of school administrative units as described in section 7202, the school board may authorize the superintendent, principal or assistant principal to enforce this subsection by allowing the superintendent, principal or assistant principal to suspend ~~an exceptional student~~ a child with a disability up to a maximum of 10 days individually or cumulatively for infractions of school rules. When ~~an exceptional student~~ a child with a disability is suspended for 10 days or less individually or cumulatively within a school year for a violation of school rules, the school board is not required to provide a tutor, transportation or any other aspect of the student's special education program. Discipline of ~~exceptional students~~ children with disabilities must be consistent with the requirements of the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1415(k).

**Sec. A-7. 20-A MRSA §3001**, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

**§3001. Schools for children with disabilities**

Private schools ~~which that~~ operate programs for ~~exceptional students~~ children with disabilities shall conform to the applicable provisions of this chapter and chapters 301 and 303.

**Sec. A-8. 20-A MRSA §3254-A, sub-§1**, as enacted by PL 1985, c. 490, §7, is amended to read:

**1. Special education programs.** The commissioner shall provide special education and related services to all ~~exceptional students~~ children with disabilities of the unorganized territory in accordance with the provisions of chapter 303, except that the commissioner shall carry out the duties of school administrative units and superintendents as described in that chapter.

**Sec. A-9. 20-A MRSA §4722, sub-§3**, as amended by PL 2005, c. 446, §2, is further amended to read:

**3. Satisfactory completion.** A diploma may be awarded to secondary school students who have satisfactorily completed all diploma requirements in accordance with the academic standards of the school administrative unit and this chapter. All secondary

school students must work toward achievement of the content standards of the system of learning results. ~~Exceptional students~~ Children with disabilities, as defined in section 7001, subsection ~~2 1-A~~, who successfully meet the content standards of the system of learning results in addition to any other diploma requirements applicable to all secondary school students, as specified by the goals and objectives of their individualized education plans, may be awarded a high school diploma. Career and technical students may, with the approval of the commissioner, satisfy the 2nd-year math and science, the 2nd-year social studies and the fine arts requirements of subsection 2 through separate or integrated study within the career and technical school curriculum.

**Sec. A-10. 20-A MRSA §4801, sub-§1, ¶D**, as enacted by PL 1989, c. 128, is amended to read:

D. A school administrative unit, operating under a plan approved by the commissioner, may provide for the use of up to 5 of the 175 instructional days required by this section to be used for screening incoming first year students for the purpose of identifying ~~exceptional students~~ children with disabilities and students at risk of school failure as required by state or federal law.

**Sec. A-11. 20-A MRSA §5201, sub-§1**, as repealed and replaced by PL 1985, c. 506, Pt. A, §36, is amended to read:

**1. Eligibility to enroll; school year.** A person meeting the minimum age requirements of subsection 2 or section 7001, subsection ~~2 1-B~~, paragraph ~~A B~~, and who has not reached 20 years of age before the start of the school year may enroll as a full-time or, with the consent of the school board, as a part-time student, in the public elementary and secondary schools where the student resides as defined in section 5202. The school year, for the purpose of this subsection, is defined as starting on July 1st and ending on the following June 30th.

**Sec. A-12. 20-A MRSA §5201, sub-§3, ¶E**, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

E. The eligibility for ~~exceptional students~~ a child with a disability is governed by section 7001, subsection ~~2 1-A~~.

**Sec. A-13. 20-A MRSA §6202, first ¶**, as amended by PL 2005, c. 446, §3, is further amended to read:

The commissioner shall establish a statewide assessment program to measure and evaluate on a continuing basis the academic achievements of students at grades 4, 8 and 11 in the content areas of

the system of learning results established in section 6209 specified by the commissioner. The commissioner may elect to provide for the use of alternative measures of student achievement in grade 11. This assessment applies to students in the public elementary and secondary schools and in all private schools approved for tuition whose school enrollments include at least 60% ~~publicly funded~~ publicly funded students, as determined by the previous school year's October and April average enrollment. The assessment program must be adapted to meet the needs of ~~exceptional students~~ children with disabilities as defined in section 7001, subsection 2 ~~1-A~~ or other students as defined under rules by the commissioner.

**Sec. A-14. 20-A MRSA §6209, first ¶**, as amended by PL 2001, c. 454, §31, is further amended to read:

The department in consultation with the state board shall establish and implement a comprehensive, statewide system of learning results, referred to in this section as the "system," no later than the 2002-03 school year. The system, based broadly upon guiding principles set forth in this section, must establish high academic standards at all grade levels in the areas of math; English; science and technology; social studies, including history, economics and civics; career preparation; visual and performing arts; health and physical education; and foreign languages. Only students in a public school or a private school approved for tuition that enrolls at least 60% publicly funded students, as determined by the previous school year's October and April average enrollment, are required to participate in the system of learning results. The commissioner shall develop accommodation provisions for instances where course content conflicts with sincerely held religious beliefs and practices of a student's parent or guardian. The system must be ~~adopted~~ adapted to accommodate ~~exceptional students~~ children with disabilities as defined in section 7001, subsection 2 ~~1-A~~.

**Sec. A-15. 20-A MRSA §7001**, as amended by PL 2003, c. 676, §§1 and 2, is further amended to read:

#### **§7001. Definitions**

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

**1. Agency.** "Agency" means an agency, school, organization, facility or institution.

**1-A. Child Development Services System.** "Child Development Services System" means regional sites, or their successor sites, and the state intermediate educational unit under section 7209, subsection 3, or its successor, established to ensure the provision of

child find activities, early intervention services and free, appropriate public education services to eligible children.

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

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

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

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

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

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

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

(a) Mental retardation;

(b) Hearing impairment, including deafness;

(c) Speech or language impairment;

(d) Visual impairment, including blindness;

- (e) Serious emotional disturbance;
- (f) Orthopedic impairment;
- (g) Autism;
- (h) Traumatic brain injury;
- (i) Other health impairment;
- (j) Specific learning disabilities;
- (k) Deafness and blindness; and
- (l) Multiple disabilities.

- ~~(8) Autism;~~
- ~~(9) Traumatic brain injury;~~
- ~~(10) Other health impairment;~~
- ~~(11) Deafness and blindness; or~~
- ~~(12) Multiple disabilities.~~

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

~~Notwithstanding paragraph A, "exceptional student" does not include a child who reaches 5 years of age between September 1st and October 15th who is already receiving free, appropriate public education services through the Child Development Services System and whose parent chooses, in accordance with rules adopted by the commissioner, not to enroll the child in kindergarten until the start of the following school year.~~

**2. Exceptional student.** ~~"Exceptional student" is an individual who-~~

**2-A. Free, appropriate public education.** "Free, appropriate public education" means special education and related services that are provided at public expense, under public supervision and direction and without charge; meet the standards of the department; include an appropriate preschool, elementary school or secondary school education in the State; and are provided in conformity with the individualized family service plan or individualized education program. Preschool children with disabilities who reach 5 years of age between September 1st and October 15th who are already receiving free, appropriate public education through the Child Development Services System and whose parents choose, in accordance with rules adopted by the commissioner, not to enroll those children in kindergarten until the start of the following school year must have free, appropriate public education available to them through the Child Development Services System for one additional school year.

~~A. Has reached 5 years of age on or before October 15th;~~

~~B. Has not reached 20 years of age at the start of the school year; and~~

~~C. Requires special education because of one or more of the following-~~

- ~~(1) Visual impairments, including blindness;~~
- ~~(2) Hearing impairments, including deafness;~~
- ~~(3) Speech and language impairments;~~
- ~~(4) Specific learning disabilities;~~
- ~~(5) Orthopedic impairments;~~
- ~~(6) Emotional disability;~~
- ~~(7) Mental retardation;~~

**2-B. Intermediate educational unit.** "Intermediate educational unit" means an entity that meets the definition of intermediate educational unit in the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1402, (23) as in effect prior to June 4, 1997 and that is a public authority, other than a local educational agency, under the general supervision of the department, that is established for the purpose of providing free public education on a regional basis and that provides special education and related services to children with disabilities within the State. An intermediate educational unit is considered a local educational agency under federal law. The Child Development Services System regional sites are organized as intermediate educational units. In this State, a local educational agency is a school administrative unit. For purposes of this chapter all references to school administrative units include intermediate educational units.

~~4. **Preschool handicapped child.** "Preschool handicapped child" means a person who:~~

~~B. Has not reached 5 years of age on or before October 15th;~~

~~B-1. Notwithstanding paragraph B, has reached 5 years of age between September 1st and October 15th, is already receiving free, appropriate public education services through the Child Development Services System and whose parent chooses, in accordance with rules adopted by the commissioner, not to enroll the child in kindergarten until the start of the following school year.~~

~~C. Requires special services because of one or more of the following:~~

- ~~(1) Visual impairments, including blindness;~~
- ~~(2) Hearing impairments, including deafness;~~
- ~~(3) Speech and language impairments;~~
- ~~(4) Specific learning disabilities;~~
- ~~(5) Orthopedic impairments;~~
- ~~(7) Mental retardation;~~
- ~~(8) Autism;~~
- ~~(9) Traumatic brain injury;~~
- ~~(10) Other health impairment;~~
- ~~(11) Deafness and blindness; or~~
- ~~(12) Multiple disabilities.~~

4-A. **Regional site.** "Regional site" means a locally governed regional intermediate educational unit established to ensure the provision of services to children with disabilities under this chapter.

4-B. **Related services.** "Related services" means special education transportation and such developmental, corrective and other related services, as defined by the commissioner, as are required to assist children with disabilities to benefit from their special education programs.

5. **Special education.** "Special education" means classroom, home, hospital, institutional or other instruction; educational diagnosis and evaluation; transportation and other supportive assistance; services, activities or programs, as defined by the commissioner, required by exceptional students, specially designed instruction, at no cost to parents, to meet the unique needs of children with disabilities, as defined by the commissioner, including:

A. Instruction conducted in the classroom, in the home, in hospitals and institutions and in other settings; and

B. Instruction in physical education.

6. **Special education facility.** "Special education facility" means a public or private school, or portion thereof of a public or private school, intended for use in meeting the educational and related needs of exceptional students children with disabilities.

7. **State licensed agency.** "State licensed agency" means an institution or facility licensed by the State to provide education, emotional or mental health services, alcohol or drug rehabilitation, boarding care or other child care services to a person between the ages of 5 and 20 years. It includes:

A. Facilities under Title 22, chapter 1661; and

B. Community mental health centers services under Title 34 34-B, chapter 483; 3, subchapter 3.

~~C. Alcohol treatment facilities approved under Title 22, chapter 1601; and~~

~~D. Residential drug abuse treatment facilities under Title 22, chapter 1601.~~

8. **Residential child care facility.** "Residential child care facility" is a facility defined in Title 22, section 8101, subsection 4.

9. **Special education program.** A "special education program" is a full-time or part-time educational program designed to provide an equal educational opportunity to exceptional students children with disabilities through the delivery of special education services by qualified individuals.

10. **Special education services.** "Special education services" are educational services provided by qualified individuals as defined by the commissioner. Special education services shall must be provided by qualified individuals employed or contracted by the school administrative unit.

Sec. A-16. 20-A MRSA §7002, as enacted by PL 1981, c. 693, §§5 and 8, is repealed.

Sec. A-17. 20-A MRSA §7003, as enacted by PL 1981, c. 693, §§5 and 8, is repealed.

Sec. A-18. 20-A MRSA §7004, as enacted by PL 1997, c. 308, §1, is repealed.

Sec. A-19. 20-A MRSA §7005, as reallocated by RR 1997, c. 1, §20, is amended to read:

§7005. Special education

**1. Rulemaking.** The commissioner is authorized to adopt rules necessary for the administration of this chapter and chapters 303 and 305. These rules are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. The department shall identify in its regulatory agenda, when feasible, a proposed rule or provision of a proposed rule that is anticipated to be more stringent than the federal statute or regulation, if an applicable federal statute or regulation exists.

During the consideration of any proposed rule, when feasible, and using information available to it, the department shall identify provisions of the proposed rule that the department believes would impose a regulatory burden more stringent than the burden imposed by the corresponding federal statute or regulation, if such a federal statute or regulation exists, and explain in a separate section of the basis statement the justification for the difference between the agency rule and the federal statute or regulation.

**Sec. A-20. 20-A MRSA §7006** is enacted to read:

**§7006. Responsibility**

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

**Sec. A-21. 20-A MRSA c. 303**, as amended, is further amended by repealing the chapter headnote and enacting the following in its place:

**CHAPTER 303**

**CHILDREN WITH DISABILITIES**

**Sec. A-22. 20-A MRSA §7201**, as amended by PL 1995, c. 95, §1, is further amended to read:

**§7201. Policy and purpose**

The policy of the State for the education of ~~exceptional students~~ children with disabilities is as follows.

**1. Equal educational opportunities.** All students shall must be provided with equal educational opportunities and all school administrative units shall

provide equal educational opportunities for all exceptional students children with disabilities.

~~**2. Least restrictive education alternative.** An exceptional student shall be educated with students in regular programs to the maximum extent possible.~~

~~A. Educational opportunities for an exceptional student shall be provided by means of the addition of appropriate supportive assistance to regular educational programs.~~

~~B. Removal of an exceptional student from the regular educational environment shall occur only if the nature or severity of the exceptionality is such that the student's education cannot be satisfactorily accomplished in:~~

~~(1) Regular classes with the use of supplemental aids and services; or~~

~~(2) Self-contained classes within the regular school programs.~~

~~C. An exceptional student may be placed in a residential school or institution, or in a private day school or program, only after supporting evaluative data justifying the placement have been submitted to and approved by the commissioner.~~

**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

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.

**3. Students diagnosed as deaf.** ~~An exceptional A student; diagnosed as deaf, shall~~ must be educated with ~~regular~~ students without disabilities whenever possible and ~~shall~~ must be educated under the principle of the least restrictive educational alternative environment as set forth in state laws and rules and federal laws and regulations.

**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 ~~which that~~ will carry out duties and responsibilities in accordance with rules established by the commissioner.

**5. Blind students; Braille instruction.** All students may receive instruction in Braille reading and writing as part of their individualized family service plans or individualized education plans programs. A student may not be denied the opportunity of instruction in Braille reading and writing 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 plan programs must be documented in the individualized family service plan or individualized education plan program.

**6. Participation in cocurricular activities.** Eligibility for an ~~exceptional student~~ 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 ~~exceptionality~~ disability, provided that only if the student is satisfactorily completing the requirements of the educational components of an individualized family service plan or individualized education plan program and is otherwise in compliance with the plan program. If the student is not satisfactorily completing the educational components of an individualized family service plan or individualized education plan program or is not otherwise in compliance with the plan program, the student's eligibility may be determined in the same manner as the eligibility of a ~~nonexceptional student~~ child without disabilities who is not satisfying the applicable academic standards.

**Sec. A-23. 20-A MRSA §7202**, as amended by PL 2005, c. 446, §7, is further amended to read:

**§7202. Duties of school administrative units**

Each school administrative unit operating schools shall:

**1. Identification.** Identify all children within its jurisdiction who require special education;

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

**2-A. Assist advocates for developmentally disabled.** Assist the Protection and Advocacy Agency for the Developmentally Disabled in Maine advocacy agency designated under Title 5, section 19502 in

conducting an investigation, pursuant to Title ~~22~~ 5, section ~~3554~~ 19505, subsection 4, by providing access to relevant case records, notifying parents or guardians of these investigations and by requesting parental consent for access to case records by the agency. Parents or guardians may refuse to consent to the examination of these records;

**3. Diagnosis and evaluation.** Provide ~~educational diagnosis and evaluation necessary~~ 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 ~~exceptional students~~ children with disabilities at least 3 years of age and under 20 years of age within its jurisdiction;

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

**5. Special education and early intervention services.** Provide special education for each ~~exceptional student~~ eligible child with a disability within its jurisdiction;

**5-A. Diploma requirements.** Award a high school diploma to each ~~exceptional student~~ 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 ~~student's~~ child's individualized education plan program;

**6. Compliance.** Provide the commissioner with the information the commissioner may require to determine compliance with this chapter;

**7. Notice of parent's right to be a member of the team.** Notify in writing the ~~exceptional student's~~ parent, surrogate parent or guardian of ~~their~~ 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 ~~exceptional~~ student's permanent records;

**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 ~~exceptional students~~ children with disabilities, or give assurances that other facilities in the school administrative unit are adequate to meet the needs of those students;

**9. Securing parental permission.** For the Protection and Advocacy Agency for the Developmentally Disabled in Maine agency conducting studies pursuant to Title ~~22~~ 5, chapter ~~961~~ 511:

- A. Assist the agency in its studies; and
- 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; and

**10. Department of Health and Human Services; authority to request convening of pupil evaluation 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 a pupil evaluation team meeting and to attend and participate in any pupil evaluation team meetings concerning ~~an exceptional student~~ a child with a disability who is a state ward. The written notice must indicate the time and place of the pupil evaluation team meeting and a copy of the notice must be placed in the ~~exceptional student's~~ child's permanent record.

**Sec. A-24. 20-A MRSA §7203**, as enacted by PL 1981, c. 693, §§5 and 8, is repealed.

**Sec. A-25. 20-A MRSA §7204**, as amended by PL 1983, c. 806, §64, is further amended to read:

**§7204. Duties of the commissioner**

The commissioner:

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

**2. State plan.** Shall make and annually review a state plan for education of all ~~exceptional students~~ children with disabilities in the State. The State's plan may not require services that exceed minimum federal requirements. The plan shall 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;

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

- A. The usual public school year as defined in section 4801, subsection 1;
- B. An extended school year; or
- C. Other periods the commissioner determines appropriate;

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

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

**5. Due process.** Shall:

- A. Adopt or amend rules to assure and protect the rights of due process for ~~exceptional students~~ children with disabilities; and
- B. Inform and train each school administrative unit on ~~exceptional students'~~ the rights of children with disabilities to due process under state laws and rules and federal law and regulations; and

**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 ~~shall~~ may not be designed to transfer the responsibility for or actual development of the plan or report.

**Sec. A-26. 20-A MRSA §7206, sub-§1**, as amended by PL 1999, c. 424, Pt. A, §5, is further amended to read:

**1. Complaint.** An interested party may file with the commissioner a written complaint alleging that a school administrative unit or private school serving ~~exceptional students~~ 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 unless a longer period is reasonable because a violation is continuing or the complaint is requesting compensatory services for a violation that occurred not

more than 3 years prior to the date the complaint is received.

**Sec. A-27. 20-A MRSA §7207-A, sub-§2,** as amended by PL 1989, c. 700, Pt. B, §46 and enacted by c. 857, §56 and amended by PL 2003, c. 689, Pt. B, §6, is further amended to read:

**2. Objection to appointments.** When ~~an exceptional student~~ 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 ~~exceptional student~~ child with a disability. When ~~an exceptional student~~ 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.

**Sec. A-28. 20-A MRSA §7207-B, sub-§3-A,** as enacted by PL 1997, c. 441, §1, is repealed.

**Sec. A-29. 20-A MRSA §7207-B, sub-§4,** as amended by PL 1985, c. 797, §41, is further amended to read:

**4. Hearing officers, immunity.** The State shall ~~train~~ 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, ~~shall be~~ are considered state employees and ~~shall be~~ are entitled to the immunity provided state employees under the Maine Tort Claims Act.

**Sec. A-30. 20-A MRSA §§7209 and 7210** are enacted to read:

**§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 or the commissioner's designee 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.

B. During the period from July 1, 2006 to September 30, 2007, the department, in a manner consistent with the authority of the board of directors of an intermediate educational unit, shall only approve the annual entitlement plan and the budget for an intermediate educational unit pursuant to subsection 6 in accordance with the following.

(1) The department shall approve the entitlement plan and the budget if the provisions of the entitlement plan and the budget are in compliance with the statewide standards established by the state intermediate educational unit pursuant to subsection 3 for the purpose of ensuring coordinated service delivery in each region of the State.

(2) In the event that the department determines that the provisions of the annual entitlement plan and the budget presented by a board of directors of an intermediate educational unit are not in compliance with the statewide standards established pursuant to subsection 3, the department shall require the board of directors of the intermediate educational unit to revise and resubmit the annual entitlement plan and the budget in a reasonable amount of time as determined by the commissioner.

(3) In the event the provisions of the re-submitted annual entitlement plan and the budget are not in compliance with the statewide standards established pursuant to subsection 3, the department is authorized to determine and approve an appropriate, final annual entitlement plan and a budget for the intermediate educational unit that is in compliance with the statewide standards established pursuant to subsection 3.

This paragraph is repealed September 30, 2007.

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.

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.

E. The department, in consultation with regional sites, shall develop an action plan with timelines to achieve compliance with federal or state law. The department may assume temporary responsibilities for operations at a regional site that fails to meet compliance requirements.

**2. State-level advisory committee.** The state-level advisory committee is established for the period from July 1, 2006 to September 30, 2007 to advise on the provisions of this section. Members of the state-level advisory committee are appointed by the commissioner and must include representatives from each board of directors of a regional site described in subsection 5, the early childhood education consultant and the director of early childhood special education within the department. This subsection is repealed September 30, 2007.

**3. State intermediate educational unit.** 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. For the period from July 1, 2006 to September 30, 2007, 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, which must be included in the annual entitlement plan described in subsection 1 beginning in fiscal year 2006-07;

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

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;

D. Develop and implement a centralized data management system to be fully operational beginning July 1, 2007;

E. Establish a standard, statewide template for regional site contracts with therapeutic service providers, including policies and procedures for the review of contracts, that must be included in the annual entitlement plan described in subsection 1, beginning in fiscal year 2006-07;

F. Refine program accountability standards for compliance with federal mandates that must be included in the annual entitlement plan described in subsection 1, 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;

G. Design and implement a statewide plan to provide professional development and training to Child Development Services System personnel; and

H. Employ professional and other personnel, 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.

**4. Director of early childhood special education.** The commissioner 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. The director shall develop operating policies and establish organizational and operational procedures that include supervision, monitoring, data and accountability structures;

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; and

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.

**5. Regional site board of directors.** A board of directors of a regional site is responsible for governance of its activities, including the management and oversight of its general operations. Membership must include representatives of the regional offices of the Department of Health and Human Services, representatives of participating school administrative units, parents of children with disabilities and other community members as determined appropriate. A regional site board member or a board member's employer may not, during the term for which the member serves on the board, derive any revenue from work performed for the Child Development Services System. A representative of a participating school administrative unit whose participation in the Child Development Services System is limited to work performed for the school administrative unit is exempt from the requirements of this subsection. Terms of membership and methods of appointment or election for each board of directors must be determined by the board of director's bylaws, subject to approval by the department.

**6. Regional site board of directors; annual entitlement plan; site budget approval.** A board of directors of a regional site is entitled to receive annual grant award allocations that are approved by the department in accordance with the approval provisions for the annual entitlement plan and the budget for a regional site pursuant to subsection 1, paragraph B. This subsection is repealed September 30, 2007.

**7. Regional site; administration.** A board of directors of a regional site shall:

A. Hire, fire and supervise the staff of the regional site according to the job classifications, pay scales and personnel policies established by the state intermediate educational unit established under subsection 3;

B. 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, using forms and procedures developed by the department;

C. Ensure data entry and reporting through June 30, 2007; and

D. Provide fiscal management of money allocated to it, in compliance with federal and state laws and subject to proof of an annual audit.

**8. Regional site; duties and obligations.** A board of directors of a regional site shall:

A. Ensure provision of child find activities as required by the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq.;

B. Ensure provision of childcount activities as required by the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq.;

C. Ensure 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.;

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;

E. Ensure that eligible children with disabilities, from 3 years of age to under 6 years of age, receive free, appropriate public education services, in collaboration with school administrative units when possible;

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 unless an individualized family service plan is preferred; and

G. Designate local personnel for training to commit funds for free, appropriate public education. Personnel who commit funds for free, appropriate public education must be trained and certified by the state intermediate educational unit established under subsection 3. The board of directors of a regional site shall determine which trained and certified personnel may commit funds.

#### **§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.

**Sec. A-31. 20-A MRSA §7252-A**, as enacted by PL 1987, c. 395, Pt. A, §76, is amended to read:

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

Special Early intervention and special education programs may be established for the delivery of early intervention and special education services to exceptional students 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 shall must:

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

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

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

**Sec. A-32. 20-A MRSA §7252-B**, as enacted by PL 1987, c. 395, Pt. A, §76, is amended to read:

**§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 ~~Heensed~~ state licensed agency providing special education services shall submit a report at such time and in such form as the commissioner may require.

**Sec. A-33. 20-A MRSA §7255**, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

**§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 ~~exceptional students~~ children with disabilities.

**Sec. A-34. 20-A MRSA §7257**, as enacted by PL 1983, c. 64, is amended to read:

**§7257. General supervision**

All educational programs for ~~exceptional students~~ children with disabilities within the State, including all such programs administered by any other state or local agency, ~~will be~~ are under the general supervision of the commissioner.

**Sec. A-35. 20-A MRSA §7302, sub-§2**, as amended by PL 2005, c. 153, §6, is further amended to read:

2. **Private special education facilities; private general purpose agencies.** Private agencies that operate facilities that exclusively serve ~~exceptional students~~ 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.

B. The tuition rates may not exceed the actual per student cost incurred in the operation during the preceding school year.

C. The commissioner shall adopt or amend rules to define allowable expenditures used to determine per student costs.

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.

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.

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.

**Sec. A-36. 20-A MRSA §7502**, as amended by PL 1991, c. 655, §6, is further amended to read:

**§7502. State institutions**

The director of a state institution shall apply to the superintendent of the school administrative unit in which the institution is located, or in any adjoining unit, for children in the institution to attend that unit's schools. These ~~exceptional students~~ children with disabilities are entitled to attend under the same conditions as apply to students residing in the school administrative unit and under the rules of the department relating to special education.

**Sec. A-37. 20-A MRSA c. 307-A**, as amended, is repealed.

**Sec. A-38. 20-A MRSA §13024, sub-§1, ¶C**, as enacted by PL 2005, c. 457, Pt. FF, §3, is amended to read:

C. Personnel employed by or serving the school administrative unit as contracted service providers; and

**Sec. A-39. 20-A MRSA §13024, sub-§1, ¶D**, as enacted by PL 2005, c. 457, Pt. FF, §3, is repealed and the following enacted in its place:

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

**Sec. A-40. 20-A MRSA §13024, sub-§1, ¶E**, as enacted by PL 2005, c. 457, Pt. FF, §3, is repealed.

**Sec. A-41. 20-A MRSA §15672, sub-§30-A, ¶D**, as enacted by PL 2005, c. 2, Pt. D, §36 and affected by §§72 and 74 and c. 12, Pt. WW, §18, is amended to read:

D. Special education costs that are the costs of educational services provided to students who are temporarily unable to participate in regular school programs. Students who may be included are pregnant students, hospitalized students or those confined to their homes for illness or injury, students involved in substance abuse programs within hospital settings or in residential rehabilitation facilities licensed by the Department of Health and Human Services, Office of Alcoholism and Drug Abuse Prevention for less than 6 weeks duration or students suffering from other temporary conditions that prohibit their attendance at school. Students served under this paragraph may not be counted as ~~exceptional students~~ children with disabilities for federal reporting purposes.

**Sec. A-42. 22 MRSA §8823, sub-§2, ¶C**, as enacted by PL 1999, c. 647, §2, is amended to read:

C. A representative of hospitals, a representative of health carriers, a representative of the ~~Child Development Services System established in Title 20-A, section 7724~~ early childhood special education program under Title 20-A, chapter 303 and a representative of the department.

**Sec. A-43. 26 MRSA §962, sub-§7, ¶A**, as amended by PL 2005, c. 279, §15, is further amended to read:

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

- (1) Any municipality or any subdivision of a municipality;
- (2) Any school, water, sewer, fire or other district;
- (3) The Maine Turnpike Authority;
- ~~(4) Any board of directors functioning as a regional intermediate education unit pursuant to Title 20-A, section 7730;~~
- (5) Any county or subdivision of a county;
- (6) The Maine State Retirement System; or
- (7) The Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf;

**Sec. A-44. Effective date.** That section of this Part that repeals the Maine Revised Statutes, Title 20-A, chapter 307-A takes effect June 30, 2006.

## PART B

**Sec. B-1. Adoption of rules.** The major substantive rules adopting the unified eligibility provisions for early childhood special education and other special education programs for eligible persons from birth to 20 years of age, pursuant to the Maine Revised Statutes, Title 20-A, section 7005, subsection 1, must be presented by the Department of Education for legislative review in the First Regular Session of the 123rd Legislature, except that the Commissioner of Education may adopt a rule for the unified eligibility provisions for early childhood special education and other special education programs for eligible persons from birth to 20 years of age for the state fiscal year 2006-07 as an emergency rule pursuant to Title 5, section 8073. Notwithstanding Title 5, section 8052, subsection 1, the Department of Education must hold a public hearing on the emergency, major substantive rule adopted pursuant to this section. The commis-

sioner shall report to the joint standing committee of the Legislature having jurisdiction over education and cultural affairs by February 15, 2007 on the emergency, major substantive rule established for fiscal year 2006-07.

### PART C

**Sec. C-1. Subcommittee established.** The Subcommittee To Study Early Childhood Special Education, referred to in this Part as "the subcommittee," is established to study early childhood special education programs and services provided for infants and young children from birth to 8 years of age. The subcommittee shall function as a subcommittee of the Task Force on Early Childhood, an initiative of the Children's Cabinet established pursuant to the Maine Revised Statutes, Title 5, chapter 439 that proposes to implement a state plan for comprehensive early childhood systems.

**Sec. C-2. Subcommittee membership.** The subcommittee consists of no more than 28 members appointed as follows:

1. Two members of the Senate, one belonging to the political party holding the largest number of seats in the Senate and one belonging to the political party holding the 2nd largest number of seats in the Senate, appointed by the President of the Senate;

2. Two members of the House of Representatives, one belonging to the political party holding the largest number of seats in the House of Representatives and one belonging to the political party holding the 2nd largest number of seats in the House of Representatives, appointed by the Speaker of the House;

3. Twenty-four members appointed jointly by the Commissioner of Education and the Commissioner of Health and Human Services, who are the lead commissioners for the early childhood priority established by the Children's Cabinet. The Commissioner of Education and the Commissioner of Health and Human Services shall appoint subcommittee members from a list of 2 to 3 nominees submitted for each subcommittee position by the respective statewide organizations that represent the specified categories as follows:

A. Two members who are parents of infants or toddlers with a disability that have knowledge of or experience with programs for infants and toddlers with disabilities, who are nominated by the Maine Parent Federation, Inc., or its successor;

B. Two members who are parents of children with a disability between 3 years of age and 8 years of age that have knowledge of or experience with programs for children with disabilities,

who are nominated by the Maine Parent Federation, Inc., or its successor;

C. Two members who are contracted service providers of early intervention and free, appropriate public education services, who are nominated by the Maine Association for Community Service Providers, or its successor;

D. Two members who are Child Development Services System regional site staff who provide direct services, who are nominated by the boards of directors of the regional sites within the Child Development Services System;

E. One member who is a member of a board of directors of a Child Development Services System regional site, who are nominated by the boards of directors of the regional sites within the Child Development Services System;

F. One member who is a director of a Child Development Services System regional site, who is nominated by the Child Development Services System Site Directors Council;

G. One member who is a representative of a Head Start agency or program, who is nominated by the Director of the Office of Child Care and Head Start in the Department of Health and Human Services;

H. One member who is a representative of a child care program, who is nominated by the Director of the Office of Child Care and Head Start in the Department of Health and Human Services;

I. One member who is a teacher in an early childhood education program for children 4 years of age established by a public elementary school that includes coordination of programs and services for eligible children with a Child Development Services System regional site, who is nominated by the Executive Director of the Maine Education Association, or its successor;

J. One member who is a principal of a public elementary school that has implemented an early childhood education program for children 4 years of age that includes coordination of programs and services for eligible children with a Child Development Services System regional site, who is nominated by the Executive Director of the Maine Principals' Association, or its successor;

K. Two members who are special education directors, who are nominated by the Executive Director of the Maine Administrators of Services for Children with Disabilities, or its successor;

L. One member who serves as a superintendent of a school administrative unit that has implemented an early childhood education program for children 4 years of age that includes coordination of programs and services for eligible children with a Child Development Services System regional site, who is nominated by the Executive Director of the Maine School Superintendents Association, or its successor;

M. One member who serves as a school board member of a school administrative unit that has implemented an early childhood education program for children 4 years of age that includes coordination of programs and services for eligible children with a Child Development Services System regional site, who is nominated by the Executive Director of the Maine School Boards Association, or its successor;

N. One member who is an individual with a disability, who is nominated by the Executive Director of the Maine Administrators of Services for Children with Disabilities, or its successor;

O. One member who is a representative on the Maine Advisory Council for the Education of Children with Disabilities, who is nominated by the chair of the Maine Advisory Council for the Education of Children with Disabilities, or its successor;

P. Two members representing the Department of Education, who are nominated by the Commissioner of Education; and

Q. Two members representing the Department of Health and Human Services, who are nominated by the Commissioner of Health and Human Services.

**Sec. C-3. Chairs.** The President of the Senate and the Speaker of the House shall each select one member appointed in section 2, subsection 3 to serve as a cochair of the subcommittee, except that the President of the Senate and the Speaker of the House may not appoint a Legislator to serve as a cochair of the subcommittee.

**Sec. C-4. Appointments; convening of subcommittee.** All the appointments must be made no later than 30 days following the effective date of this Part. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. Within 15 days after appointment of all members, the chairs shall call and convene the first meeting of the subcommittee.

**Sec. C-5. Duties.** The subcommittee shall examine the following:

1. The extent to which services provided by the early childhood special education systems established in the State to deliver effective early intervention and free, appropriate public education services for eligible children from birth to 8 years of age are provided in an efficient manner that meets federal and state legal requirements;

2. The extent to which the existing early childhood systems established in the State strike a reasonable balance between the cognitive development and the emotional and physical needs of young children from birth to 8 years of age;

3. National trends and relevant models of governing and delivering early childhood special education systems in other states and jurisdictions that hold the potential for enhancing the effectiveness, efficiency or accountability of the early childhood special education systems established in the State;

4. The short-term and long-term costs and benefits of the Department of Education plan to restructure the Child Development Services System as presented by the Commissioner of Education to the Legislature pursuant to Public Law 2005, chapter 12, Part YY on November 30, 2005 and as set forth in this Act; and

5. Such other issues as the subcommittee membership determine to be useful or necessary in examining this policy matter.

**Sec. C-6. Staff assistance.** The Department of Education shall provide necessary staffing services to the subcommittee.

**Sec. C-7. Compensation.** Legislative members of the subcommittee are entitled to receive the legislative per diem and reimbursement for travel and other necessary expenses related to their attendance at authorized meetings of the subcommittee. Other members of the subcommittee may not receive compensation for their participation on the subcommittee.

**Sec. C-8. Report.** The subcommittee shall submit a report that includes its findings and recommendations, including suggested legislation, which may include an extension of any of the time periods established in the Maine Revised Statutes, Title 20-A, section 7209, for presentation to the Commissioner of Education and the Commissioner of Health and Human Services, who are the lead commissioners for the early childhood priority established by the Children's Cabinet, and to the joint standing committee of the Legislature having jurisdiction over education and cultural affairs and to the joint standing committee of the Legislature having jurisdiction over health and human services matters no later than January 31, 2007. The subcommittee is authorized to introduce legislation related to the recommendations

contained in its report to the First Regular Session of the 123rd Legislature at the time of submission of its report.

**PART D**

**Sec. D-1. Appropriations and allocations.**

The following appropriations and allocations are made.

**EDUCATION, DEPARTMENT OF**

**Preschool Handicapped 0449**

Initiative: Deappropriates funds in fiscal year 2005-06 and appropriates funds in fiscal year 2006-07 in order to recognize savings achieved in fiscal year 2005-06.

<b>GENERAL FUND</b>	<b>2005-06</b>	<b>2006-07</b>
All Other	(\$930,000)	\$930,000
<b>GENERAL FUND TOTAL</b>	<b>(\$930,000)</b>	<b>\$930,000</b>

**Preschool Handicapped 0449**

Initiative: Appropriates funds associated with savings in the MaineCare program in fiscal year 2005-06 due to a decline in enrollment of MaineCare-eligible children.

<b>GENERAL FUND</b>	<b>2005-06</b>	<b>2006-07</b>
All Other	\$0	\$214,500
<b>GENERAL FUND TOTAL</b>	<b>\$0</b>	<b>\$214,500</b>

**Preschool Handicapped 0449**

Initiative: Appropriates funds associated with savings in the MaineCare program in fiscal year 2006-07 due to a decline in enrollment of MaineCare-eligible children.

<b>GENERAL FUND</b>	<b>2005-06</b>	<b>2006-07</b>
All Other	\$0	\$277,616
<b>GENERAL FUND TOTAL</b>	<b>\$0</b>	<b>\$277,616</b>

**Preschool Handicapped 0449**

Initiative: Appropriates funds associated with savings in the MaineCare program in fiscal year 2006-07 due to adherence to current eligibility criteria and other changes in evaluations and service delivery for MaineCare-eligible children.

<b>GENERAL FUND</b>	<b>2005-06</b>	<b>2006-07</b>
All Other	\$0	\$544,500
<b>GENERAL FUND TOTAL</b>	<b>\$0</b>	<b>\$544,500</b>

**Preschool Handicapped 0449**

Initiative: Appropriates funds associated with savings in the MaineCare program in fiscal year 2006-07 related to autism programs for MaineCare-eligible children.

<b>GENERAL FUND</b>	<b>2005-06</b>	<b>2006-07</b>
All Other	\$0	\$100,000
<b>GENERAL FUND TOTAL</b>	<b>\$0</b>	<b>\$100,000</b>

**EDUCATION, DEPARTMENT OF  
DEPARTMENT TOTALS**

<b>2005-06</b>	<b>2006-07</b>
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<b>GENERAL FUND</b>	<b>(\$930,000)</b>	<b>\$2,066,616</b>
<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>(\$930,000)</b>	<b>\$2,066,616</b>

**HEALTH AND HUMAN SERVICES, DEPARTMENT OF**

**Medical Care - Payments to Providers 0147**

Initiative: Reduces funding associated with savings in the MaineCare program due to a decline in enrollment of MaineCare-eligible children in the Child Development Services System.

<b>GENERAL FUND</b>	<b>2005-06</b>	<b>2006-07</b>
All Other	(\$214,500)	(\$277,616)
<b>GENERAL FUND TOTAL</b>	<b>(\$214,500)</b>	<b>(\$277,616)</b>

<b>FEDERAL EXPENDITURES FUND</b>	<b>2005-06</b>	<b>2006-07</b>
All Other	(\$371,566)	(\$476,366)
<b>FEDERAL EXPENDITURES FUND TOTAL</b>	<b>(\$371,566)</b>	<b>(\$476,366)</b>

**Medical Care - Payments to Providers 0147**

Initiative: Reduces funds associated with savings in the MaineCare program in fiscal year 2006-07 due to adherence to current eligibility criteria and other changes in evaluations and service delivery for MaineCare-eligible children.

<b>GENERAL FUND</b>	<b>2005-06</b>	<b>2006-07</b>
All Other	\$0	(\$544,500)
<b>GENERAL FUND TOTAL</b>	<b>\$0</b>	<b>(\$544,500)</b>

<b>FEDERAL EXPENDITURES FUND</b>	<b>2005-06</b>	<b>2006-07</b>
All Other	\$0	(\$934,316)
<b>FEDERAL EXPENDITURES FUND TOTAL</b>	<b>\$0</b>	<b>(\$934,316)</b>

**Medical Care - Payments to Providers 0147**

Initiative: Reduces funds associated with savings in the MaineCare program in fiscal year 2006-07 related to autism programs for MaineCare-eligible children.

<b>GENERAL FUND</b>	<b>2005-06</b>	<b>2006-07</b>
All Other	\$0	(\$100,000)
<b>GENERAL FUND TOTAL</b>	<b>\$0</b>	<b>(\$100,000)</b>

<b>FEDERAL EXPENDITURES FUND</b>	<b>2005-06</b>	<b>2006-07</b>
All Other	\$0	(\$171,592)
<b>FEDERAL EXPENDITURES FUND TOTAL</b>	<b>\$0</b>	<b>(\$171,592)</b>

**HEALTH AND HUMAN SERVICES, DEPARTMENT OF  
DEPARTMENT TOTALS**

<b>GENERAL FUND</b>	<b>(\$214,500)</b>	<b>(\$922,116)</b>
<b>FEDERAL EXPENDITURES FUND</b>	<b>(\$371,566)</b>	<b>(\$1,582,273)</b>

**DEPARTMENT TOTAL - ALL FUNDS**

<b>(\$586,066)</b>	<b>(\$2,504,389)</b>
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**SECTION TOTALS**

<b>2005-06</b>	<b>2006-07</b>
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GENERAL FUND	(\$1,144,500)	\$1,144,500
FEDERAL EXPENDITURES		
FUND	(\$371,566)	(\$1,582,273)
<hr/>		
SECTION TOTAL -		
ALL FUNDS	(\$1,516,066)	(\$437,773)

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved, except as otherwise indicated.

Effective May 30, 2006, unless otherwise indicated.

**CHAPTER 663**

S.P. 665 - L.D. 1748

**An Act To Make Technical Changes to the Gambling Laws**

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

**Sec. 1. 5 MRSA §12004-A, sub-§47** is enacted to read:

47. Gambling \$55/Day 8 MRSA §1002 Control Board

**Sec. 2. 8 MRSA §1001, sub-§21**, as enacted by PL 2003, c. 687, Pt. A, §5 and affected by Pt. B, §11, is amended to read:

**21. Gross slot machine income.** "Gross slot machine income" means the total value of money, tokens, credits or similar objects or things of value used to actually play a slot machine minus money, credits or prizes paid out to winners before payback is distributed to a player.

**Sec. 3. 8 MRSA §1001, sub-§29-A** is enacted to read:

**29-A. Net slot machine income.** "Net slot machine income" means money, tokens, credits or similar objects or things of value used to play a slot machine minus money, credits or prizes paid out to winners and amounts paid pursuant to section 1036, subsection 1.

**Sec. 4. 8 MRSA §1003, sub-§2, ¶Q**, as enacted by PL 2003, c. 687, Pt. A, §5 and affected by Pt. B, §11, is amended to read:

Q. Certify monthly to the department a full and complete statement of all slot machine revenue, credits disbursed by licensees, administrative expenses and the allocation of gross slot machine income for the preceding month;

**Sec. 5. 8 MRSA §1003, sub-§2, ¶R**, as enacted by PL 2003, c. 687, Pt. A, §5 and affected by Pt. B, §11, is amended to read:

R. Submit by March 15th an annual report to the Governor and the joint standing committee of the Legislature having jurisdiction over gambling affairs on slot machine revenue, credits disbursed by slot machine operators, administrative expenses and the allocation of gross slot machine income for the preceding year;

**Sec. 6. 8 MRSA §1011, sub-§4**, as enacted by PL 2003, c. 687, Pt. A, §5 and affected by Pt. B, §11, is amended to read:

**4. Requirement for license; agreement with municipality where slot machines are located.** A slot machine operator shall enter into an agreement with the municipality where the slot machine operator's slot machines are located that provides for revenue sharing or other compensation, including, but not limited to, a provision requiring the preparation, in conjunction with the municipality, of a security plan for the premises on which the slot machines are located. The revenue-sharing agreement must provide for a minimum payment to the municipality of 3% of the ~~total gross net~~ slot machine income derived from the machines located in the municipality.

**Sec. 7. 8 MRSA §1018, sub-§1**, as enacted by PL 2003, c. 687, Pt. A, §5 and affected by Pt. B, §11, is amended to read:

**1. Fees.** The application fee for a license and the annual fee for a registered slot machine under this chapter are as set out in this subsection.

A. The initial registration fee for a registered slot machine is \$100. The annual renewal fee is ~~an amount, set by rules of the board, equal to the cost to the board of licensing slot machines and determined by dividing the costs of administering the slot machine licenses by the total number of slot machines licensed by the board~~ \$100 for each registered slot machine.

B. The initial application fee for a slot machine distributor license is \$200,000. The annual renewal fee is ~~an amount, set by rules of the board, equal to the cost to the board of licensing slot machine distributors and determined by dividing the costs of administering the slot machine distributor licenses by the total number of slot machine distributors licensed by the board~~ \$75,000.

C. The initial application fee for a slot machine operator license is \$200,000. The annual renewal fee is \$75,000 plus an amount, set by rules of the board, equal to the cost to the board of licensing slot machine operators and determined



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# 122nd MAINE LEGISLATURE

## SECOND REGULAR SESSION-2006

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Legislative Document

No. 1772

S.P. 689

In Senate, December 30, 2005

### **An Act To Improve Early Childhood Special Education**

(EMERGENCY)

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Submitted by the Department of Education pursuant to Joint Rule 204.

Received by the Secretary of the Senate on December 28, 2005. Referred to the Committee on Education and Cultural Affairs pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator MITCHELL of Kennebec.

Cosponsored by Senators: BRENNAN of Cumberland, MARTIN of Aroostook, TURNER of Cumberland, Representatives: CUMMINGS of Portland, DAVIS of Falmouth, MILLETT of Waterford, NORTON of Bangor.



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L.D. 1772

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**EDUCATION AND CULTURAL AFFAIRS**

Reported by: *Majority*

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE  
SENATE  
122ND LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 689, L.D. 1772, Bill, "An Act To Improve Early Childhood Special Education"

Amend the bill by striking out everything after the title and before the summary and inserting in its place the following:

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

**Whereas,** there is an immediate need for the Department of Education to begin implementation of the early childhood special education system, including employee salary and benefits administration, fiscal management, data management and service delivery; and

**Whereas,** failure to begin implementation would result in delays or possible disruption of early intervention and special education and related services to eligible children with disabilities and their families; and

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

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

**COMMITTEE AMENDMENT**

2 C. Personnel employed by or serving the school  
administrative unit as contracted service providers; and

4  
6 **Sec. A-39. 20-A MRSA §13024, sub-§1, ¶D**, as enacted by PL  
2005, c. 457, Pt. FF, §3, is repealed and the following enacted  
in its place:

8  
10 D. Personnel for whom certification or authorization is not  
required prior to being hired or being placed under contract  
by a public school or an intermediate educational unit.

12  
14 **Sec. A-40. 20-A MRSA §13024, sub-§1, ¶E**, as enacted by PL  
2005, c. 457, Pt. FF, §3, is repealed.

16 **Sec. A-41. 20-A MRSA §15672, sub-§30-A, ¶D**, as enacted by PL  
2005, c. 2, Pt. D, §36 and affected by §§72 and 74 and c. 12, Pt.  
18 WW, §18, is amended to read:

20 D. Special education costs that are the costs of  
22 educational services provided to students who are  
temporarily unable to participate in regular school  
24 programs. Students who may be included are pregnant  
students, hospitalized students or those confined to their  
homes for illness or injury, students involved in substance  
26 abuse programs within hospital settings or in residential  
rehabilitation facilities licensed by the Department of  
28 Health and Human Services, Office of Alcoholism and Drug  
Abuse Prevention for less than 6 weeks duration or students  
30 suffering from other temporary conditions that prohibit  
their attendance at school. Students served under this  
32 paragraph may not be counted as ~~exceptional~~--students  
children with disabilities for federal reporting purposes.

34 **Sec. A-42. 22 MRSA §8823, sub-§2, ¶C**, as enacted by PL 1999,  
36 c. 647, §2, is amended to read:

38 C. A representative of hospitals, a representative of  
health carriers, a representative of the ~~Child-Development~~  
40 ~~Services--System--established--in--Title--20--A--section--7724~~  
early childhood special education program under Title 20-A,  
42 chapter 303 and a representative of the department.

44 **Sec. A-43. 26 MRSA §962, sub-§7, ¶A**, as amended by PL 2005, c.  
279, §15, is further amended to read:

46  
48 A. Any officer, board, commission, council, committee or  
other persons or body acting on behalf of:

**SUMMARY**

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This amendment is the majority report of the Joint Standing Committee on Education and Cultural Affairs. The amendment strikes and replaces the bill. The amendment accomplishes the following.

1. It consolidates the provisions of early childhood special education, from birth to 2 years of age, and of special education, from 3 years of age to 20 years of age, into one unified set of statutory provisions for birth to 20 years of age.

2. It directs the Department of Education to amend the department rules established for the provision of special education services to eligible children from 5 years of age to 20 years of age into one unified set of department rules for the provision of special education programs and services for eligible infants, toddlers and children from birth to 20 years of age. The Department of Education must adopt emergency rules, which are designated as major substantive rules, which combine the department rules in rules chapter 101 established for the provision of special education services to eligible children from 5 years of age to 20 years of age with the department rules in rules chapters 180 and 182 established for the Child Development Services System.

3. It revises existing state statutes to align with the recently reauthorized federal Individuals with Disabilities Education Act, which was amended by the Federal Government in 2004.

4. It requires that related services be provided at public expense to children with disabilities. Related services means special education transportation and such developmental, corrective and other related services, as defined by the commissioner, as are required to assist children with disabilities to benefit from their special education programs.

5. It further amends state statutes to ensure consistent terminology, including replacing the term exceptional student with the term child with a disability.

6. It reorganizes the responsibilities of the Department of Education, the state intermediate educational unit and the 16 regional sites of the Child Development Services System in order to enhance the effectiveness of early childhood special education programs and to achieve efficiencies of cost to realize administrative savings within the Child Development Services System as required by Public Law 2005, chapter 12, Part YY.

COMMITTEE AMENDMENT "A" to S.P. 689, L.D. 1772

2 7. It establishes initiatives within the early childhood  
4 special education program that centralize fiscal administration,  
6 salary and benefits administration and data management policies  
and procedures beginning with the fiscal year starting on July 1,  
2006.

8 8. It provides the Commissioner of Education with the duty  
10 to determine and approve the annual entitlement application and  
the budget presented by the respective boards of directors of the  
16 regional sites within the Child Development Services System.

12 9. It establishes the Subcommittee To Study Early Childhood  
14 Special Education, a 28-member subcommittee, to study early  
16 childhood special education programs and services provided for  
18 infants and young children from birth to 8 years of age. The  
20 subcommittee shall function as a subcommittee of the Task Force  
22 on Early Childhood, an initiative of the Children's Cabinet that  
24 proposes to implement a state plan for comprehensive early  
26 childhood systems. The subcommittee shall submit a report to the  
28 Commissioner of Education and the Commissioner of Health and  
Human Services and to the joint standing committee of the  
Legislature having jurisdiction over education and cultural  
affairs and to the joint standing committee of the Legislature  
having jurisdiction over health and human services matters no  
later than January 31, 2007. The subcommittee has the authority  
to submit legislation to the First Regular Session of the 123rd  
Legislature to implement the recommendations contained in its  
report.

30 10. It adds an appropriations and allocations section.

FISCAL NOTE REQUIRED  
(See Attached)

**COMMITTEE AMENDMENT**