



Maine State Legislature
OFFICE OF POLICY AND LEGAL ANALYSIS
www.mainelegislature.gov/opla
13 State House Station, Augusta, Maine 04333-0013
(207) 287-1670

BILL ANALYSIS

TO: Members, Joint Standing Committee on Education and Cultural Affairs

FROM: Hillary Risler, Legislative Analyst

DATE: 2/29/24

RE: LD 345, "An Act Regarding Educational Policies and Programs" (Brennan)

SUMMARY

This bill is a concept draft pursuant to Joint Rule 208, and proposes to direct the Department of Education to develop policies and programs to assist all Maine students to succeed.

The sponsor proposed an amendment, which is the department's proposed language to reorganize the oversight over FAPE for children aged 3-5 from Child Development Services (CDS) to school administrative units. This language matches the language proposed in the Governor's supplemental budget, LD 2214, Part W.

Attached is a revised draft, which makes the following technical and substantive changes:

TECHNICAL DRAFTING CONSIDERATIONS:

- **Definitions:** Definitions in law are used to provide clarity and consistency, define words that are difficult or technical, or define terms that may be substituted for longer terms or phrases used repeatedly in the law. *A definition section should never include substantive provisions of law.* The attached, revised draft removes substantive provisions of law from definitions (reallocating those provisions elsewhere) and/or removes unnecessary language.
- **Clarifications:**
 - Regional sites and regional service hubs - CDS currently operates regional sites for both Part C and Part B §619 services. As SAUs assume responsibility for the provision of FAPE, the regional sites will transition to regional service hubs – aligned with the nine superintendent regions – while continuing to provide Part C services. Depending on how much detail the committee wants to include about the role of regional service hubs, there could be an additional section or subsection that outlines the roles and MOUs.

- Responsibility for the provision of services – this section is re-drafted to clearly delineate who has responsibility for what and when, how services may be provided, and clarifies that for those school administrative units that are ultimately unable to assume responsibility for FAPE, the commissioner may establish a modified plan for them. Some of the language in the original draft that had to do with the transition to regional service hubs has been moved to the transition section.
- Transition section – this section has been reallocated to its own section (rather than a subsection), which allows the structure to clearly delineate the steps during the transitional years, including assumption of FAPE by SAUs, additional time for certain SAUs, service provision options, the transition of CDS regional sites to regional service hubs, and an annual reporting requirement to the EDU committee.
- Funding section – As above, this section has also been reallocated to its own section (rather than as a subsection) for readability. The introductory paragraph includes language requiring the funding to be provided outside of GPA and at 100% state share.

SUBSTANTIVE ADDITIONS IN THE DRAFT FROM DOE:

- **Compensatory services:** In the transition section of the draft, DOE has added that CDS is responsible for due process and is required to pay 100% of costs for compensatory services for children with a disability from 3 years of age to under 6 years of age who have been underserved through the child development services system.
- **Funding:** Substantive clarifications in the allocation formula adds a cross reference to section 15681 for the regular per-pupil allocation; clarifies that the special education per-pupil allocation is 1.5 times the 15676 EPS per-pupil rate calculation; and removes the high-cost in-district allocation.
- **Expanded Part C eligibility criteria:** Adds unallocated language directing the department to convene a workgroup to review the State's Part C eligibility criteria. This may require some additional language.

OVERVIEW:

- **Part C – what is included in the revised draft:** Adds to current law the Extended Part C Option, directs the DOE to convene a work group to review Part C eligibility criteria, and transitions the CDS regional sites to become CDS service hubs aligned with the nine superintendent regions.
- **Part C – what is not in the draft:**
 - Statutory language expanding Part C eligibility criteria
 - Specific language regarding improvements to data and financial systems improvements

- **Part B § 619 – what is included in the revised draft:** Provides for reorganization and transition of oversight of Child Find and FAPE for children from 3 years of age to under 6 years of age from CDS to school administrative units as follows:
 - Until June 30, 2028, the commissioner will designate responsibility for child find and FAPE to CDS or SAUs in accordance with the transition schedule. In the first year, SAUs may be approved, and the DOE will provide community readiness assessments, professional learning and technical support. Funding will be provided on a quarterly basis. The DOE and each SAU will establish an MOU delineating the services to be provided by regional service hub, which must be in place prior to the assumption of FAPE responsibilities and reviewed and updated each month. The DOE will contract with a national expert to regularly monitor funding and programming.

In school years 2026-27 and 2027-28, the commission will approve additional SAUs to assume responsibility and will provide the same supports as required for the first cohort.

At the end of the transition phase, if a SAU is not able to assume responsibility, the commissioner may give them an extra year. If at the end of that, they still are not able to assume responsibility, they may receive a modified plan.

During and after the transition, SAUs may provide services directly or may contract with public or private providers or their regional CDS site/service hub.

As SAUs assume responsibility for FAPE, the regional CDS sites will transition into regional service hubs, aligned with the 9 superintendent regions.

DOE will provide annual reports to the EDU committee in January each year.

CDS will be responsible for due process and for paying 100% of the costs for compensatory services for children who were underserved through the CDS system.

- SAUs that assume responsibility for FAPE will receive funding, which may not be appropriated to or allocated through GPA or the EPS formula and the funding must be 100% state share (no local contribution). Funding includes two components:
 - A per-pupil operating allocation calculated using the per-pupil counts (§15674), applying the additional weights for specialized populations (§15675) and targeted funds (§15681); and
 - A per-pupil special education and related services allocation, which is the EPS per-pupil rate (§15676) multiplied by 1.5 for each eligible child (and adjusted each quarter).

There are also additional allocations for high-cost out-of-district placements.

- The draft also establishes the Preschool Special Education Program Fund as a nonlapsing fund for these general education and special education and related services costs.

- **Part B § 619 – what is not included in the draft:**

- Directing DOE to develop a Maine Preschool IDEA Monitoring Process to identify what metrics are necessary to include in a readiness tool and track unmet and partially met needs
- Developing an invoicing system to reimburse SAUs for actual costs
- Including the minimum requirements for the CDS regional service hubs, including suggestions for:
 - MaineCare and private insurance billing (alternately was suggested that DOE work with DHHS to develop regional MaineCare billing hubs);
 - Training and professional development;
 - Assistance with Child Find;
 - Recruitment/connection with private related service providers
- Certification changes – Suggestions included directing the State Board of Education to expand the 282 endorsement from K-12 to Pre-K-12
 - *Note: The committee directed the SBE to engage in rulemaking (LD 2221). The SBE's report included: **2.1 Endorsement 282 Teacher of Children with Disabilities** - Other specific suggestions have been made by constituents that will require further study and refinement. Specifically, the grade spans for the endorsements need to be refined.*
- Additional positions and/or advisory bodies, such as: an inclusion consultant and contract with an advocacy agency
- Specific direction regarding additional rulemaking of DOE's Ch. 101: MUSER or DHHS's Ch. 101: MaineCare Benefits Manual to establish a new section containing the requirements for the provision of school health-related services

- **Concerns raised during the public hearing include, but are not limited to:**

- Reference to being educated or enrolled in a Pre-K classroom
 - The revised draft does clarify the extended Part C option definition by removing the reference to enrollment in a pre-k classroom.
 - DOE can provide additional information on why they used the language in the definition in 1-D "child eligible under IDEA Part B § 619"
- Ensuring LRE (suggestion to include definition and use of term "inclusive, high-quality early education program")
- Ensuring schools receive assistance with Child Find
- Staffing, transportation, and physical space
- CDS employees (retention and recruitment, pay, better management and oversight, retirement)

RECENT REPORTS:

- DOE LD 1528 Report (2/1/24)¹
- Child Development Services Annual Report (February 2024)²
- Annual Pre-K Report (2/15/24)³
- Report of the Commission to Study Expansion of Public Preschool and Early Care and Education (January 2024)⁴
- PCG Reports (130th Legislature)⁵

PRELIMINARY FISCAL IMPACT STATEMENT:

- **Not yet determined**
- **Potential State Mandate:** The Maine Constitution, Article IX, Section 21 (adopted in 1992), prohibits the State from requiring a local unit of government to expand or modify its activities so as to necessitate additional expenditures from local revenues unless:
 - The State annually provides 90% of the funding; or
 - The Legislature votes to establish an exemption by a 2/3 vote of the elected membership of each chamber.

In accordance with the Constitution, the Legislature enacted implementing legislation (30-A MRSA §5685) which, among other things, clarifies that if the Legislature passes legislation that constitutes a State mandate and does not create an exception for that mandate or provide the required state funding, affected local units of government are not bound by the mandate.

This draft will be flagged as a potential state mandate by OFPR. The question will be whether the mandate is funded. Considerations will include the language that funding is intended to be at 100% state share, that the mandate will not fully be in place until July 2028, and that the full cost probably is not known at this time. As a rule, purpose (or intent) clauses should not be included in Acts or Resolves of the Legislature. However, a purpose clause *may* be used to strengthen a law against a constitutional challenge and/or the Legislature can include its intent in the summary of the bill. This *could* be an option if the committee wants to make it clear that the intent is to fund 100% of the costs associated with this transition in FAPE responsibility.

¹ <https://legislature.maine.gov/doc/10651>

² <https://legislature.maine.gov/doc/10772>

³ <https://legislature.maine.gov/doc/10773>

⁴ <https://legislature.maine.gov/doc/10727>

⁵ <https://legislature.maine.gov/independent-review-of-the-states-early-childhood-special-education-services-reports-and-memoranda>

