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Task Force to Identify Special Education Cost Drivers and Innovative Approaches to Services

Maine State Legislature

Maine Office of Policy and Legal Analysis

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**STATE OF MAINE
128th LEGISLATURE
SECOND REGULAR SESSION**

**Task Force to Identify Special Education Cost Drivers
and Innovative Approaches to Services**

January 2018

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Lynn Maddocks
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Executive Summary

The Task Force to Identify Special Education Cost Drivers and Innovative Approaches to Services (Task Force) was established during the First Regular Session of the 128th Legislature by Resolve 2017, Chapter 26 (LD 642, “Resolve, To Identify Special Education Cost Drivers and Innovative Approaches to Services”). The Task Force was comprised of 11 members, including 2 legislators and 9 individuals with expertise in school administration, finance and management, special education services and students with special needs. The Task Force was established to address the rising cost of special education and the maintenance of high-quality services that accommodate the needs of all children, by identifying cost drivers and recommending innovative approaches to serving students.

PROCESS

The Task Force explored key information regarding the special education funding components, including the background, trends, common themes, comparisons and policy considerations related to the ongoing state and federal special education cost drivers. The Task Force considered the statutory and regulatory policy trends aligned with the administration of special education programs and services and the response to intervention system. The Task Force members also reflected upon strategies that provide cost savings while improving student outcomes, including services and best practices for raising the outcomes for all students, both those with and without special needs.

The meetings included a number of presentations from individuals representing organizations engaged in the finance and delivery of special education services and related policy research at the state and national levels, including the Maine Department of Education, the Maine Education Policy Research Institute, the Maine Administrators of Services for Children with Disabilities, the Maine School Management Association, the District Management Group, the Maine Small School Coalition, and the University of Maine Center for Community Inclusion and Disability Studies. The final meeting of the Task Force focused on the discussion of findings and the development of proposed recommendations for the final report.

FINDINGS AND RECOMMENDATIONS

This report fulfills the Task Force’s requirement to submit a report that includes findings and recommendations that address the rising cost of special education and the maintenance of high-quality services that accommodate the needs of all children. Following its receipt and review of the Task Force report, the Joint Standing Committee on Education and Cultural Affairs is authorized to submit a bill to the Second Regular Session of the 128th Legislature. The Task Force developed nine recommendations:

Recommendation #1. Implement strategies to remove barriers between special education and general education and develop an integrated, inclusive system in which special education and general education work collaboratively to deliver services to all students.

The Task Force recommends that the Department of Education, with input from state and local education policy experts and stakeholders, take the following steps to promote integration:

- ❖ Review and make necessary changes in state law, special education rules, teacher certification requirements, job titles, funding formulas, and other relevant areas, to allow:
 - Special education teachers and paraprofessionals to serve all students, not only those identified as special education students;
 - General education teachers and subject area specialists (for example, reading and math specialists) to provide services for Individual Education Programs (IEPs) to special education students. This is allowed under federal law and regulations;
 - Special education and general education teachers to co-teach classrooms;
 - Special education paraprofessionals to provide general classroom support, not only support to individual special education students; and
 - Special education staff to focus on specialized and adapted instruction of general education curriculum; and
- ❖ Critically review the use of one-to-one adult support for special education students and develop strategies to foster student independence:
 - Develop and implement standard processes and criteria for one-to-one adult support that IEP teams must follow to identify, justify, and regularly re-evaluate the need for this service; and
 - Explore and implement alternative strategies to meet the needs of special education students with reduced reliance on one-to-one support.

Recommendation #2. Enhance and upgrade the Response to Intervention system as an all-encompassing Multi-Tiered System of Support.

The Task Force recommends that the Department of Education (DOE) upgrades the Response to Intervention (RTI) system to become a holistic Multi-Tiered System of Support (MTSS) for regular education and special education students. Task Force members proposed that the DOE should bring the RTI system back to the forefront in general education, in addition to special education, to ensure that the RTI/MTSS system is utilized to serve all students. The Task Force agreed that any necessary changes should be made to implement the RTI/MTSS systems broadly, and that the DOE should specifically consider moving RTI related rules from the special education rules chapter, (Chapter 101), to an appropriate general education rules

chapter, possibly Chapter 125, related to the Basic Approval Standards for Public Schools and School Administrative Units.

The Task Force also recommends that the DOE promote the integration of the proposed RTI/MTSS system by taking the following steps:

- ❖ Promote integration of RTI and regular classroom instruction by increasing the investment of regular instruction teachers in special education students; and requiring the regular instruction teachers to be the teacher of record who is responsible for issuing grades (the exception would only be for those students who spend 100% of their instructional time in special education classroom);
- ❖ Enhance RTI/MTSS targeted interventions; the RTI/MTSS staff should provide interventions to target academic, behavior and mental health needs; interventions should be data driven; and regular education staff need training related to various intervention approaches, strategies and data collection;
- ❖ Increase RTI support for reading instruction, which is the gateway to all other learning; provide additional support, both financially as well as strong technical assistance, to ensure all students have a solid reading foundation and reduce future referrals to special education; and
- ❖ Revise the Essential Programs and Services (EPS) school funding formula law to provide resources for the RTI/MTSS systems to support regular education; funding resources must be allocated in order to provide effective levels of support for:
 - Student interventions so that these are noticed and funded;
 - Training to be provided for all regular education staff in the areas of differentiating instruction, providing targeted interventions that are data-based, and using interventions and instructional strategies that are research-based;
 - Training teachers to provide instruction and track progress;
 - Math and literacy coaches and behavior strategists; change the EPS formula treatment of math and literacy coaches and behavior strategists so that they are counted under support rather than direct instruction;
 - Behavior strategists to provide behavior plans and to consult with classroom teachers; and

- Oversight to assure that the RTI/MTSS system has been implemented in all districts.

Recommendation #3. Address special education staffing shortages by reviewing the certification processes for special education teachers and related staff, including promotion of dual certification programs at the university level whereby students graduate with both general and special education certification, and implementing “grow our own” initiatives to encourage enrollment in special education certification programs.

The Task Force recommends that the state and local education policy makers work to reduce barriers to obtaining special education and related certifications. These certifications include, but are not limited to, certifications for special education teachers, reading and math specialists, and paraprofessionals. The Task Force recommends that state and local education policy leaders should work together to:

- ❖ Design and promote the use of dual certification programs at the university level whereby students obtain certification in both general and special education;
- ❖ Design alternative pathway approaches to special education certification for Education Technicians (for example, through the Department of Labor’s (DOL) apprenticeship model);
- ❖ Design a “fast track” certification program for special education teachers; and
- ❖ Develop “grow our own” initiatives to create incentives for Maine students to go into the field of special education through tuition reimbursement, scholarship and loan forgiveness programs.

Recommendation #4. Streamline and reduce state special education paperwork requirements so that teachers can dedicate more time to direct student instruction.

The Task Force recommends that the Department of Education (DOE) take the following steps to streamline and reduce special education paperwork requirements:

- ❖ Align with federal standards: review the Maine Unified Special Education Regulations (Rule Chapter 101) to identify where paperwork and documentation requirements exceed Federal regulations and propose changes to streamline state requirements, reduce redundancy and bring state and Federal regulations into alignment; conduct rulemaking to implement proposed changes;
- ❖ Eliminate redundancy: review standardized forms to identify duplication and implement changes to reduce redundancy; and

- ❖ Collect data and measure progress: collect data on time spent on special education paperwork and meetings by teachers (special education and general education) under current state requirements (baseline) and then again after changes have been implemented.

Recommendation #5. Address federal and state laws and regulations regarding funding formulas related to financing special education programs and services.

The Task Force recommends that the Department of Education (DOE) revisits the following federal and state funding formulas to increase the equity of special education costs across all school districts:

- ❖ Review the Essential Programs and Services (EPS) school funding formula regarding issues related to the high cost in-district students;
- ❖ Revisit the federal and state statutes and regulations related to the Maintenance of Effort (MOE) finance requirements and review the MOE data for Maine school districts; and
- ❖ Propose legislation that recalculates the base and supports funding formulas that ensure greater equity in special education allocations.

Recommendation #6. Review and improve the MaineCare billing systems and procedures to simplify the billing process and reduce the burden for school districts that seek to obtain Federal funds for medically necessary services for public school students.

The Task Force recommends that the DOE and DHHS review and address barriers in the current MaineCare billing systems and processes for medically necessary services including:

- ❖ Consider and make changes to improve the formation and distribution of seed money to remove barriers for school districts, particularly with respect to students sent to special purpose private schools;
- ❖ Simplify the MaineCare process for school districts' billing and reduce school districts' administrative burdens; and
- ❖ Change the MaineCare billing rules to include a provision for school district-based reimbursement with a different, but appropriate set of school-based rules established for a medical provider.

Recommendation #7. Review and recodify the state special education regulations to improve usefulness, readability and accessibility.

The Maine Unified Special Education Regulations (Rule Chapter 101) provide the regulatory framework for the administration and delivery of special education in Maine. Chapter 101 is a critical resource and reference document for school administrators, teachers and staff across the State, providing guidance and direction on the many, and often complex, requirements for special education services. The Task Force finds that it is time to update and recodify this document.

The Task Force recommends that the DOE conduct rulemaking to recodify Rule Chapter 101 for the purpose of improving the flow, structure, usefulness and accessibility of the contents of this important document. These changes will reduce time spent and increase accuracy for users who need to locate specific regulations and will support correct implementation of the regulations within the document.

Recommendation #8. Explore and address the costs associated with special education litigation and educational program materials to determine the actual cost to school districts and how to reduce those costs.

The Task Force recommends gathering additional information on what is driving special education litigation and what the actual cost of that litigation is to school districts. The Task Force suggests utilizing a Maine Education Policy Research Institute (MEPRI) study to gather and analyze the drivers and associated costs of litigation. Data on this issue could lead to a better understanding of how to reduce litigation costs, while still providing special education services that meet the needs of the students.

At the final meeting, the Task Force also identified the high cost of educational program materials as a potential cost driver. The Task Force considered whether the purchase of materials and supplies could be negotiated at the State level to ease some of the burden on individual school districts. The Task Force noted that even small discounts could have large implications for school district budgets. The Task Force recommends that the Department of Education explore and implement where feasible, state-wide purchasing options to reduce these costs to school districts.

Recommendation #9. Consider providing funding for universal preschool programs.

The Task Force suggests that the Legislature should consider providing funding in order to implement universal preschool access for all four and five year old children in the State. Task Force members proposed that providing funding for universal preschools would accomplish the following:

- ❖ All children would have access to an enriched preschool experience with approved curriculum, regardless of their parent's financial status;
- ❖ In some cases, districts would be able to deliver services that are not provided through Child Development Services (CDS);

- ❖ Reduce future identification of students requiring special education and related services by early intervention and identification;
- ❖ Provide access to literacy, math, and behavior specialists for preschool teachers and their students; and
- ❖ Create a seamless transition to kindergarten for students.

Conclusion

The Task Force acknowledges that the proposed recommendations for prospective changes may well address the areas of rising special education cost drivers and the innovative approaches to the maintenance of high-quality services that will be able to accommodate the needs of all children. Therefore, the Task Force encourages the Committee on Education and Cultural Affairs to explore the recommendations proposed in this report in order to help improve the programs and services that are capable to fulfill the needs of all children in the State.

I. INTRODUCTION

The Task Force to Identify Special Education Cost Drivers and Innovative Approaches to Services was established during the First Regular Session of the 128th Legislature by Resolve 2017, Chapter 26 (LD 642), “Resolve, To Identify Special Education Cost Drivers and Innovative Approaches to Services.” A copy of the legislation authorizing the Task Force is attached as **Appendix A**.

The Task Force was comprised of 11 members¹, including 2 legislators and 9 individuals with expertise in school administration, finance and management, special education services and students with special needs. The Task Force membership included the following members:

- ❖ Sen. Brian D. Langley *Senate member of Education and Cultural Affairs Committee*
- ❖ Rep. Richard R. Farnsworth *House member of Education and Cultural Affairs Committee*
- ❖ Richard Colpitts *School Superintendent representing Maine School Superintendents Association*
- ❖ Kathleen Cox *Special Education Director who serves an urban school district*
- ❖ Lynn Maddocks *Advocate for students with special needs*
- ❖ Lesley Snyer *Special Education Director who serves a rural district*
- ❖ Jill Watson *Special Education Teacher representing the Maine Education Association*
- ❖ Andrea Disch *School Business Manager*
- ❖ Jennifer McGee *Principal representing Maine Principal’s Association*
- ❖ Jerry Nault *School Board Member representing Maine School Boards Association*
- ❖ Carrie Woodcock *Parent of a student with special needs representing Maine Parent Foundation*

The Task Force membership list, including the members’ contact information, is attached as **Appendix B**.

¹ The Resolve establishing the Task Force designated two additional members: a special education student who graduated within the last five years, appointed by the President of the Senate, and an employee of the Department of Education, appointed by the Commissioner of Education. These members were not appointed.

The Resolve specified that the Chairs of the Task Force would consist of the appointed Senate member as the Senate Chair and the appointed House member as the House Chair. As such, Senator Brian Langley served as the Senate Chair and Representative Richard Farnsworth served as the House Chair.

II. TASK FORCE DUTIES

The Task Force was established to address the rising cost of special education and the maintenance of high-quality services that accommodate the needs of all children, by identifying cost drivers and recommending innovative approaches to serving students.

The key elements of the Task Force project included:

- 1) Conducting a comprehensive study on special education cost drivers and innovative approaches to services;
- 2) Researching issues to address the rising cost of special education while maintaining high-quality services and the maintenance of high-quality services that accommodate the needs of all children by identifying cost drivers and recommending innovative approaches to service students;
- 3) Arranging presentations by recognized experts and practitioners on special education cost drivers and innovative approaches to services; and
- 4) Making recommendations to accommodate the needs of all children by identifying cost drivers and recommending innovative approaches to serving students.

The Task Force was charged to submit a final report, including its findings, recommendations and suggested legislation, for presentation to the Joint Standing Committee on Education and Cultural Affairs no later than December 6, 2017; the Task Force requested and received an extension to submit the report no later than January 15, 2018. The resolve that created this Task Force also provides the Joint Standing Committee on Education and Cultural Affairs the authority to submit a bill, based upon the final report of the Task Force, to the Second Regular Session of the 128th Legislature.

III. TASK FORCE PROCESS

The Task Force held a total of four meetings. These meetings were held on October 19, 2017; November 16, 2017; December 4, 2017; and December 19, 2017. All meetings were open to the public and were broadcast by audio transmission over the internet. A complete collection of meeting materials is available online at: <http://legislature.maine.gov/special-education-cost-drivers-task-force>.

The first several meetings of the Task Force focused on gathering key information to inform the development of findings and recommendations. These meetings included a number of presentations from individuals representing organizations engaged in the finance and delivery of special education services and related policy research at the state and national level. A full list of presenters is provided in **Appendix C**. The final meeting of the Task Force focused on the discussion of findings and the development of proposed recommendations for the final report.

The Task Force was authorized to hold up to five meetings and convened its first meeting on October 19, 2017. At the first meeting, members received a presentation from Dr. Amy Johnson, Director, and James Sloan, Research Associate, both from the Maine Education Policy Research Institute (MEPRI) at the University of Southern Maine. They presented the “Analysis of the Essential Programs and Services Special Education Cost Component” a report that was prepared for the Maine Department of Education (DOE) in July 2016. This report reviewed the special education funding component of Maine’s Essential Programs and Services (EPS) funding model and provided the next iteration of the external review process required by statute. At this meeting, the Task Force also heard from Janice Breton, the DOE Director of Special Services (and the representative of the DOE’s Special Education Working Group), and Dr. David Silvernail, Professor Emeritus and Research Professor, University of Southern Maine, who briefed the Task Force on the ongoing work of the working group established by the DOE to identify and provide recommendations on special education cost drivers. The Task Force also received a presentation from Dr. Katie Hawes, Superintendent, RSU #21 (Kennebunk) entitled “Special Education Cost Drivers and Innovative Approaches in Maine Schools” that provided information on cost driver background, trends, common themes, comparisons and policy considerations related to special education.

The second meeting of the Task Force was held on November 16, 2017. The Task Force received a set of panel presentations regarding the administration of special education submitted by Jill Adams, Executive Director of the Maine Administrators of Services for Children with Disabilities (MADSEC), and three Task Force members: Kathleen Cox, Director of Instructional Support, South Portland; Lesley Snyder, Special Education Director, RSU #87, (Carmel); and Lynn Maddocks, Director of Special Education, Ellsworth. The panel discussed trends and policies recommended by special education directors and response to intervention (RTI). Another panel presentation included MADSEC’s Jill Adams, DOE’s Janice Breton and MEPRI’s Dr. Amy Johnson; and they provided clarification of cost driver categories for regional special education programs and services.

At this second meeting, the Task Force members also received a brief presentation from DOE’s Janice Breton concerning the relationship of state plans with the Federal Centers for Medicare and Medicaid Services (CMS); and the Task Force also heard from DOE’s Janice Breton, and MEPRI’s Dr. Amy Johnson regarding the federal and state maintenance of effort (MOE) finance data. During the discussion of the “next steps” portion of the meeting, the Task Force member, Carrie Woodcock, Executive Director of the Maine Parent Federation, introduced the report “Something Has Got to Change: Rethinking Special Education” by Nathan Levenson, a special education expert located in Boston, Massachusetts, that addressed strategies that provide cost savings while improving student outcomes.

The third meeting of the Task Force was held on December 4, 2017. At this meeting, members received a presentation from Nathan Levenson, President, District Management Group, located in Boston, Massachusetts. Mr. Levenson discussed strategies, services and best practices for raising student outcomes for all students, both those with and without special needs. The Task Force also heard from Paul Austin, Superintendent, RSU #3, (Unity), and a Maine Small School Coalition (MSSC) member, who presented recent special education matters discussed at the MSSC fall meeting, including what is driving up special education costs and suggestions for improvement. The Task Force also received a written response to their requests for information from the Department of Health and Human Services (DHHS) explaining the relationship of State plans with Federal Centers for Medicaid Services (CMS). The DHHS written response document is attached as **Appendix D**. Near the end of the third meeting, the Chairs of the Task Force charged the members to reflect on the Task Force meetings already held and to prepare recommendations for consideration at the next meeting.

On December 19, 2017, the Task Force held its fourth and final meeting. At this meeting the members received a presentation from Kate MacLeod, Instructor of Special Education at the University of Maine, Farmington, and Alan Cobo-Lewis, Director, University of Maine Center for Community Inclusion and Disability Studies (CCIDS) regarding inclusive education, strategies of least restrictive environment, and the benefits of peer interaction and co-teaching. Dr. Katie Hawes, Superintendent RSU #21, (Kennebunk), also returned to speak to the Task Force regarding the Maine School Management Association's (MSMA) response to the district managements group's mission to improve services for students with special needs. The remainder of the final meeting was dedicated to the Task Force members' discussing and reviewing the proposals that would become the Task Force recommendations to be included in the final report. The Task Force also discussed the process of presenting the report to the Joint Standing Committee on Education and Cultural Affairs.

During its work, the Task Force also desired to consider the DOE's proposed conversion of the Child Development Service's (CDS) early intervention services for three to five year olds. The Task Force had some preliminary discussions regarding the CDS and the DOE statements in mid-September 2017 that the DOE would be submitting legislation for consideration during the 2018 legislative session to shift the CDS programs from the state level to local public schools; and the CDS and the DOE would convene a "Part B 619 Advisory Committee" to identify and address all issues regarding the proposed transition of special education and related services for three to five year old children with disabilities from the state-run CDS system programs to the local school districts.

Prior to the second Task Force meeting, the Task Force Chairs requested that the DOE submit what would be the financial impact for the State and the local school districts' special education costs should the DOE's proposals to shift the CDS and early intervention programs be implemented. The DOE responded that the information was not available yet. However, the DOE advised that as they contemplated the measures required to meet an increasing need for the provisions of services for children with disabilities at age three to five, there will be a need for additional funding.

The Task Force requested that the DOE submit the recommendations that were proposed by the Part B 619 Advisory Committee at their final meeting, (held on December 11th), to the final Task Force meeting. Since the recommendations proposed by the CDS and DOE advisory committee members were not finalized and had not been presented to the DOE Commissioner and the Executive Branch officials, the recommendations were not provided to the Task Force members at their final meeting. The Task Force looks forward to the forthcoming legislation that the DOE will submit to the Committee on Education and Cultural Affairs to revise the CDS system programs and services; and the Task Force members rely on the expertise of the Committee on Education and Cultural Affairs to consider and address the proposed legislation from the DOE.

A list of the resources provided to the Task Force throughout the course of the Task Force meetings is attached as **Appendix E**.

IV. FINDINGS AND RECOMMENDATIONS

This report fulfills the Task Force’s requirement to submit a report that includes findings and recommendations that address the rising cost of special education and the maintenance of high-quality services that accommodate the needs of all children. Following its receipt and review of the Task Force report, the Joint Standing Committee on Education and Cultural Affairs is authorized to submit a bill to the Second Regular Session of the 128th Legislature.

Recommendation #1. Implement strategies to remove barriers between special education and general education and develop an integrated, inclusive system in which special education and general education work collaboratively to deliver services to all students.

The Task Force identified a need to remove barriers between special education and general education so that all educators within a school can work together, regardless of job title or certification, to provide the most effective and responsive services to children. The Task Force noted that the current model and practice divides “special education” and “general education” into segregated systems, or “silos” within schools. This needs to be replaced by an integrated approach. This finding was based on the members’ own experience across the field of education, and special education specifically, and expert testimony and research evidence presented to the Task Force by Nathan Levenson and Kate MacLeod. Through integration of these now separate silos into a unified system, the Task Force sees an excellent opportunity to increase the responsiveness, effectiveness and efficiency of educators and administrators in meeting the needs of both special education students and general education students.

The Task Force recommends that the Department of Education, with input from state and local education policy experts and stakeholders, take the following steps to promote integration:

- ❖ Review and make necessary changes in state law, special education rules, teacher certification requirements, job titles, funding formulas, and other relevant areas, to allow:

- Special education teachers and paraprofessionals to serve all students, not only those identified as special education students;
 - General education teachers and subject area specialists (for example, reading and math specialists) to provide services for Individual Education Programs (IEPs) to special education students. This is allowed under federal law and regulations;
 - Special education and general education teachers to co-teach classrooms;
 - Special education paraprofessionals to provide general classroom support, not only support to individual special education students; and
 - Special education staff to focus on specialized and adapted instruction of general education curriculum; and
- ❖ Critically review the use of one-to-one adult support for special education students and develop strategies to foster student independence:
- Develop and implement standard processes and criteria for one-to-one adult support that IEP teams must follow to identify, justify, and regularly re-evaluate the need for this service; and
 - Explore and implement alternative strategies to meet the needs of special education students with reduced reliance on one-to-one support.

Recommendation #2. Enhance and upgrade the Response to Intervention system as an all-encompassing Multi-Tiered System of Support.

The Task Force recommends that the Department of Education (DOE) upgrades the Response to Intervention (RTI) system to become a holistic Multi-Tiered System of Support (MTSS) for regular education and special education students. Task Force members proposed that the DOE should bring the RTI system back to the forefront in general education, in addition to special education, to ensure that the RTI/MTSS system is utilized to serve all students. Even though the RTI system was enacted in law (Title 20-A, section 4710) to be implemented in the 2012-2013 school year for all kindergarten to grade 12 students, the agency rules adopted to implement the statutes placed within the rule chapter governing special education (Rule Chapter 101). The Task Force agreed that any necessary changes should be made to implement the RTI/MTSS systems broadly, and that the DOE should specifically consider moving RTI related rules from the special education rules chapter, (Chapter 101), to an appropriate general education rules chapter, possibly Chapter 125, related to the Basic Approval Standards for Public Schools and School Administrative Units.

The Task Force also recommends that the DOE promote the integration of the proposed RTI/MTSS system by taking the following steps:

- ❖ Promote integration of RTI and regular classroom instruction by increasing the investment of regular instruction teachers in special education students; and requiring the regular instruction teachers to be the teacher of record who is responsible for issuing grades (the exception would only be for those students who spend 100% of their instructional time in special education classroom);
- ❖ Enhance RTI/MTSS targeted interventions; the RTI/MTSS staff should provide interventions to target academic, behavior and mental health needs; interventions should be data driven; and regular education staff need training related to various intervention approaches, strategies and data collection;
- ❖ Increase RTI support for reading instruction, which is the gateway to all other learning; provide additional support, both financially as well as strong technical assistance, to ensure all students have a solid reading foundation and reduce future referrals to special education; and
- ❖ Revise the Essential Programs and Services (EPS) school funding formula law to provide resources for the RTI/MTSS systems to support regular education; funding resources must be allocated in order to provide effective levels of support for:
 - Student interventions so that these are noticed and funded;
 - Training to be provided for all regular education staff in the areas of differentiating instruction, providing targeted interventions that are data-based, and using interventions and instructional strategies that are research-based;
 - Training teachers to provide instruction and track progress;
 - Math and literacy coaches and behavior strategists; change the EPS formula treatment of math and literacy coaches and behavior strategists so that they are counted under support rather than direct instruction;
 - Behavior strategists to provide behavior plans and to consult with classroom teachers; and
 - Oversight to assure that the RTI/MTSS system has been implemented in all districts.

Recommendation #3. Address special education staffing shortages by reviewing the certification processes for special education teachers and related staff, including promotion of dual certification programs at the university level whereby students graduate with both general and special education certification, and implementing “grow our own” initiatives to encourage enrollment in special education certification programs.

The Task Force identified recruitment and retention of special education teachers and related service providers as a cost driver. Currently, school districts statewide are experiencing staff shortages across all special education related positions. Because of these shortages, school districts are competing with each other for teachers, specialists, and paraprofessionals. School districts are also competing with the medical field to fill positions such as occupational, physical, and speech therapists and psychologists. The shortage of special education personnel leads to expensive placements in special programs and increased transportation costs. Alternately, many districts may run the risk of not providing necessary services.

The Task Force recommends that the state and local education policy makers work to reduce barriers to obtaining special education and related certifications. These certifications include, but are not limited to, certifications for special education teachers, reading and math specialists, and paraprofessionals. The Task Force recommends that state and local education policy leaders should work together to:

- ❖ Design and promote the use of dual certification programs at the university level whereby students obtain certification in both general and special education;
- ❖ Design alternative pathway approaches to special education certification for Education Technicians (for example, through the Department of Labor’s (DOL) apprenticeship model);
- ❖ Design a “fast track” certification program for special education teachers; and
- ❖ Develop “grow our own” initiatives to create incentives for Maine students to go into the field of special education through tuition reimbursement, scholarship and loan forgiveness programs.

The Task Force believes that these approaches will work concurrently with the Task Force’s first recommendation in this report to develop an integrated, inclusive system in which special education and general education work collaboratively to deliver services to all students, instead of separate “silos.”

Special education staffing shortages have also led some schools to rely on teleservices, otherwise known as remote services. However, the Task Force found there is relatively little data, if any, regarding the effectiveness of teleservices. The Task Force members recommend further study on the use and effectiveness of teleservices. Such a study could be conducted through a work-plan by the Maine Education Policy Research Institute (MEPRI).

Recommendation #4. Streamline and reduce state special education paperwork requirements so that teachers can dedicate more time to direct student instruction.

The Task Force identified special education paperwork requirements as a barrier to teachers delivering the best possible education and instruction to students. Based on their own experience in the field as well as research on best practices, Task Force members reported that time necessary to fulfill complex, and sometimes redundant paperwork requirements are reducing time available to meet the needs of students through planning and delivering direct instruction. The Task Force noted that in Maine, the special education paperwork requirements go beyond what is required by federal regulations, placing further demands on educators' time. While the Task Force recognizes the necessity and importance of documentation, members are concerned that current Maine requirements pose barriers to meeting the instructional needs of students and to attracting and retaining skilled teachers to the field of special education.

The Task Force recommends that the Department of Education (DOE) take the following steps to streamline and reduce special education paperwork requirements:

- ❖ Align with federal standards: review the Maine Unified Special Education Regulations (Rule Chapter 101) to identify where paperwork and documentation requirements exceed Federal regulations and propose changes to streamline state requirements, reduce redundancy and bring state and Federal regulations into alignment; conduct rulemaking to implement proposed changes;
- ❖ Eliminate redundancy: review standardized forms to identify duplication and implement changes to reduce redundancy; and
- ❖ Collect data and measure progress: collect data on time spent on special education paperwork and meetings by teachers (special education and general education) under current state requirements (baseline) and then again after changes have been implemented.

Recommendation #5. Address federal and state laws and regulations regarding funding formulas related to financing special education programs and services.

The Task Force acknowledged the need to develop strategies to reduce special education costs and improve the equity of special education budgets across school districts. Task Force members suggested that further review of special education funding formula data is necessary to determine if it is accurate and meets local needs for high-cost, in-district students. The Task Force also suggests that the allocation of Maintenance of Effort (MOE) funding needs close examination since communities with greater financial resources are being fiscally rewarded, while communities that are less financially capable to support the special education program costs are being penalized. This outcome is counter to the intended purpose of the MOE and ultimately gives greater resources and supports to those communities more able to support the costs of educating their students with higher cost needs.

The Task Force recommends that the Department of Education (DOE) revisits the following federal and state funding formulas to increase the equity of special education costs across all school districts:

- ❖ Review the Essential Programs and Services (EPS) school funding formula regarding issues related to the high cost in-district students;
- ❖ Revisit the federal and state statutes and regulations related to the MOE finance requirements and review the MOE data for Maine school districts; and
- ❖ Propose legislation that recalculates the base and supports funding formulas that ensure greater equity in special education allocations.

Recommendation #6. Review and improve the MaineCare billing systems and procedures to simplify the billing process and reduce the burden for school districts that seek to obtain Federal funds for medically necessary services for public school students.

Task Force members identified barriers that exist in the relationship of Maine’s state plans with the Federal Centers for Medicaid Services (CMS) for school districts for medically necessary services for students. Currently, the State provides seed money up front and then deducts the amount from a school districts state subsidy payment. Also, when a school district refers a student to a special purpose private school, the school district submits a tuition payment, but does not submit a bill to the Department of Health and Human Services (DHHS) for seed money for the student’s medically necessary services. Instead, the special purpose private school sends the bill for medically necessary services to the DHHS. The Department of Education (DOE) sends 100% of the seed money to the special purpose private school and 30% of the school district’s local share of state subsidy is included in the seed money.

The Task Force recommends that the DOE and DHHS review and address barriers in the current MaineCare billing systems and processes for medically necessary services including:

- ❖ Consider and make changes to improve the formation and distribution of seed money to remove barriers for school districts, particularly with respect to students sent to special purpose private schools;
- ❖ Simplify the MaineCare process for school districts’ billing and reduce school districts’ administrative burdens; and
- ❖ Change the MaineCare billing rules to include a provision for school district-based reimbursement with a different, but appropriate set of school-based rules established for a medical provider.

Recommendation #7. Review and recodify the state special education regulations to improve usefulness, readability and accessibility.

The Maine Unified Special Education Regulations (Rule Chapter 101) provide the regulatory framework for the administration and delivery of special education in Maine. Chapter 101 is a critical resource and reference document for school administrators, teachers and staff across the State, providing guidance and direction on the many, and often complex, requirements for special education services. The Task Force finds that it is time to update and recodify this document.

Chapter 101 became effective in September 1978. In the 40 years since Chapter 101 was first written, the Department of Education has completed a comprehensive rewrite (“repealed and replaced”) the document three times, at approximately 10 year intervals (1988, 1999 and 2007). Another 10 years has now passed since the last repeal and replace of Chapter 101 in 2007. The Task Force discussed how this important regulatory document has become increasingly difficult to navigate and use, as various portions have been amended through department rulemakings (9 have been completed since 2007) and certain portions have become outdated.

The Task Force recommends that the DOE conduct rulemaking to recodify Rule Chapter 101 for the purpose of improving the flow, structure, usefulness and accessibility of the contents of this important document. These changes will reduce time spent and increase accuracy for users who need to locate specific regulations and will support correct implementation of the regulations within the document.

Recommendation #8. Explore and address the costs associated with special education litigation and educational program materials to determine the actual cost to school districts and how to reduce those costs.

The Task Force discussed whether special education litigation is a cost driver for school districts. At the October 19, 2017 meeting, the Task Force heard that, in addition to litigation itself, in some cases, “schools may weigh the costs of independent evaluations, due process, and other litigation expenses that a parent or guardian may legally request, and will choose to provide additional requested services rather than contest them.” (See Appendix E for the link to the MEPRI’s “Analysis of the Essential Programs and Services Special Education Cost Component” Report). At the December 4, 2017 meeting, the Maine Small Schools Coalition (MSSC) also identified litigation costs as a concern and highlighted the need for greater guidance from State leaders on the legal and educational responsibilities of school districts in view of the individual districts’ capacity to deliver on those responsibilities. However, at its final meeting, the Task Force recognized that there is very little, if any, data on the actual cost of litigation and the costs that result from decisions not to move forward with litigation.

The Task Force recommends gathering additional information on what is driving special education litigation and what the actual cost of that litigation is to school districts. The Task Force suggests utilizing a MEPRI study to gather and analyze the drivers and associated costs of litigation. Data on this issue could lead to a better understanding of how to reduce litigation costs, while still providing special education services that meet the needs of the students.

At the final meeting, the Task Force also identified the high cost of educational program materials as a potential cost driver. The Task Force considered whether the purchase of materials and supplies could be negotiated at the State level to ease some of the burden on individual school districts. The Task Force noted that even small discounts could have large implications for school district budgets. The Task Force recommends that the Department of Education explore and implement where feasible, state-wide purchasing options to reduce these costs to school districts.

Recommendation #9. Consider providing funding for universal preschool programs.

The Task Force suggests that the Legislature should consider providing funding in order to implement universal preschool access for all four and five year old children in the State. Task Force members proposed that providing funding for universal preschools would accomplish the following:

- ❖ All children would have access to an enriched preschool experience with approved curriculum, regardless of their parent’s financial status;
- ❖ In some cases, districts would be able to deliver services that are not provided through Child Development Services (CDS);
- ❖ Reduce future identification of students requiring special education and related services by early intervention and identification;
- ❖ Provide access to literacy, math, and behavior specialists for preschool teachers and their students; and
- ❖ Create a seamless transition to kindergarten for students.

Conclusion

The Task Force acknowledges that the proposed recommendations for prospective changes may well address the areas of rising special education cost drivers and the innovative approaches to the maintenance of high-quality services that will be able to accommodate the needs of all children. Therefore, the Task Force encourages the Committee on Education and Cultural Affairs to explore the recommendations proposed in this report in order to help improve the programs and services that are capable to fulfill the needs of all children in the State.

Acknowledgement of Key Resource People and Organizations

The members and staff of the Task Force to Identify Special Education Cost Drivers and Innovative Approaches to Services wish to acknowledge and thank the key resource people and organizations for assisting us in conducting this study. A list of persons and organizations that provided assistance to the Task Force is attached as **Appendix C**.

APPENDIX A

**Authorizing Legislation, Resolve 2017, Chapter 26 (LD 642), “Resolve, To Identify
Special Education Cost Drivers and Innovative Approaches to Services”**

GOVERNOR'S
VETO
OVERRIDDEN
AUGUST 2, 2017

CHAPTER
26
RESOLVES

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND SEVENTEEN

H.P. 456 - L.D. 642

**Resolve, To Establish the Task Force To Identify Special Education
Cost Drivers and Innovative Approaches to Services**

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

Whereas, the Task Force To Identify Special Education Cost Drivers and Innovative Approaches to Services will work to address the rising cost of special education while maintaining high-quality services that accommodate the needs of all children; and

Whereas, the study must be initiated before the 90-day period expires in order that the study may be completed and a report submitted in time for submission to the next legislative session; 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

Sec. 1. Task force established. Resolved: That, notwithstanding Joint Rule 353, the Task Force To Identify Special Education Cost Drivers and Innovative Approaches to Services, referred to in this resolve as "the task force," is established; and be it further

Sec. 2. Task force membership. Resolved: That the task force consists of 13 members appointed as follows:

1. A Senate member of the Joint Standing Committee on Education and Cultural Affairs, appointed by the President of the Senate;

2. A House of Representatives member of the Joint Standing Committee on Education and Cultural Affairs, appointed by the Speaker of the House;

3. A school superintendent representing the Maine School Superintendents Association, appointed by the President of the Senate;

4. A member of a school board representing the Maine School Boards Association, appointed by the Speaker of the House;

5. Two special education directors representing a statewide association of special education directors or teachers, appointed by the President of the Senate. One of the members must be a special education director who serves an urban school administrative unit, and the other member must be a special education director who serves a rural school administrative unit;

6. A principal representing the Maine Principals' Association, appointed by the Speaker of the House;

7. A teacher representing the Maine Education Association, appointed by the President of the Senate;

8. A parent of a student with special needs representing a statewide association of parents of students with special needs, appointed by the Speaker of the House;

9. An advocate for students with special needs, appointed by the President of the Senate;

10. A school finance manager or a school business manager, appointed by the Speaker of the House;

11. A special education student who graduated from a school administrative unit in the State within the last 5 years, appointed by the President of the Senate; and

12. An employee of the Department of Education, appointed by the Commissioner of Education; and be it further

Sec. 3. Chairs. Resolved: That the Senate member is the Senate chair and the House of Representatives member is the House chair of the task force; and be it further

Sec. 4. Appointments; convening of task force. Resolved: That all appointments must be made no later than 30 days following the effective date of this resolve. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. After appointment of all members, the chairs shall call and convene the first meeting of the task force. If 30 days or more after the effective date of this resolve a majority of but not all appointments have been made, the chairs may request authority and the Legislative Council may grant authority for the task force to meet and conduct its business; and be it further

Sec. 5. Duties; authorized meetings. Resolved: That the task force shall address the rising cost of special education and the maintenance of high-quality services that accommodate the needs of all children by identifying cost drivers and recommending innovative approaches to serving students. The task force may hold no more than 5 meetings; and be it further

Sec. 6. Staff assistance. Resolved: That the Legislative Council shall provide necessary staffing services to the task force; and be it further

Sec. 7. Report. Resolved: That, no later than December 6, 2017, the task force shall submit a report that includes its findings and recommendations, including suggested legislation, for presentation to the Joint Standing Committee on Education and Cultural Affairs. The Joint Standing Committee on Education and Cultural Affairs may submit a bill to the Second Regular Session of the 128th Legislature.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

APPENDIX B

**Membership List, Task Force to Identify Special Education Cost Drivers
and Innovative Approaches to Services**

**Task Force To Identify Special Education Cost Drivers
and Innovative Approaches To Services
Resolve 2017, Chapter 26 (LD 642) 1st Session, 128th Maine Legislature**

Appointments by the President of the Senate	
Sen. Brian D. Langley - Chair 11 South Street Ellsworth, ME 04605	Member of Education and Cultural Affairs Committee
Richard Colpitts 232 Main Street, Suite 2 South Paris, ME 04281	School Superintendent representing Maine School Superintendents Association
Kathleen Cox South Portland School District 130 Westcott Road S. Portland, ME 04106	Special Education Director representing statewide association - urban district
Lynn Maddocks 120 Birch Point Road Dedham, ME 04429	Advocate for Students with Special Needs
Lesley Snyer RSU #87 44 Plymouth Road Carmel, ME 04419	Special Education Director representing statewide association - rural district
Jill Watson Special Education Teacher Maranacook Community High School 2250 Millard Harrison Drive Readfield, ME 04355	Teacher representing the Maine Education Association
Appointments by the Speaker of the House	
Rep. Richard R. Farnsworth - Chair 55 Old Mast Road Portland, ME 04102	Member of Education and Cultural Affairs Committee
Andrea Disch Business Manager, MSAD #11 150 Highland Avenue Gardiner, ME 04345	School finance manager or school business manager
Jennifer McGee Atwood Primary School 19 Heath Street Oakland, ME 04963	Principal representing Maine Principal's Association

Jerry Nault Sheepscot Valley RSU #12 665 Patricktown Road Somerville, ME 04348	School Board Member representing Maine School Boards Association
Carrie Woodcock Maine Parent Foundation 484 Maine Avenue, Suite 2 Farmingdale, ME 04344	Parent of a student with special needs representing statewide association of parents of children with special needs
Appointment by the President of the Senate	
(Not appointed)	Special education student who graduated from a school unit in the State within the last 5 years
Appointment by the Commissioner of Education	
(Not appointed)	Department of Education employee
Staff	
Phil McCarthy , Senior Legislative Analyst Office of Policy & Legal Analysis 13 State House Station Augusta, ME 04333-0013 Tel: 207-287-1670	
Lucia Nixon , Legislative Analyst Office of Policy & Legal Analysis 13 State House Station Augusta, ME 04333-0013 Tel: 207-287-1670	
Hillary Risler , Legislative Analyst Office of Policy & Legal Analysis 13 State House Station Augusta, ME 04333-0013 Tel: 207-287-1670	

APPENDIX C

Acknowledgement of Key Resource People, Presenters and Organizations

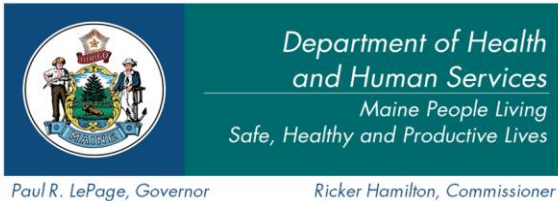
Acknowledgement of Key Resource People, Presenters and Organizations

The members and staff of the Task Force to Identify Special Education Cost Drivers and Innovative Approaches to Services wish to recognize and thank the key resource people, presenters and organization for assisting us in conducting this study.

- ⊕ Jill Adams, Executive Director, Maine Administrators of Services for Children with Disabilities;
- ⊕ Alison Ames, Researcher, Office of Policy and Legal Analysis, Maine State Legislature;
- ⊕ Paul Austin, Superintendent, RSU #3 (Unity, Maine); and Member, Maine Small School Coalition;
- ⊕ Tyler Backus, School Finance Coordinator, Maine Department of Education;
- ⊕ Julian Baier, Acting Director, Government Relations and Policy, Maine Department of Health and Human Services;
- ⊕ Janice Breton, Director, Special Services, Maine Department of Education;
- ⊕ Dr. Alan Cobo-Lewis, Director, Center for Community Inclusion and Disability Studies; and Associate Professor of Psychology, University of Maine;
- ⊕ Kathleen Cox, Director of Instructional Support, South Portland; and Task Force Member;
- ⊕ Dr. Katie Hawes, Superintendent, RSU #21 (Kennebunk, Maine);
- ⊕ Dr. Amy Johnson, Director, Maine Education Policy Research Institute, University of Southern Maine;
- ⊕ Nathan Levenson, President, District Management Group; Boston, Massachusetts;
- ⊕ Kate MacLeod, Instructor of Special Education, University of Maine at Farmington;
- ⊕ Lynn Maddocks, Director of Special Education, Ellsworth, Maine; and Task Force Member;
- ⊕ Deborah Plowman, Director of Policies and Programs, Maine Department of Education;
- ⊕ Dr. David Silvernail, Professor Emeritus and Research Professor; University of Southern Maine;
- ⊕ James Sloan, Research Associate, Maine Education Policy Research Institute, University of Southern Maine;
- ⊕ Lesley Snyer, Special Education Director, RSU #87 (Carmel, Maine); and Task Force Member; and
- ⊕ Carrie Woodcock, Director, Maine Parent Federation; and Task Force Member.

APPENDIX D

**Department of Health and Human Services Responses
to Special Education Task Force Questions**



Department of Health and Human Services
Commissioner's Office
221 State Street
11 State House Station
Augusta, Maine 04333-0011
Tel.: (207) 287-3707; Fax (207) 287-3005
TTY Users: Dial 711 (Maine Relay)

December 4, 2017

TO: Senator Brian L. Langley, Chair
Representative Richard R. Farnsworth, Chair
Members of the Task Force to Identify Special Education Cost Drivers and Innovative Approaches to Services

FROM: The Department of Health and Human Services

SUBJECT: DHHS Responses to Questions from the Task Force

Question: What are the current state laws and rules enacted following the April 30, 2012 report from the Department of Education (DOE) and the DHHS report to the Legislature in response to LD 1003, "Resolve, To Assist Maines Schools to Obtain Federal Funds for Medically Necessary Services?"

Response: DHHS would like to note that we do not have the authority to enact state laws. We do, however, have regulatory authority. MaineCare covers a full compendium of school-based Medicaid services, including, but not limited to, speech therapy, physical and occupational therapies, day treatment (for children with serious mental health conditions), center-based rehabilitative service (for children with autism and intellectual disabilities), and nursing services.

LD 1003 required a number of things of DHHS. First, the bill required DOE and DHHS to "refine existing policies, develop new policies or prepare nonregulatory guidance on billing procedures, as appropriate, to ensure the provision of medically necessary services to students in school-based settings." The bill required DHHS to take into account the recommendations of a stakeholder group. A stakeholder group was convened and met on numerous occasions until Fall of 2016. The group agreed to cease meeting, as DHHS had gotten the information necessary to proceed with our work. The significant amount of information provided to DHHS has been thoughtfully considered. The extensive work completed by this group is reflected in the current draft of our new school-based policy which is now in the process of internal review.

We would like to respond specifically to the State Plan Amendment (SPA) referred in LD 1003. The LD directs the Department to "propose changes to the state plan for Medicaid services provided pursuant to the Maine Revised Statutes, Title 22, chapter 855 to permit reimbursement for school-based services by July 1, 2012." This requirement is redundant, as current Medicaid rules (and indeed rules in effect at the time of the passage of LD 1003) do permit MaineCare reimbursement for school-based services. As a result, the DHHS has not submitted a new SPA, as the intent of the LD appears to have

already been met. Any future SPA submitted will only change the format of the information in the MaineCare Benefits Manual (MBM), not impact any services being provided.

As stated above, MaineCare has drafted a new school-based policy, which compiles all school-based services into one “section” of policy. MaineCare intends to propose this rule in January of 2018.

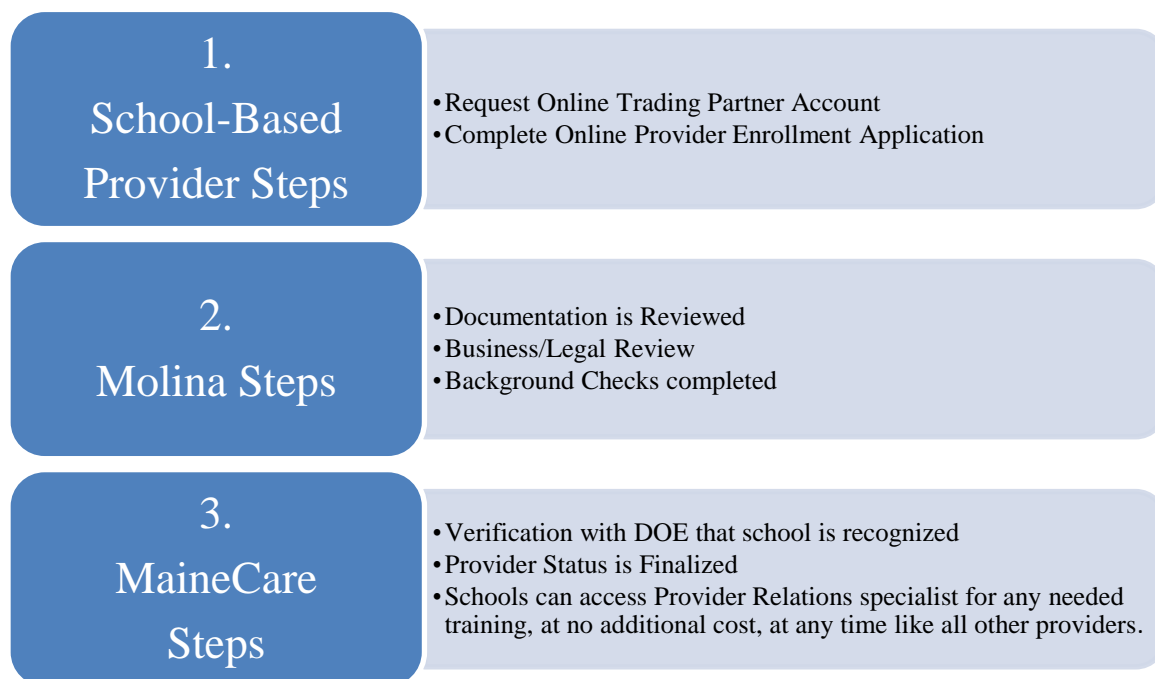
Question: Is it possible for the DOE and DHHS to present briefings and discuss the authority to package together expenses with MaineCare (Medicaid) funds to provide medically necessary services for public school students.

Response: DHHS is unsure what is meant by “package together expenses.” Medicaid reimbursement is dictated by strict federal rules that require reimbursement on a per person, per service basis. As stated above, MaineCare currently covers a full array of school-based services. MaineCare staff have completed a draft of the new school-based policy which will allow our office to identify and account for all school-based services. The draft was created with input provided by the stakeholder group, along with information obtained over the past seventeen months from site visits and discussions with our school-based providers in addition to DOE and Child Development Services feedback.

Question: Can you provide a diagram that shows the steps that must be followed by a school district in order to gain access to MaineCare funded services for children in public schools.

Response:

MaineCare Provider Enrollment Process



The average time it takes to enroll as a MaineCare provider is less than 45 days.

Provider Enrollment information can be accessed at: <http://www.maine.gov/dhhs/oms/enrollment.shtml>

Question: Can you inform us what supports are being deployed to help school districts navigate this issue; and what support is available to school districts to insure that the steps taken will lead to an effective billing process?

Response: DHHS is unclear what specific issue is being referenced in this question. However, MaineCare provides the following resources to school-based providers:

- A School-based Billing Guide was created in October of 2016, revised most recently in November 2017. This was posted on our newly-updated school-based service website. DOE was also notified the resource was available.
- MaineCare staff, through work on the stakeholder group, conversations with individual districts, and a thorough review of our data, have drafted a new policy to address the many provider and systemic challenges to school-based Medicaid services in Maine.

Through collaborative work with staff at DOE, additional challenges have been identified which include:

- Implementing a process when Seed report corrections need to be made to ensure timely correction.
- Consistent messaging in Provider Notices and DOE's Priority Notices and Dispatches in response to school-based challenges.
- Both MaineCare and DOE have updated website information relating to MaineCare school-based services, adding contact information to ensure providers know who to call for assistance.
- School-based inquiries are very often reviewed by both MaineCare and DOE staff prior to a response being given in order to maintain consistency.
- Although at this time not all school districts bill MaineCare for services, there has been an increase of five additional districts from last year who are now billing for MaineCare services. Presentations have also been made specifically for District Business Managers, and Charter School administrators to provide them with information regarding reimbursement through MaineCare for school-based services.

Question: Since we've been informed that one out of eight babies were recently born in the state from mothers battling medical addiction, is it possible for DHHS to have a discussion with the task force to preview what medical service needs they consider are coming to us in the future based on their services being provided to families and children around the state; and what services they might be able to assist schools with in trying to address those needs?

Response: While research regarding the long term sequelae of in utero exposure to opioids is still ongoing, studies have suggested that the following issues may develop in some of these children:

- Behavioral issues;
- Developmental delays;

- Cognitive impairments;
- Learning disabilities;
- Vision problems;
- Hearing problems;
- Impulsivity;
- Hyperactivity;
- Memory issues; and/or
- Risk of future drug use.

Researchers have encountered difficulty in distinguishing between issues caused by exposure to the opioid itself versus those caused by environmental factors (including family instability, avoidance of healthcare providers, inconsistent caregiving, chronic stress, and foster care involvement) affecting the families of many opioid-exposed infants. It is likely that direct effects of opioid exposure are made more severe by these social factors.

Additional Information

Federal Background for Reimbursement of School-Based Services through Medicaid

The Individuals with Disabilities Education Act (IDEA) authorized Federal funding to states for two programs that impact Medicaid payment for services provided in schools. Section 411(k)(12) of the Medicare Catastrophic Coverage Act of 1988 (P.L. 100-360) amended section 1903(c) of the Act to permit Medicaid payment for medical services provided to children under IDEA through a child's Individualized Education Plan (IEP) or Individualized Family Service Plan (IFSP). This amendment was enacted to ensure that Medicaid would cover the health-related services under the IDEA.

Part B of IDEA was designed to ensure that children with special education needs receive a free appropriate public education. Part H of IDEA provided for financial assistance to the states to develop and implement comprehensive, interagency early intervention programs for infants and toddlers with disabilities. Implementation of Section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 has resulted in the expansion of many state Medicaid programs to include payment for services provided in accordance with an IEP or IFSP of a Medicaid-eligible child.

As schools and districts are aware, under Part B of IDEA, school districts must prepare an IEP for each child which specified all special education and "related services" needed by the child. The Medicaid program can pay for some of the "health related services" required by Part B of IDEA in an IEP, if they are among the services specified in Medicaid law. In addition, services must be included in the state's Medicaid plan or available through the EPSDT benefit. Examples of such services include physical therapy, speech pathology services, occupational therapy, psychological services and medical screening and assessment services. Within Federal and state Medicaid program requirements regarding allowable services and providers, the Medicaid program can pay for some or all of the cost of these health-related services when provided to children eligible for Medicaid. The 1997 authorization of IDEA strengthened the expectation that schools work closely with the state Medicaid Agency to coordinate provision of services to disabled children in schools.

Part H of IDEA provides for early intervention programs that include all of the available developmental services needed by the infant or toddler with special health needs and development of an IFSP. Many of the health services included in IFSPs can be covered by Medicaid as well.

In addition, if medical evaluations or assessments are conducted to determine a child's health-related needs for purposes of the IEP/IFSP, payment for some or all of the costs may be available under Medicaid. However, if the evaluations or assessments are for educational purposes, Medicaid reimbursement is not available. Medicaid payment is only available for the part of the assessment that is medical in nature and provided by qualified Medicaid providers. In addition, reimbursement for non-medical services, such as special instruction, is not covered.

In summary, HCFA policy is that health-related services included in a child's IEP or IFSP can be covered under Medicaid if all relevant statutory and regulatory requirements are met. A state may cover services often included in an IEP or IFSP as long as: 1) the services are medically necessary and coverable under a Medicaid coverage category (speech therapy, physical therapy, etc.); 2) all other Federal and state regulations are followed, including those for provider qualifications, comparability of services and the amount, duration and scope provisions; and 3) the services are included in the state's plan or available under EPSDT.

We hope this information will be helpful as you continue to examine fiscal issues relating to the provision of Special Education services for students in our state. Our goal is to continue to address the challenges faced by our school-based providers to ensure that MaineCare members are able to receive medically necessary services needed to access their education.

APPENDIX E

Resources Provided to the Task Force

Resources Provided to the Task Force to Identify Special Education Cost Drivers and Innovative Approaches to Services

October 19, 2017 Meeting

- ❖ MEPRI Report “*Analysis of the Essential Programs and Services Special Education Cost Component: Report to the Maine Department of Education*” (July 2016), Prepared by Amy Johnson, Trish Merrill and James Sloan; <http://legislature.maine.gov/uploads/originals/special-education-cost-component-report.pdf>
- ❖ Maine Department of Education PowerPoint “*Presentation to the Task Force for Special Education Cost Drivers and Innovative Approaches to Services*”, by Janice Breton and Dr. David Silvernail; <http://legislature.maine.gov/uploads/originals/specedtfdoeprst.pdf>
- ❖ “*Overview of Special Education Cost Drivers and Innovation Approaches to Services in Maine School Administrative Units*” by Dr. Katie Hawes; <http://legislature.maine.gov/uploads/originals/specialedhawestestimony.pdf>

November 16, 2017 Meeting

- ❖ MADSEC Presentations: Special Education Occupations; Response to Intervention Regulations; MaineCare Seed/Match Procedures and Medicaid Revenues from EPS Formula; <http://legislature.maine.gov/uploads/originals/madsecpresentation.pdf>
- ❖ Maine DOE and Maine DHHS Report pursuant to Resolve 2011, Chapter 145 (LD 1003) 125th Maine Legislature, Resolve to Assist Maine Schools To Obtain Federal Funds for Medically Necessary Services; <http://legislature.maine.gov/uploads/originals/maine-doe-and-dhhs-report-ld-1003.pdf>
- ❖ Maine DOE Presentations: Cost Driver Categories; State Plans with Federal Centers for Medicaid Services; CDS and Early Intervention; Maintenance of Effort Finance Data; <http://legislature.maine.gov/uploads/originals/maine-doe-presentation.pdf>
- ❖ Maintenance of Effort Fiscal Policies and Procedures; MEPRI 2016 Special Education Allocations; <http://legislature.maine.gov/uploads/originals/maintenance-of-effort-fiscal-policies-and-procedures.pdf>
- ❖ “*Something Has Got to Change: Rethinking Special Education*” by Nathan Levenson
[“Something Has Got to Change: Rethinking Special Education” Nathan Levenson Report](http://legislature.maine.gov/uploads/originals/something-has-got-to-change-rethinking-special-education-nathan-levenson-report.pdf)

December 4, 2017 Meeting

- ❖ “*Improving and Expanding Social, Emotional, and Behavioral Supports: 10 Best Practices*” by Nathan Levenson; <http://legislature.maine.gov/uploads/originals/improving-and-expanding-social-emotional-and-behavioral-.pdf>

- ❖ *“Improving Special Education: Best Practices for Cost Effectively Raising Achievement”* by Nathan Levenson; <http://legislature.maine.gov/uploads/originals/improving-special-education-best-practices-for-cost-effe.pdf>
- ❖ Maine Small Schools Coalition Membership Memo to Special Education Task Force, 11-17-2017; <http://legislature.maine.gov/uploads/originals/special-education-initiatives-in-the-maine-fy-2018-fy-20.pdf>
- ❖ Department of Education Responses to Nov. 28, 2017 Request to Governor LePage and Commissioner Hasson; <http://legislature.maine.gov/uploads/originals/specialedtfdoeresponsesdec4.pdf>
- ❖ Department of Health and Human Services Responses to Questions from the Task Force; <http://legislature.maine.gov/uploads/originals/specedtfhdhsresponsesdec4.pdf>
- ❖ Center for Community Inclusion and Disability Studies Memo and Enclosed Documents to Special Education Task Force; <http://legislature.maine.gov/uploads/originals/specedtfcenterforinclusionmemo.pdf>
- ❖ Special Education Initiatives in the Maine FY 2018 & 2019 Biennium Budget Bill, PL 2017 c 284 (LD 390); <http://legislature.maine.gov/uploads/originals/special-education-initiatives-in-the-maine-fy-2018-fy-20.pdf>
- ❖ Public Law 2015, Chapter 359, (LD 582), “An Act to Establish a State Education Medicaid Officer”; <http://legislature.maine.gov/uploads/originals/an-act-to-establish-a-state-educational-medicaid-officer.pdf>

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- ❖ Task Force Members' Proposed Recommendations for the Final Report of the Task Force to Identify Special Education Cost Drivers and Innovative Approaches; <http://legislature.maine.gov/uploads/originals/specedmtgmatrlsdec19.pdf>