

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1812

H. P. 1607

House of Representatives, May 27, 1977

Reported by Mr. Fenlason from Committee on Education. Sent up for concurrence and ordered printed under Joint Rules No. 2.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Improve the Laws Relating to Exceptional Children.

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

Sec. 1. 20 MRSA § 3122, sub-§ 4, 2nd ¶, an enacted by PL 1975, c. 732, § 2, is repealed and the following enacted in its place:

Any child between the ages of 5 and 20 years, as defined in section 3123, subsection 1, diagnosed as deaf, shall be educated with regular students whenever possible and shall be educated under the principle of the least restrictive educational alternative as set forth in state and federal laws and regulations.

Sec. 2. 20 MRSA § 3127, as repealed and replaced by PL 1975, c. 732, § 2, is repealed and the following enacted in its place:

§ 3127. Denial of state aid

1. Complaint. A written complaint alleging that an administrative unit is not in compliance with this chapter may be filed with the commissioner by any interested party.

2. Investigation. Upon receiving a complaint, or if the commissioner has reason to believe that an administrative unit is not in compliance with this chapter, the commissioner shall cause an investigation to be conducted. The investigation shall be completed within 30 days after the complaint has been received.

3. Probable cause; conciliation; local hearing.

A. Within 10 days after the investigation has been completed, the commissioner shall determine whether probable cause exists to believe that

an administrative unit is not in compliance with this chapter. If he determines probable cause does exist, he shall attempt to resolve the matter to the satisfaction of the interested parties through mediation and consultation. The commissioner shall reduce the results of the concillation efforts to a written report and shall give notice of that report to all interested parties.

B. If conciliation between all interested parties cannot be attained within 45 days after the commissioner has determined that probable cause exists and that the unit is in violation of this chapter, the commissioner shall notify all interested parties of the time and place of a local hearing to be held to consider whether unit is in violation of this chapter.

(1) The local hearing shall be conducted by the department in accordance with the due process requirement set forth in section 3131, subsection 1;

(2) The local hearing shall be conducted in public unless otherwise requested by an interested parent, guardian or surrogate parent; and

(3) The commissioner shall notify all interested parties of his written findings of fact and conclusions of law within 10 days after the hearing has been completed.

4. Remedies. Compliance; order; appeal; state aid withheld; Attorney General.

A. If the written findings of the commissioner are that the unit is in violation of this chapter, then he shall issue a written order specifying the steps which the unit shall take to comply with this chapter and specifying the exact date by when the corrective steps shall be completed.

B. Any interested party may appeal to the Superior Court in the manner provided in the Maine Rules of Civil Procedure, Rule 80B.

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

(1) Is authorized to withhold state aid from the unit in order to assure compliance with his order; and

(2) Shall refer the matter to the Attorney General who shall take appropriate action to bring the unit into compliance with this chapter.

5. Other available remedies. The remedies provided in this section are in addition to, not in lieu of, any other available remedy in law or equity.

Sec. 3. 20 MRSA § 3131, sub-§§ 1-A and 1-B are enacted to read:

1-A. Information and training; hearing official.

A. The State shall inform and train the local administrative units of the exceptional children's right to due process under state and federal law and regulations.

B. The State shall train an impartial hearing official to hear appeals presented to the State Board of Education.

1-B. Regulations; surrogate parent; sequence of appeals; pupil evaluation team. The regulations established by the commissioner under this section shall provide for the following:

A. A procedure for determining when a surrogate parent is needed and criteria for his selection;

B. Maximum periods of time to be uniformly applied to all administrative units within which a parent, guardian or surrogate parent may:

(1) Request a hearing regarding the identification, evaluation and educational placement of the child;

(2) Appeal the decision of the hearing to the local school board or school committee and the State Board of Education; and

(3) Appeal the decision of the State Board of Education to a state court of competent jurisdiction or to a United States District Court.

C. Criteria for selection and qualifications of pupil evaluation team members. The interested parent, surrogate parent or guardian has the right to be a member of the team and the administrative unit shall give notice by certified mail of his or her right to be a member of the team and a copy of the notice shall be placed in the student's permanent file.

STATEMENT OF FACT

The purpose of this new draft is to identify the rights of all interested parties affected by Title 20, chapter 404, and to bring state law into conformity with PL 94-142. This new draft reorganizes sections 2 and 3 of L. D. 555 and restates the complaint and enforcement procedures consistent with the approach contained in L. D. 123.