

MAINE STATE LEGISLATURE

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(EMERGENCY)
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Legislative Document

No. 1669

H. P. 1559

House of Representatives, May 27, 1981

Reported by Representative Theriault from the Committee on Education.
Printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Define Eligibility for School Purposes and to Determine Financial Responsibility for the Education of State Wards and Students who are not State Wards.

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

Whereas, school administrative units have a fiscal year which coincides with the state's fiscal year; and

Whereas, it is essential that the funding of educational costs for state wards by the Departments of Mental Health and Corrections, Human Services and Educational and Cultural Services be clarified before the start of the next fiscal year, so that the education of state wards will not be interrupted; and

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

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

Sec. 1. 20 MRSA § 859, sub-§ 3, as repealed and replaced by PL 1979, c. 346, § 1, is repealed and the following enacted in its place:

3. Eligibility; state wards; federal installations.

A. A child is eligible to attend schools in the school administrative unit where his parent or legal guardian resides or where he resides upon reaching the age of 18 or upon becoming an emancipated minor. A state ward, as defined in section 864, is eligible to attend schools in the unit in which he is placed by an authorized unit of a state agency. For purposes of this subsection, a child's parent is the parent who has legal custody of the child.

B. A child, other than a state ward, residing with a person, who is not the child's parent or legal guardian, is entitled to all of the school privileges of the unit where that person is a resident and shall be counted as a resident pupil of the unit if the superintendent of schools in the unit determines that it is in the best interest of the child for the following reasons:

(1) It is undesirable and impractical for the child to reside with his parent or legal guardian, or other extenuating circumstances exist which justify the placement of the child in the unit; and

(2) The child is residing in the unit for purposes other than attending the unit's schools.

The parent or legal guardian may request the commissioner to review the superintendent's determination. The commissioner shall review the superintendent's determination and issue a decision. His decision is final and binding on all parties.

C. A child, other than a state ward, who has been placed by a parent or legal guardian in a residential placement as defined in section 864, located in a school administrative unit other than where his parent or legal guardian resides, is entitled to all of the school privileges of the unit where he is placed if:

(1) The parent or legal guardian provides the receiving unit with satisfactory evidence that funds sufficient to cover the cost of educating the child will be paid to the receiving unit in the year of allocation; and

(2) The unit has approved the acceptance of tuition students in accordance with this Title.

D. Federal installations are considered a part of the school administrative unit or units in which they are located, and the children residing on the installations with their parents or legal guardians, or admitted under paragraph A or B, shall be counted as resident pupils of the administrative unit or units.

E. This subsection does not supersede the rights of students to attend schools in an administrative unit under sections 912; 966, subsection 2, paragraph A; 1292; and chapter 404, and the rules adopted by the department pursuant thereto.

Sec. 2. 20 MRSA § 864 is enacted to read:

§ 864. Definition of state ward; residential placements

1. **State ward.** For the purposes of this Title, a state ward is defined as a child under the age of 18 who is:

- A. In the care or custody, or both, of the Department of Human Services or the Department of Mental Health and Corrections;
- B. Placed with a person who is not the child's parent or legal guardian or relative by an authorized agent of a state agency;
- C. On entrustment or absent-with-leave status from the Maine Youth Center; or
- D. Attending a public or private school while still a resident of a state-operated institution.

2. **Residential placements.** For the purposes of this Title, the following are the definitions of the various types of residential placement.

- A. "Emergency shelter" means a facility operated by a corporation which provides board and care to no more than 10 children over the age of 12, who may be runaways, abused children, or whose well-being is jeopardized by some other family crisis or emergency, and which provides services to a child for not more than 21 consecutive days, except with special permission.
- B. "Foster home" means a private home, occupied by the owner, licensed to provide 24-hour care for no more than 6 nonrelated children.
- C. "Group home" means a facility operated by a corporation for the purpose of providing board and care for no more than 10 children.
- D. "Residential agency" means a facility operated by a corporation for the purpose of providing board and care to more than 10 children.
- E. "Residential treatment center" means a facility operated by a corporation that provides therapeutically-planned, group living situations within which educational, recreational, medical and sociopsychotherapeutic components are integrated for children whose present handicaps preclude community outpatient treatment.
- F. "Residential treatment facility" means a facility operated by a corporation for the purpose of providing board, care and treatment for more than 10 moderately to severely handicapped children, and which does not contain an educational component.
- G. "Therapeutic group home" means a facility operated by a corporation for the purpose of providing board, care and treatment for no more than 10 moderately to severely handicapped children.

Sec. 3. 20 MRSA § 4744, sub-§ 1, ¶ Q is enacted to read:

Q. Board and care for children who are not state wards placed by administrative units in residential treatment centers.

Sec. 4. 20 MRSA § 4745, sub-§ 1, as enacted by PL 1977, c. 625, § 8, is amended to read:

1. Annual certification. Prior to December 15th of each year, the commissioner, with the approval of the State Board of Education, shall certify to the Bureau of the Budget the funding levels he recommends for section 4744, subsection 1, paragraphs A through K ~~and, M and Q~~, and for the state's maximum obligation under section 4751, subsection 3.

Sec. 5. 20 MRSA § 4745, sub-§ 2, ¶ B, as enacted by PL 1977, c. 625, § 8, is amended to read:

B. The requested funding levels of section 4744, subsection 1, paragraph D, subparagraphs (2) and (3) ~~and paragraph Q~~, shall be computed by estimating those costs in the year of allocation of funds.

Sec. 6. 20 MRSA § 4746, first sentence, as enacted by PL 1977, c. 625, § 8, is amended to read:

The Bureau of the Budget shall annually certify to the Legislature the funding levels which the Governor recommends for section 4744, subsection 1, paragraphs A through K ~~and paragraph Q~~ and the state's maximum obligation under section 4751, subsection 3.

Sec. 7. 20 MRSA § 4747, sub-§§ 11 and 12 as enacted by PL 1977, c. 625, § 8, are amended to read:

11. Appropriation for nonpublic school student services. Appropriate the necessary funds for reimbursement for nonpublic school student services as authorized by section 4750, subsection 6; ~~and~~

12. Appropriation for pupils placed directly by the State and for institutional residents. Tuition and board for pupils placed directly by the State in accordance with rules and regulations adopted by the commissioner and special education tuition and other tuition for institutional residents of state-operated institutions attending programs in administrative units in accordance with rules and regulations adopted by the commissioner; ~~and~~

Sec. 8. 20 MRSA § 4747, sub-§ 13 is enacted to read:

13. Appropriation for children who are not state wards in residential treatment centers. Appropriate the necessary funds for board and care for children who are not state wards placed in residential treatment centers for emotionally disturbed children.

Sec. 9. 20 MRSA § 4750, sub-§ 8, as enacted by PL 1977, c. 625, § 8, is repealed and the following enacted in its place:

8. Payment of state ward costs. The commissioner may pay approved special education costs for all state wards placed in residential placements by an authorized agent of a state agency. The commissioner may pay regular education costs for state wards, other than those in the care or custody, or both, of the

Department of Human Services, placed in Group Home Placements by an authorized agent of a state agency. These payments shall be made, limited to the amount of funds appropriated by the Legislature for this purpose, directly to the school administrative unit, or public or private agency, providing the educational program regardless of whether it is provided on a day or residential basis.

A. Special education costs and regular education costs authorized by this subsection for state wards and other pupils placed by an authorized agent of a state agency shall be paid by the department in the year of allocation at 100% of actual costs, limited to the amount of funds appropriated by the Legislature for that purpose.

B. In the fiscal years beginning July 1, 1981, and July 1, 1982, the commissioner shall pay either approved, special education costs and regular education costs authorized by this subsection for state wards being educated by an administrative unit in the year of allocation or shall allocate approved, special education costs and regular education costs authorized by this subsection for state wards incurred by the administrative unit in the base year, whichever is greater. In the fiscal year beginning July 1, 1983, and every fiscal year thereafter, the commissioner shall pay only approved, special education costs and regular education costs authorized by this subsection for state wards and shall not allocate for such costs incurred by the administrative unit for state wards in the base years starting July 1, 1981 and every base year thereafter.

C. Commencing July 1, 1983 the commissioner may pay board and care costs for children who are not state wards in residential-treatment centers under applicable laws and regulations relating to the education of handicapped children. These payments shall be made, limited to the amount of funds appropriated by the Legislature for this purpose, directly to the school administrative unit, or public or private agency providing board and care. Board and care costs authorized by this subsection shall be paid by the department in the year of allocation at 100% of actual costs, limited to the amount of funds appropriated by the Legislature for that purpose. Beginning July 1, 1983, the commissioner shall pay either approved board and care costs for children who are not state wards in residential treatment centers authorized by this subsection in the year of allocation or shall allocate approved board and care costs for children who are not state wards in residential treatment centers incurred by the administrative unit in the base year, whichever is greater.

Sec. 10. 22 MRSA § 4002, sub-§ 12 is enacted to read:

12. State ward. For the purpose of section 4062, subsection 3, "state ward" has the meaning set out in Title 20, section 864.

Sec. 11. 22 MRSA § 4062, sub-§ 3 is enacted to read:

3. Payment for state wards. The department is responsible for the payment of approved board-and-care and mental health treatment costs for all state wards in its care or custody, or both, who are in residential placements, as defined in Title 20, section 864.

Sec. 12. 34 MRSA § 12, sub-§ 1, ¶I is enacted to read:

I. "State ward" for the purpose of this section, has the meaning set forth in Title 20, section 864.

Sec. 13. 34 MRSA § 12, sub-§ 4 is enacted to read:

4. Payment for state wards and children who are not state wards in residential treatment centers. The department is responsible for the payment of approved, mental health treatment costs for all emotionally or mentally handicapped state wards in residential placements, as defined in Title 20, section 864, except those in the care or custody, or both, of the Department of Human Services. The department is responsible for the payment of mental health treatment costs for children who are not state wards placed in residential treatment centers under applicable laws and regulations governing education of handicapped children, limited to the amount of funds appropriated by the Legislature for this purpose. The department is responsible for payment of approved board and care costs for all state wards in residential placements, as defined in Title 20, section 864, except those in the care or custody, or both, of the Department of Human Services.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect on July 1, 1981.

FISCAL NOTE

This new draft will authorize the Departments of Educational and Cultural Services, Human Services and Mental Health and Corrections to contribute to the cost of services to an expanded group of state wards and, beginning in 1983, to contribute to board and care costs for nonstate wards in residential treatment centers. This new draft does not mandate any additional state appropriations and department obligations are limited to the amounts appropriated by the Legislature for these purposes. The maximum estimated costs of service to the expanded group of state wards, if all state wards used 100% of the applicable educational services, would be \$600,000 in 1982-83. The additional cost for room and board at residential treatment centers is estimated to be \$990,000 for 1983-84. The Commissioner of Educational and Cultural Services would be authorized to pay all or some of these costs depending on the amount appropriated by the Legislature for this purpose. There will be no increased fiscal impact on the local units, nor to the State, unless funds are appropriated.

STATEMENT OF FACT

The purpose of this new draft is to include authorization for the Department of Educational and Cultural Services to pay the board and care costs of nonstate wards within the limits of available funds commencing July 1, 1983 and to codify in statute the present practice of the Department of Mental Health and Corrections of paying the mental health treatment costs for such placements.