

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1998 to June 19, 1999

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

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Augusta, Maine
1999

psychologist evaluating or treating the person or the chief administrative officer of the hospital determines that the treatment is not in the best interest of the person.

Sec. 4. 34-B MRSA §3862, as amended by PL 1997, c. 683, Pt. A, §20, is further amended to read:

§3862. Protective custody

1. Law enforcement officer's power. If a law enforcement officer has reasonable grounds to believe, based upon probable cause, that a person may be mentally ill and that due to that condition the person presents a threat of imminent and substantial physical harm to that person or to other persons, or if a law enforcement officer knows that a person has an advance health care directive authorizing mental health treatment and the officer has reasonable grounds to believe, based upon probable cause, that the person lacks capacity, the law enforcement officer:

A. May take the person into protective custody; and

B. If the law enforcement officer does take the person into protective custody, shall deliver the person immediately for examination as provided in section 3863 or, for a person taken into protective custody who has an advance health care directive authorizing mental health treatment, for examination as provided in Title 18-A, section 5-802, subsection (d) to determine the individual's capacity and the existence of conditions specified in the advance health care directive for the directive to be effective. If the examination occurs in a hospital emergency room, the examination may be performed by a licensed physician, a licensed clinical psychologist, a physician's assistant, a nurse practitioner or a certified psychiatric clinical nurse specialist. If the examination does not occur in a hospital emergency room, the examination may be performed only by a licensed physician or licensed clinical psychologist.

When, in formulating probable cause, the law enforcement officer relies upon information provided by a 3rd-party informant, the officer shall confirm that the informant has reason to believe, based upon the informant's recent personal observations of or conversations with a person, that the person may be mentally ill and that due to that condition the person presents a threat of imminent and substantial physical harm to that person or to other persons.

2. Certificate not executed. If a certificate relating to the person's likelihood of serious harm is not executed by the examiner under section 3863, and, for a person who has an advance health care directive

authorizing mental health treatment, if the examiner determines that the conditions specified in the advance health care directive for the directive to be effective have not been met or, in the absence of stated conditions, that the person does not lack capacity, the officer shall:

A. Release the person from protective custody and, with ~~his~~ the person's permission, return ~~him~~ the person forthwith to ~~his~~ the person's place of residence, if within the territorial jurisdiction of the officer;

B. Release the person from protective custody and, with ~~his~~ the person's permission, return ~~him~~ the person forthwith to the place where ~~he~~ the person was taken into protective custody; or

C. If the person is also under arrest for a violation of law, retain ~~him~~ the person in custody until ~~he~~ the person is released in accordance with the law.

3. Certificate executed. If the certificate is executed by the examiner under section 3863, the officer shall undertake forthwith to secure the endorsement of a judicial officer under section 3863 and may detain the person for a reasonable period of time, not to exceed 18 hours, pending that endorsement.

3-A. Advance health care directive effect. If the examiner determines that the conditions specified in the advance health care directive for the directive to be effective have been met or, in the absence of stated conditions, that the person lacks capacity, the person may be treated in accordance with the terms of the advance health care directive.

4. Transportation costs. The costs of transportation under this section must be paid in the manner provided under section 3863. Any person transporting an individual to a hospital under the circumstances described in this section shall use the least restrictive form of transportation available that meets the security needs of the situation.

See title page for effective date.

CHAPTER 424

H.P. 1419 - L.D. 2026

**An Act to Make Certain Provisions
for Exceptional Students Consistent
with Federal Laws and Regulations**

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

PART A

Sec. A-1. 20-A MRSA §1001, sub-§9-B, as enacted by PL 1997, c. 594, §1, is amended to read:

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

Sec. A-2. 20-A MRSA §7001, sub-§2, ¶C, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

C. Requires special education because of ~~an impairment~~ in one or more of the following:

- (1) ~~Vision~~ Visual impairments including blindness;
- (2) Hearing impairments, including deafness;
- (3) Speech and language impairments;
- (4) ~~Cerebral or perceptual functions~~ Specific learning disabilities;
- (5) ~~Physical mobility functions~~ Orthopedic impairments;
- (6) ~~Behavior; or~~ Emotional disability. This subparagraph is repealed June 30, 2000;
- (7) ~~Mental development or maturation.~~ Mental retardation;
- (8) Autism;
- (9) Traumatic brain injury;
- (10) Other health impairment;
- (11) Deafness and blindness; or

(12) Multiple disabilities.

Sec. A-3. 20-A MRSA §7001, sub-§3, as enacted by PL 1981, c. 693, §§5 and 8, is repealed.

Sec. A-4. 20-A MRSA §7001, sub-§4, ¶C, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

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

- (1) ~~Vision~~ Visual impairments, including blindness;
- (2) Hearing impairments, including deafness;
- (3) Speech and language impairments;
- (4) ~~Cerebral or perceptual functions~~ Specific learning disabilities;
- (5) ~~Physical mobility functions~~ Orthopedic impairments;
- (6) ~~Behavior; or~~ Emotional disability. This subparagraph is repealed June 30, 2000;
- (7) ~~Mental development or maturation.~~ Mental retardation;
- (8) Autism;
- (9) Traumatic brain injury;
- (10) Other health impairment;
- (11) Deafness and blindness; or
- (12) Multiple disabilities.

Sec. A-5. 20-A MRSA §7206, sub-§1, as amended by PL 1989, c. 69, §1, is further amended to read:

1. Complaint. An interested party may file with the commissioner a written complaint alleging that a school administrative unit or private school serving exceptional students, ~~within 180 days preceding receipt of the complaint~~, has failed to comply with this chapter. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received unless a longer period is reasonable because a violation is continuing or the complaint is requesting compensatory services for a violation that occurred not more than 3 years prior to the date the complaint is received.

Sec. A-6. 20-A MRSA §7206, sub-§4, as amended by PL 1993, c. 483, §4, is further amended to read:

4. Appeal. ~~An interested party may appeal the commissioner's order to the United States Department of Education. A parent or a school administrative unit may challenge a complaint investigation report by requesting a due process hearing within 30 days of the receipt of the complaint investigation report.~~

Sec. A-7. 20-A MRSA §7206, sub-§7 is enacted to read:

7. Complaint investigators; immunity. The State shall train complaint investigators. For the purposes of this section, while carrying out their official duties, complaint investigators are considered state employees and are entitled to the immunity provided state employees under the Maine Tort Claims Act.

Sec. A-8. 20-A MRSA §7207-B, sub-§1, ¶¶C and D, as enacted by PL 1985, c. 318, §3, are amended to read:

C. The use of mediation; ~~and~~

D. The procedures for conducting the hearings; ~~and~~

Sec. A-9. 20-A MRSA §7207-B, sub-§1, ¶E is enacted to read:

E. The procedures for determining the award of attorney's fees consistent with the requirements of the federal Individuals with Disabilities Education Act.

Sec. A-10. 20-A MRSA §7207-C is enacted to read:

§7207-C. Mediations

The following provisions apply to mediations.

1. Rules. The commissioner shall adopt rules governing the procedures for conducting mediations. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

2. Request for mediation. A parent, surrogate parent, guardian or school administrative unit may request the appointment of a mediator to conduct a mediation to resolve a dispute between the parent, surrogate parent or guardian and the school.

3. Mediators; immunity. The State shall train impartial mediators. For the purposes of this section, while carrying out their official duties, mediators are considered state employees and are entitled to the immunity provided state employees under the Maine Tort Claims Act.

Sec. A-11. Study of use of emotional and behavioral indicators in identification of exceptional students and preschool handicapped children.

The Department of Education shall study and compare the rate of identification of exceptional students and preschool handicapped children using emotional and behavioral indicators between school units within the State and between the State and other states. The department shall analyze the use of emotional and behavioral indicators within the State to identify inconsistencies and instances of over-identification and under-identification. The department shall report its findings and recommendations to the Joint Standing Committee on Education and Cultural Affairs no later than December 31, 1999. The committee may introduce legislation concerning the use of emotional and behavioral indicators in the identification of exceptional students and preschool handicapped children to the Second Regular Session of the 119th Legislature.

Sec. A-12. Study of developmental delay category.

The Department of Education, with input from interested parties, shall study the appropriateness and likely impact of including developmental delay for children from 5 to 9 years of age and from birth to 5 years of age as a component in the definitions of "exceptional student" and "preschool handicapped child" in the Maine Revised Statutes, Title 20-A, section 7001. In performing the study, the department may draw on its experiences with the category of developmental delay as a disability characteristic for children from birth to 3 years of age and 3 years of age to under 6 years of age under Title 20-A, chapter 307-A. The department shall report its findings to the Joint Standing Committee on Education and Cultural Affairs no later than December 31, 1999.

PART B

Sec. B-1. 12 MRSA §7076, sub-§13, as amended by PL 1997, c. 432, §15, is further amended to read:

13. Persons with mental retardation. A complimentary license to fish must be issued to any ~~mentally retarded~~ person with mental retardation, as defined in Title ~~20-A 34-B~~, section ~~7001 5001~~, subsection 3, upon application to the commissioner. The application must be accompanied by certified evidence that the applicant meets the defined condition. This complimentary license remains effective for the life of the license holder, if the license is not revoked or suspended.

See title page for effective date.
