

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date September 18, 1975

To John T. Kierstead Dept. Educational and Cultural Services  
From John W. Benoit, Jr., Deputy Dept. Attorney General  
Subject Interpretation of 34 M.R.S.A. Sections 2901-2907 and 20 M.R.S.A. Sections 3121-3141  
Re Education of Deaf Children

This is a reply to the several questions posed in your memorandum of August 21.

1. You ask whether a deaf student of appropriate age, found to be better able to benefit from one method of education than another, may be allowed to attend a school for the deaf other than the Governor Baxter School for the Deaf to pursue a method of education not taught at Baxter School. The answer is yes.

Maine statutes concerning the Governor Baxter State School for the Deaf appear in 34 M.R.S.A. Sections 2901-2907. Section 2905 reads as follows:

"Every parent, guardian or other person having control of any mentally normal child between 6 and 18 years of age, too deaf to be materially benefited by the methods of instruction in vogue in the public schools, unless it can be shown that the child is receiving regular instruction during the same period in studies usually taught in the public schools, shall be required to send such child or youth to the Governor Baxter State School for the Deaf during the scholastic year of that school. Such child or youth shall attend such school, year after year, until discharged by the superintendent upon approval of the Department of Mental Health and Corrections." (Emphasis supplied.)

The reference School was established by P. & S.L. 1897, c. 446.

Another statute warrants consideration concerning this question; it is 20 M.R.S.A. Sections 3121-3141 (education of exceptional children). Under that statute, one of the categories of exceptional children is one who has impaired hearing.

"1. Exceptional child. 'Exceptional child' means any person between the ages of 5 and 20 determined to be mentally handicapped, emotionally handicapped, hearing impaired, speech and language impaired, learning disabled, visually impaired, physically handicapped or multiply handicapped, as defined by the Maine Department of Educational and Cultural Services." 20 M.R.S.A. Sec. 3123(1).

A child with impaired hearing may obtain "special education" in a "special education facility."

"2. Special education. 'Special education' means classroom, home, hospital, institutional or other instruction to meet the needs of exceptional children, diagnosis and evaluation, transportation and corrective and supporting services, as defined by the commissioner, required to assist exceptional children.

"3. Special education facility. 'Special education facility' means a school or any portion thereof, intended for use in meeting the educational, corrective and related needs of exceptional children." 20 M.R.S.A. Section 3123(2) and (3).

According to the provisions of Maine law relating to the education of exceptional children, an administrative unit may provide, through tuition arrangement with a private agency, educational services to children whose hearing is impaired.

"2. Contract. An administrative unit may contract with, or tuition to, another administrative unit or any approved public or private agency or institution to provide a program for the education of exceptional children. Such contract shall be subject to approval by the commissioner." 20 M.R.S.A. Sec. 3127(2).

The provisions of 20 M.R.S.A. Sec. 2905 contain an exception to schooling at the Governor Baxter School for the Deaf, which exception is dispositive of the question:

" \* \* \* unless it can be shown that the child is receiving regular instruction during the same period in studies usually taught in the public schools \* \* \* ."

The exception allows a deaf student of appropriate age, found to be better able to benefit from one method of education than another, to attend a school for the deaf other than the Governor Baxter State School to pursue instruction in studies usually taught in public schools. The provisions of Maine statutes quoted earlier herein are thus not in conflict.

2. You inquire whether "deaf children who are other than normal"\* may attend Governor Baxter State School for the Deaf. The answer is no. That State facility only may admit deaf students who are "mentally normal." 20 M.R.S.A. Sec. 2905.

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\* We interpret your reference to "other than normal" to mean other than mentally normal.

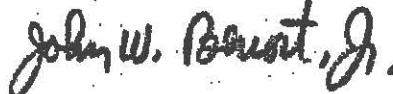
3. Your memorandum poses additional questions relating to the course of study to be prescribed at Governor Baxter School for the Deaf. With the provisions of 20 M.R.S.A. Sec. 2903 in mind, you ask the following two questions:

- (1) "Can we (Department of Educational and Cultural Services) prescribe a course for multiple handicapped students, deaf retarded, deaf disturbed, deaf cerebral palsy, deaf blind, to be conducted at Baxter?" (Parenthesis mine)
- (2) "Can we (Department of Educational and Cultural Services) prescribe a course of instruction, e.g., more emphasis on oral as opposed to manual communication?" (Parenthesis mine)

Those deaf students who are so mentally retarded or mentally disturbed as to be other than "mentally normal" may not be admitted to the School. 20 M.R.S.A. Sec. 2905. On the other hand, those who are mentally normal but are deaf and blind or deaf and cerebral palsy may be admitted. As for your second question regarding the manner of course of instruction, the provisions of 20 M.R.S.A. Sec. 2903 broadly specify that the Department of Educational and Cultural Services shall prescribe the system of education and the course of study to be pursued at the School. As to whether more emphasis should be placed upon oral as opposed to manual communication in the system of education and course of study at the School, that is a decision for the Department of Educational and Cultural Services.

Trusting that this memorandum sufficiently answers the questions you have posed, I remain,

Very truly yours,



JOHN W. BENOIT, JR.  
Deputy Attorney General

JBjr./ec

cc: Honorable James B. Longley