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STATE OF MAINE

Inter-Departmental Memorandum Date December 15, 1975

To Edgar N. Darby, Consultant
Exceptional Children
From S. Kirk Studstrup, Assistant

Dept. Educational and Cultural Serv.
Dept. Attorney General

Subject Special Education Finance

Your memorandum of October 1, 1975, outlined a situation concerning the child of a Coast Guard officer who is a domiciliary of Maine, but who resides in New York where he is stationed. The information which accompanied the memorandum indicates that the child has some handicap or disability, and that he is attending a special school in Massachusetts for this reason. On the basis of this fact situation, you have asked, among other questions, whether a school administrative unit in Maine is legally responsible to provide appropriate education for an "exceptional" child who is not living in Maine and whose family is not living here. In this connection, you ask that this office review its informal opinion of October 26, 1973, advising that such responsibility existed. We have done so and decline to adhere to the opinion of October 26, 1973.

The opinion of October 26, 1973, stated, in part, that the administrative unit does have the responsibility of providing appropriate educational opportunities to a child if the child's parents are "domiciled" in the unit, even if they are actually residing elsewhere. The key to this conclusion was an interpretation of the word "residence," as used in 20 M.R.S.A. § 859, to be synonymous with the word "domicile," despite a statutory definition to the contrary. Section 859 provides, "Residence as used in this section shall mean the administrative unit where the father or legal guardian maintains a home for his family." An earlier opinion of September 19, 1963, (1963-64 Atty. Gen. Rep. 81, 82), and the case of Shaw v. Small, 124 Me. 36 (1924) which was cited therein, were given as authority for the "residence/domicile" interpretation of the 1973 opinion. There was no mention of yet an earlier opinion of June 3, 1963 (1963-64 Atty. Gen. Rep. 59, 60) which applied the statutory definition of Section 859 in a more literal fashion and concluded that part-time residence in a house owned in Maine by a Maine taxpayer was not maintaining a home and the respective administrative unit was not required to furnish educational opportunities for a child of the house owner.

At one time the pertinent part of Section 859 read, ". . . every person between the ages of 5 and 21 shall have the right to attend the public schools in the administrative unit in which his parent or guardian has a legal residence." The section was amended in 1955 by deleting the words "a legal" and adding the sentence defining the word "residence." P.L. 1955, c. 63; H. P. 345, L.D. 383. The amending act was titled "An Act Relating to

Definition of Residence of Parents of Children of School Age," but there was no Statement of Fact or other recorded legislative history. There is no indication that the Legislature intended an interpretation of "residence" other than that which was clearly stated; clarification of the term was the purpose for the legislation.

The case of Shaw v. Small, supra, cited in both the 1963 and 1973 opinions, concerned the definition of the word "guardian" in what is now Section 859. The only reference to "domicile" in the court's opinion was relative to a comparison of a Nebraska statute to its parallel in Maine, on the question of universal elementary education. Elsewhere in the opinion the court stated: ". . . the Legislature intended that free public school privileges should be somewhere open to all children living in any town in the State." 124 Me. 36, 39 (emphasis supplied). Therefore, the Shaw case, which was decided prior to the amendment which added the definition of "residence" to Section 859, does not appear as determinative of the issue as its previous citations would have indicated. Whatever the Shaw case stands for in terms of the definition of "residence," its precedent value is negated on this point by the subsequent legislative action.

The foregoing reanalysis of the scope of the general education provisions of Section 859 indicates that the right of a child to attend school, and conversely the responsibility of the administrative units to offer him educational opportunities, is a function of his parent's or guardian's residence, as defined by statute. The statutory definition does not equate "residence" with "domicile," but rather says it is where the parent or guardian maintains a home for the family. Therefore, we cannot adhere to the earlier opinions to the extent that they departed from the statutory definition.

Since the child you described in your memorandum appears to be an "exceptional child" as that term is defined in 20 M.R.S.A. § 3123,1, the requirements placed upon the administrative unit by 20 M.R.S.A. Chapter 404, § 2121, et seq. should also be considered. Unlike 20 M.R.S.A. § 859, there is no specific definition in a geographic sense in Chapter 404 of which children are to be included, although the age group is the same. The responsibility of the administrative units for exceptional children is stated:

"Every administrative unit shall appropriate sufficient funds and shall provide adequate instructional facilities for the education of all exceptional children as set forth in this Title and in any other statutes." 20 M.R.S.A. § 3128.

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Obviously the term "all exceptional children" cannot be read literally, for this would result in an absurd and impossible task for each unit. Therefore, other sections in the chapter must be examined for an answer. One clue as to the intended scope of the responsibility is found in the record-keeping section, which provides:

"The administrative unit shall make and keep current records of all exceptional children under section 3131 and all other children who are residents of the administrative unit and are receiving home, hospital, institutional or other special education in other than regular programs." 20 M.R.S.A. § 3132 (emphasis provided)

Furthermore, Section 3131 provides that identification of exceptional children shall be the responsibility of the "administrative unit of residence." Therefore, it is logical to conclude that the administrative unit's responsibilities extend only to the exceptional child who is an actual resident of the unit or whose parent or guardian is a resident of the unit. This interpretation would be consistent with the interpretation of Section 859 discussed above.

In light of the foregoing, it is clear that the legal responsibilities of an administrative unit do not extend to a child who does not reside in the unit or whose parent or guardian does not maintain a home there. The facts in the particular case you outlined in your memorandum do not appear to satisfy this criteria. Having answered your first question in the negative, your other questions become moot.

S. KIRK STUDSTRUP
Assistant Attorney General

SKS/ec

cc: Asa A. Gordon, Deputy Commissioner
John Kierstead, Acting Director,
Division of Special Education