

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

J. E. 13 W. H. W.

February 13, 1976

Edgar Darby, Consultant

Educational & Cultural Services

W. G. Buschmann, Assistant

Attorney General

Tuition payments to private schools for the education of exceptional children

FACTS:

A State ward, who has been classified as an exceptional child, is in need of special education, which is available at a specific private school. The ward will not be within the jurisdiction of a school administrative unit (An administrative unit is any municipal or quasi-municipal corporation responsible for operating public schools). The State wishes to place the ward in the private school.

QUESTION:

May the State of Maine make tuition payments directly to a private school for providing approved programs of special education to exceptional children who are legal wards of the State of Maine and are in residence at the private school?

ANSWER:

Yes.

REASONS:

The right to a free public education in the public schools, in the administrative unit in which a person's parent or guardian has residence, is a statutory right granted to all persons between the ages of 5 and 20. 20 M.R.S.A. § 859. The Legislature has even mandated that "Every child between the 7th and 17th anniversaries of his birth shall attend" school. 20 M.R.S.A. § 911. The 106th Legislature, through the enactment of Chapter 404 of Title 20, M.R.S.A., declared it to be the "policy of this State to provide equal educational opportunities for all children" including exceptional children. 20 M.R.S.A. § 3121. The Commissioner of the Department of Educational and Cultural Services has the duty to "provide. . . all regular and special education, corrective and supporting services required by exceptional children to the end that they shall receive the benefits of a free public education appropriate to their needs." 20 M.R.S.A. § 3122.

It is mandatory that the State provide financial assistance, including the cost of tuition, "to administrative units for educational and related services provided by them for exceptional children." 20 M.R.S.A. § 3136. However, if there is no administrative unit which has jurisdiction over a given State ward, who is an exceptional child, to whom does the State provide financial assistance for the ward's tuition at the private school?

Edgar Darby, Consultant
Page 2
February 13, 1976

The Legislature provided that "Nothing contained in" chapter 404 of Title 20, M.R.S.A. "shall be construed to prevent or impair the administration or enforcement of any other provision of laws of this State." 20 M.R.S.A. § 3141. In light of this savings provision, along with clear legislative intent that all children (exceptional and normal) must attend school and that the State is to pay for the cost of educating exceptional children, it is our opinion that the State should make tuition payments directly to the private school. (See also Opinion of the Attorney General entitled "School Residence of State Wards" dated June 7, 1968.)

W. G. BUSCHMANN
Assistant Attorney General

WGB:mfe