

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 965

H. P. 751

House of Representatives, February 20, 1973

Referred to Committee on Education. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Ault of Wayne.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Relating to Exceptional Children.

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

Sec. 1. R. S., T. 20, c. 404, additional. Title 20 of the Revised Statutes is amended by adding a new chapter 404 to read as follows:

CHAPTER 404

EXCEPTIONAL CHILDREN

§ 3121. Purpose

It is the declared policy of this State to provide equal educational opportunities for all children. It is the purpose of this chapter to insure that all school administrative units provide equal educational opportunities for exceptional children. It is deemed to be appropriate to provide educational services within regular programs with supportive assistance, within regulations promulgated by the State Department of Educational and Cultural Services. Exception to this policy shall be based on appropriate supporting evaluative data submitted by a school administrative unit to the commissioner explicitly indicating a child cannot be properly served in a regular program.

§ 3122. Services mandatory

The commissioner shall provide or cause to be provided by administrative units 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. It shall be within the jurisdiction of the commissioner to require that schools and classes in all

institutions, wholly or partly supported by the State, which are not supervised by public school authorities, be organized according to the regulations established by him for the conduct of schools and classes of the public school system.

§ 3123. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Exceptional child. "Exceptional child" means any person between the ages of 4 and 20 with physical, mental or emotional handicaps, as defined by the Bureau of Education for the Handicapped in the United States Office of Education and the Maine Department of Educational and Cultural Services. Special education may be provided for any exceptional child between the ages of 0 and 4 and for any person between the ages of 20 and 25, subject to approval by the commissioner.

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.

§ 3124. Facilities

Physical aspects and specifications of schools, classrooms and other facilities for use by exceptional children shall be related to their educational, physical, psychological and social needs. To this end, administrative units, agencies of the State, and its subdivisions, and any private persons or entities constructing, renovating or repairing facilities with or aided by public funds, which facilities are intended to be used for the education of exceptional children, shall plan, locate, design, construct, equip and maintain them with due regard for the special capabilities, handicaps and requirements of the exceptional children to be accommodated therein.

No school or school-related construction, renovation, remodeling, expansion or modification shall be eligible for state aid pursuant to chapter 512, unless the State Board of Education finds that it is in conformity with Title 25, sections 2701 to 2703, prohibiting architectural barriers for the handicapped.

§ 3125. Plans and specifications

Plans and specifications for every special education facility shall be prepared in 2 parts, as follows:

1. Statement. A statement of the educational and related objectives and functions to be served and the uses to be made of the facility;

2. Plans —architectural plans and specifications. If the administrative unit submits plans and specifications for a building, or other structure, which does not include appropriate accommodations for its exceptional children, the State Board of Education shall require assurance that the submitting authority has other facilities adequate to meet the needs of its exceptional children.

§ 3126. Identification of a unit

The commissioner is authorized to employ such personnel, subject to the Personnel Law, as may be necessary to achieve the purposes of this chapter.

§ 3127. Appropriate services for exceptional children

Each administrative unit shall provide an appropriate education for exceptional children, as set forth in this Title, and in any other statutes and regulations of the Commissioner and State Board of Education, by any one or a combination of the following methods:

1. Approval. An appropriate program for exceptional children may be established in any administrative unit provided it is approved by the commissioner as to requirements for admission, teacher preparation, plan of instruction, necessary facilities and supervision.

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.

3. Cooperative agreement. An administrative unit may enter into a cooperative agreement with one or more administrative units under sections 309, 309-A and 309-B. Programs established under this section shall be subject to approval by the State Board of Education.

In addition to subsections 1, 2 and 3, an administrative unit shall make any other provisions, subject to approval by the commissioner, to insure the education of all exceptional children as may become necessary.

§ 3128. Responsibility of administrative units

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.

The guidelines developed by the commissioner will establish procedures to assure the rights of due process for all children referred to in this Title.

§ 3129. State plan

The commissioner shall make and keep current by annual review a state plan for the education of all exceptional children. This state plan shall be presented to the Governor and be made available for public distribution.

§ 3130. Local planning and responsibility

The administrative unit shall provide the commissioner with such information as may be required to insure compliance with the policy set forth in this Title.

§ 3131. Identification of exceptional children

The administrative unit shall establish procedures to identify all children who require special education. The administrative unit of residence shall provide diagnosis and evaluation as necessary for the planning and implementation of a special education program for each exceptional child.

§ 3132. Records

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.

§ 3133. Technical assistance

The commissioner, upon the request of any school administrative unit, shall provide technical assistance in the formulation of any plan or subsequent report required pursuant to section 3129. However, any such assistance shall not be designed to transfer either in whole or in part the responsibility for or actual development of the plan or report. The commissioner shall give final approval to all plans or reports.

§ 3134. In-service education

Administrative units shall raise and appropriate money for in-service education of teachers and other school personnel.

§ 3135. Grants

The commissioner may provide grants to public and private agencies for such revision, development and model programs as are required to promote effective special education.

§ 3136. Direct state action

1. Denial of state aid. If, at any time after July 1, 1975, an administrative unit is found by the commissioner to have failed to provide the necessary education to all exceptional children who by law are entitled to receive the same from such administrative unit, the commissioner may withhold all or such portion of the state aid for the administrative unit as, in his judgment, is warranted. The denial of state aid may continue until the failure to provide appropriate education for exceptional children is remedied. The commissioner may provide the education directly, taking such action as is needed to insure appropriate education for exceptional children in said administrative unit.

2. —public hearing. No action pursuant to subsection 1 shall be taken by the commissioner, except after public hearing on due notice and on a record that establishes the failure of the administrative unit to provide an appropriate education for exceptional children.

3. —costs. Any cost incurred by the commissioner in administering subsections 1 and 2 shall be deducted from the general purpose aid of the administrative unit.

4. State aid. No state aid pursuant to section 3137 shall be given to an administrative unit during any period when education of exceptional children in the unit is being administered directly by the commissioner. The basic responsibility for education of exceptional children shall remain with the administrative unit. The commissioner shall return responsibility to the administrative unit when he finds that it is capable of fulfilling its responsibilities pursuant to law.

§ 3137. State aid to be provided

The State shall provide financial aid to administrative units for educational and related services provided by them for exceptional children. Such aid shall include the following elements:

1. Remedial services. The education of exceptional children in school programs designed to meet their special needs; and the furnishing of corrective or remedial services and equipment designed to assist exceptional children.

2. Evaluation. Screening, diagnosis and evaluation as is necessary for the planning and implementation of a special education program;

3. Transportation. The furnishing of round-trip transportation to the facility where the public or private day program is provided;

4. Tuition. The furnishing of tuition to day or residential schools, in-state or out-of-state;

5. Other transportation. The furnishing of transportation to and from a residential educational facility, in-state or out-of-state, corresponding to major vacation periods, as approved by the commissioner;

6. Room and board. The furnishing of room and board, not to exceed an amount determined by the commissioner, in lieu of daily conveyance to a special education facility, in-state or out-of-state;

7. Contracts. Contracts with appropriate agencies for provisions of educational services for exceptional children, providing the contract is approved by the commissioner.

§ 3138. Tuition computation

Any administrative unit operating a program under the authority granted in this chapter may compute an annual tuition rate in either of the following manners:

1. Actual costs. Itemization of the actual costs of the program which was offered;

2. Salary. The salary paid to special education teachers shall be increased by 35% to compensate for the operating costs not included in salaries, and the resulting amount shall be divided by the average daily membership of students in special education classes for the same fiscal year. The per pupil cost thus determined shall become the legal tuition charge for the following school year.

A private school shall compute an annual tuition rate based on the actual per pupil cost incurred in the operation of the program during the preceding school year. The per pupil tuition charge shall be computed on the basis of financial reports filed by the private school. Such financial reports shall be filed July 1st of each year in such form as the commissioner may require, and the allowable tuition charge may not exceed the per pupil operating cost as determined from the financial reports of the preceding school year.

Any administrative unit or private agency establishing a new special education program may charge a tuition rate which is based on the estimated cost of the new program as it is approved by the commissioner.

§ 3139. Preschool hearing impaired

Appropriations made under this chapter may be used to make expenditures to institutions and organizations for speech and language education of hearing and language impaired children who have not become of compulsory school age.

§ 3140. Amounts of aid

Any administrative unit which has maintained an approved program of education for exceptional children shall receive reimbursement from the State for all of the cost in excess of the unit's per pupil expenditure.

§ 3141. Contributions

The commissioner is authorized to receive contributions and donations to be used in conjunction with appropriations made to carry out the provisions and requirements of this chapter. The Department of Educational and Cultural Services is designated as the agency for cooperation with the Federal Government in any program for the education of exceptional children.

§ 3142. Savings provision

Nothing contained in this chapter shall be construed to prevent or impair the administration or enforcement of any other provision of the laws of this State.

Sec. 2. R. S., T. 20, c. 403, repealed. Chapter 403 of Title 20 of the Revised Statutes, as amended, is repealed.

STATEMENT OF FACT

Currently, Maine is serving the educational needs of only 21% of the estimated 45,600 exceptional children. The purpose of this bill is to assure that equal educational opportunities are provided within regular programs, insofar as possible, with supportive assistance, for all exceptional children ages 4 through 20. This bill complies with the intent of the Joint Resolution in Support of Education for Handicapped Children passed by the special session of the 105th Legislature.

There is ample available evidence that judicial decisions recently made are affirming the constitutional rights of all exceptional children to equal educational opportunity.