

MAINE STATE LEGISLATURE

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(EMERGENCY)
FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1956

H. P. 1797 House of Representatives, January 19, 1976
Referred to Committee on Education. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Ault of Wayne.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

AN ACT Relating to Exceptional Children.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the experience of the past 2 years has shown that the mandatory special education legislation and accompanying guidelines and regulations enacted by the 106th Legislature and adopted by the Department of Educational and Cultural Services need to be revised without delay in order to provide for the effective and efficient delivery of services to handicapped students throughout Maine; and

Whereas, in view of contemplated changes in school funding procedures, it is vital that the special education legislation be revised at once; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 20 MRSA § 859, 5th ¶, last sentence, as enacted by 1975, c. 69, § 2, is repealed.

Sec. 2. 20 MRSA c. 404, as enacted by PL 1973, c. 609, § 1, and as amended, is repealed and the following enacted in place thereof:

CHAPTER 404
EXCEPTIONAL CHILDREN

§ 3121. Policy and purpose

It is the declared policy of the State that all children be provided with equal educational opportunities. The purpose of this chapter is to ensure that all administrative units operating schools provide equal educational opportunities for all exceptional children as defined. Educational opportunities for such children shall be provided, in so far as possible, by means of the addition of appropriate supportive assistance to regular educational programs. Exceptions to this policy shall be made only after supporting evaluative data, indicating that a child cannot be properly served in a regular program, have been submitted to and approved by the commissioner.

§ 3122. Supportive assistance; private schools; state-operated institutions; Governor Baxter School for the Deaf

1. Supportive assistance. The commissioner shall provide, or cause to be provided by administrative units operating schools, all supportive assistance and services, as defined in guidelines and regulations he establishes, required by exceptional children to the end that they may benefit from equal educational opportunities.

2. Private schools. It is within the jurisdiction of the commissioner to require that classes in schools and institutions, wholly or partly supported by the State, that are not supervised by public school authorities, be organized in accordance with guidelines and regulations established by him for the conduct of classes within the public school system.

3. State-operated institutions. Any exceptional child committed or otherwise legally admitted to any state-operated institution for the mentally ill or mentally handicapped shall have the right to attend the public school in the administrative unit in which such institution is located, or in any adjoining administrative unit. The head of such institution shall make application for such attendance to the superintendent of the administrative unit involved, under the same conditions as apply to regular pupils residing in such administrative unit and in accordance with guidelines and regulations of the Department of Educational and Cultural Services relating to special education.

4. Governor Baxter School for the Deaf. The Governor Baxter School for the Deaf, established by chapter 446 of the private and special laws of 1897 and by chapter 44 of the private and special laws of 1953, is to be devoted to the education and instruction of deaf children. The school shall be located in the County of Cumberland and the State shall have the entire charge, responsibility and expense of maintaining the school. The government of the school is vested in the Department of Educational and Cultural Services, which shall have charge of the general interests of the school and shall see that its affairs are conducted in accordance with law. The department may employ officers, teachers and other employees as it may deem advisable subject to the Personnel Law. The department may prescribe the system of education and course of study to be pursued in the school.

Any child between the ages of 5 and 20, as defined in section 3123, subsection 1, diagnosed as deaf, shall attend the Governor Baxter School for the Deaf during the scholastic year, unless it can be shown that a program adequate to his needs is available on a local or regional basis within the State or unless the commissioner approves an alternative.

The superintendent of the administrative unit in which such child resides, with the consent of the child's parent or legal guardian, may enroll such child in the Governor Baxter School for the Deaf and the sums necessary for the support of such child while attending the school shall be paid by the Department of Educational and Cultural Services in accordance with its guidelines and regulations.

It shall be the responsibility of the Governor Baxter School for the Deaf to provide annual evaluation of all children enrolled in the school. These evaluations will be sent to the superintendents of the administrative units from which such children are enrolled. Each administrative unit may request technical assistance from the Governor Baxter School for the Deaf in matters relating to the education of deaf children in accordance with guidelines and regulations of the department.

§ 3123. Definitions

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

1. Exceptional children. "Exceptional children" means any person who reaches the age of 5 on or before October 15th of any school year and until the end of the school year in which such persons reach the age of 20 who require special services in the area of vision, audition, speech and language, cerebral or perceptual functions, behavior, mental development or maturation, or multiple of these functions, as defined by the commissioner, so that their educational progress and potential may be realized.

2. Special education. "Special education" means classroom, home, hospital, institutional or other instruction; educational diagnosis and evaluation; transportation and other supportive assistance, services, activities or programs, as defined by the commissioner, required by exceptional children.

3. Special education facility. "Special education facility" means a school, or portion thereof, intended for use in meeting the educational and related needs of exceptional children.

§ 3124. Local responsibility

Each administrative unit operating schools shall identify all children within its jurisdiction who require special education and supportive assistance. Each such administrative unit shall provide educational diagnosis and evaluation as may be necessary for the planning and implementation of a special education program for each exceptional child. Each such administrative unit shall provide special education and supportive services for exceptional children within its jurisdiction by any or by a combination of the methods indicated.

Activities related to identification, educational diagnosis and evaluation, planning and implementation, and the provision of services shall be conducted in accordance with guidelines and regulations established by the commissioner.

§ 3125. Methods of providing programs

1. Local programs. An appropriate program for exceptional children may be established by any administrative unit operating schools providing it is approved by the commissioner with respect to requirements for admission, qualification or certification of staff, plan of instruction, adequacy of facilities and supportive services, professional supervision and teacher-student ratio.

2. Contractual programs. An administrative unit may arrange with or tuition to another administrative unit or any public or private agency or institution approved by the commissioner with respect to the components listed in subsection 1. When such arrangements are effected, they shall be in accordance with guidelines and regulations established by the commissioner and shall be described in a contract, subject to approval in advance by the commissioner.

3. Cooperative agreements. An administrative unit may enter into a cooperative agreement with one or more other administrative units in order to provide education programs or supportive services for exceptional children. Programs established through cooperative agreements shall be approved by the commissioner with respect to those components listed in subsection 1. Cooperative agreements are particularly encouraged when it can be demonstrated that they will more effectively provide special education programs than the other 2 methods listed in subsection 2.

4. Other. In addition to, or in place of, those methods listed above, an administrative unit may make any other provisions, subject to approval in advance by the commissioner, to ensure the education of all exceptional children.

§ 3126. State aid and review

The State shall provide financial aid to administrative units for special education as defined, in accordance with guidelines and regulations established by the commissioner.

All administrative units shall provide the commissioner with such information as may be required to ensure compliance with the policy set forth in this chapter. Each administrative unit shall submit a plan of its services to exceptional children to the commissioner for approval, in accordance with guidelines and regulations that he establishes every 3 years and shall annually report any change in such services.

The commissioner, upon the request of any administrative unit, may provide technical assistance in the formulation of any plan or subsequent report required of administrative units. 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 and reports.

§ 3127. Denial of state aid

If, at any time after July 1, 1976, an administrative unit is found by the commissioner to have failed to provide appropriate education to all exceptional children who are by law 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.

No action pursuant to denial of state aid shall be taken by the commissioner, except after public hearing by the State Board of Education, on due notice and on a record that establishes the failure of the administrative unit to provide an appropriate education for exceptional children.

Notwithstanding the provisions of this section, if the commissioner is presented with substantial evidence by an administrative unit that significant hardship exists, he may waive enforcement of this chapter until July 1, 1977.

§ 3128. Records

Each administrative unit operating schools shall make and keep current such records of exceptional children as are identified by guidelines and regulations established by the commissioner. Each such administrative unit shall institute procedures that guarantee the confidentiality of such records as required by state and federal law.

The commissioner shall make and keep current by annual review a state plan for the education of all exceptional children in Maine. This state plan shall be made available for public inspection on request.

§ 3129. Facilities

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 obtain approval in advance from the commissioner. Such approval, when given, shall be in accordance with established regulations pertaining to school construction. If an administrative unit submits plans and specifications for a building or other structure that does not include appropriate accommodations for its exceptional children, the commissioner shall require assurance that the submitting authority has other facilities adequate to meet the needs of its exceptional children.

§ 3130. Miscellaneous provisions

1. Due process. The guidelines and regulations established by the commissioner shall establish procedures to assure and protect the rights of due process for all children referred to in this Title.

2. Preschool children. The commissioner may authorize expenditures to institutions and organizations for speech and language education of hearing and impaired children who have not become of compulsory school age.

3. Contributions. The commissioner is authorized to receive contributions and donations to be used in conjunction with appropriations made to carry out 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.

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

Sec. 3. 34 MRSA c. 251, as amended, is repealed.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

The purpose of this bill is to revise mandatory special education legislation and accompanying guidelines and regulations enacted by the 106th Legislature and adopted by the Department of Educational and Cultural Services.