

MAINE STATE LEGISLATURE

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(EMERGENCY)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 1077

S.P. 356

In Senate, March 7, 1983

Submitted by the Department of Educational and Cultural Services pursuant to Joint Rule 24.

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

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Clark of Cumberland.

Cosponsors: Representative Locke of Sebec, Representative Matthews of Caribou and Representative Brown of Gorham.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-THREE

**AN ACT Concerning Confidential Records and
State Certification of Educational Personnel.**

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

Whereas, there is confusion regarding the manner in which professional certificates can be revoked by the Commissioner of Educational and Cultural Services; and

Whereas, the Legislature finds that one ground for the revocation of a professional certificate is conduct involving child abuse which should be dealt with immediately; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of

1 the Constitution of Maine and require the following
2 legislation as immediately necessary for the preservation
3 of the public peace, health and safety; now,
4 therefore,

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

7 Sec. 1. 20 MRSA §807, sub-§4 is enacted to read:

8 4. Commissioner's review. The commissioner
9 shall be entitled to review any of the records or
10 documents designated as confidential in this section
11 in carrying out his duties pursuant to sections 1751
12 to 1754.

13 Sec. 2. 20 MRSA §1752, sub-§4 is enacted to
14 read:

15 4. Complaints confidential. Complaints, charges
16 or accusations made and investigated pursuant to
17 section 1755, replies to those complaints, charges or
18 accusations, and any other information or materials
19 that may result in action to revoke or suspend certi-
20 fication shall be confidential, except as provided in
21 section 807 and Title 5, section 554. Any charges or
22 information filed by the commissioner with the Admin-
23 istrative Court in support of a petition to revoke or
24 suspend certification and any decision of the court
25 shall be public records.

26 Sec. 3. 20 MRSA §§1755 to 1757 are enacted to
27 read:

28 §1755. Revocation of suspension of certificate; com-
29 plaints; investigation

30 The commissioner may investigate complaints of
31 misconduct, immoral or illegal conduct or unprofes-
32 sional behavior by teachers and other professional
33 personnel in possession of certificates issued under
34 this Title. If the commissioner finds cause for
35 revocation or suspension of any certificate issued
36 under this Title, he shall seek, in the Administra-
37 tive Court, to revoke or suspend the certificate.

1 §1756. Grounds for revocation of certificate

2 The following shall be considered grounds for
3 revocation or suspension of a certificate issued
4 under this Title.

5 1. Fraud. Fraud in the procurement of a certif-
6 icate.

7 2. Child abuse conduct. Behavior which has
8 injured the health or welfare of a child, including
9 the physical or sexual abuse, exploitation or neglect
10 of any child. A certified court record that a
11 teacher or other professional school personnel was
12 convicted in any state or federal court of a criminal
13 offense involving moral turpitude, including, but not
14 limited to, the physical or sexual abuse of a child,
15 which is punishable as a Class C crime, shall be suf-
16 ficient grounds for the revocation of that person's
17 certificate.

18 3. Incompetence. Gross incompetence in the pro-
19 fessional field for which the certificate was issued.

20 4. Unprofessional conduct. Unprofessional con-
21 duct, including such misconduct as the State Board of
22 Education may define in rules issued pursuant to
23 section 59.

24 §1757. Reinstatement of certificate

25 One year after the certificate of a teacher or
26 other professional personnel has been revoked pur-
27 suant to this chapter, that person may apply to the
28 commissioner to have the certificate reinstated. The
29 commissioner may reinstate the certificate provided
30 that he is convinced that reinstatement is in the
31 best interest of the public. Denial of reinstatement
32 may be appealed to the Superior Court.

33 Sec. 4. 20-A MRSA §6101, sub-§3 is enacted to
34 read:

35 3. Commissioner's review. The commissioner may
36 review any of the records or documents designated as
37 confidential in this section in carrying out his
38 duties pursuant to sections 13001 to 13006.

1 Sec. 5. 20-A MRSA §13003, sub-§2-A is enacted to
2 read:

3 2-A. Complaints confidential. Complaints,
4 charges or accusations made and investigated pursuant
5 to section 13007, replies to those complaints,
6 charges or accusations, and any other information or
7 materials that may result in action to revoke or sus-
8 pend certification shall be confidential, except as
9 provided in section 6101 and in Title 5, section 554.
10 Any charges or information filed by the commissioner
11 with the Administrative Court in support of a peti-
12 tion to revoke or suspend certification and any deci-
13 sion of the court shall be public records.

14 Sec. 6. 20-A MRSA §§13007 to 13009 are enacted
15 to read:

16 §13007. Revocation or suspension of certificate;
17 complaints; investigation

18 The commissioner may investigate complaints of
19 misconduct, immoral or illegal conduct or unprofes-
20 sional behavior by teachers and other professional
21 personnel in possession of certificates issued under
22 this Title. If the commissioner finds cause for
23 revocation or suspension of any certificate issued
24 under this Title, he shall seek, in the Administra-
25 tive Court, to revoke or suspend the certificate.

26 §13008. Grounds for revocation of certificate

27 The following shall be considered grounds for
28 revocation or suspension of a certificate issued
29 under this Title.

30 1. Fraud. Fraud in the procurement of a certif-
31 icate.

32 2. Child abuse conduct. Behavior which has
33 injured the health or welfare of a child, including
34 the physical or sexual abuse, exploitation or neglect
35 of any child. A certified court record that a
36 teacher or other professional school personnel was
37 convicted in any state or federal court of a criminal
38 offense involving moral turpitude, including, but not
39 limited to, the physical or sexual abuse of a child,

1 which is punishable as a Class C crime, shall be suf-
2 ficient grounds for the revocation of that person's
3 certificate.

4 3. Incompetence. Gross incompetence in the pro-
5 fessional field for which the certificate was issued.

6 4. Unprofessional conduct. Unprofessional con-
7 duct, including such misconduct as the State Board of
8 Education may define in rules issued pursuant to
9 section 13001.

10 §13009. Reinstatement of certificate

11 One year after the certificate of a teacher or
12 other professional personnel has been revoked pur-
13 suant to this chapter, that person may apply to the
14 commissioner to have the certificate reinstated. The
15 commissioner may reinstate the certificate provided
16 that he is convinced that reinstatement is in the
17 best interest of the public. Denial of reinstatement
18 may be appealed to the Superior Court.

19 Sec. 7. 22 MRSA §4008, sub-§3, ¶¶C and D, as
20 enacted by PL 1979, c. 733, §18, are amended to read:

21 C. A grand jury on its determination that access
22 to those records is necessary in the conduct of
23 its official business; and

24 D. An appropriate state executive or legislative
25 official with responsibility for child protection
26 services in carrying out his official functions,
27 provided that no personally identifying informa-
28 tion may be made available unless necessary to
29 his functions; and

30 Sec. 8. 22 MRSA §4008, sub-§3, ¶E is enacted to
31 read:

32 E. Where the information concerns teachers and
33 other professional personnel issued certificates
34 under Title 20-A, the information shall be dis-
35 closed to the Commissioner of Educational and
36 Cultural Services.

1 revocation of those certificates, in contrast to
2 legal provisions governing the licensing of medical,
3 dental, nursing and other professionals, as well as
4 cosmetologists, real estate agents and other business
5 personnel. These standards give guidance to the
6 State Board of Education in existing rule-making
7 authority. It also provides for the revocation of
8 the certificate of any teacher or other professional
9 school person convicted of a criminal offense involv-
10 ing moral turpitude. This includes criminal offenses
11 relating to unreasonable physical force and sexual
12 offenses against children.

13 The addition of Title 20-A, section 13009, pro-
14 vides a procedure to govern reinstatement of a
15 revoked or suspended certificate.

16 Sections 7 and 8 provide for mandatory disclo-
17 sure of investigatory records of the Department of
18 Human Services to the Commissioner of Educational and
19 Cultural Services if those records are relevant to
20 the commissioner's investigation and presentation of
21 an action to revoke or suspend the certificate of a
22 teacher or other educational professional.

23 Because this is an emergency bill, amendments to
24 both Title 20 and Title 20-A have to be made.

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