

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1135

6
7 H.P. 801

House of Representatives, March 26, 1985

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

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

EDWIN H. PERT, Clerk

Presented by Representative Bost of Orono.

11 Cosponsored by Senator Gauvreau of Androscoggin, Representative
Roberts of Farmington and Representative Matthews of Caribou.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to Update and Improve the Education
18 Laws of Maine.
19

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

22 Sec. 1. 5 MRSA §12004, sub-§10, ¶A, sub-¶¶8 and
23 13 are repealed.

24 Sec. 2. 20-A MRSA §7207, as enacted by PL 1981,
25 c. 693, §§5 and 8, is repealed.

26 Sec. 3. 20-A MRSA §§7207-A and 7207-B are en-
27 acted to read:

28 §7207-A. Surrogate parents

29 The commissioner shall adopt rules to determine
30 when a surrogate parent is needed and the criteria
31 for selection of a surrogate parent.

32 §7207-B. Due process hearings

1 The following provisions apply to due process
2 hearings.

3 1. Rules. The commissioner shall adopt rules
4 governing the procedures for conducting due process
5 hearings. The rules shall include:

6 A. A maximum period within which a parent,
7 surrogate parent, guardian or administrative unit
8 may exercise the rights listed in subsection 2;

9 B. A maximum time within which a final decision
10 must be issued by the hearing officer;

11 C. The use of mediation; and

12 D. The procedures for conducting the hearings.

13 2. Request for hearing. The parent, surrogate
14 parent, guardian or administrative unit may:

15 A. Request the commissioner to appoint an impar-
16 tial hearing officer, who shall conduct a hearing
17 regarding the identification, evaluation and edu-
18 cational program of the student and shall make
19 findings of fact and issue a decision; and

20 B. Appeal the decision of the hearing officer to
21 the Superior Court or to a United States District
22 Court.

23 3. Subpoenas. The commissioner may issue sub-
24 poenas in the name of the department to require the
25 attendance and testimony of the witnesses and the
26 production of any evidence relating to any issue or
27 fact in the due process hearing as requested by any
28 party to the hearing. Any fees for attendance and
29 travel required by the witnesses shall be the respon-
30 sibility of the party seeking the subpoena. The is-
31 suance of subpoenas shall conform in all other ways
32 to the requirements of the Maine Administrative Pro-
33 cedure Act, Title 5, subchapter I.

34 4. Hearing officers. The State shall train im-
35 partial hearing officers.

1 Sec. 4. 20-A MRSA c. 309, as enacted by PL 1981,
2 c. 693, §§5 and 8, is repealed.

3 Sec. 5. 20-A MRSA §10104, sub-§2, ¶D, as enacted
4 by PL 1981, c. 693, §§5 and 8, is amended to read:

5 D. Charge tuition and other reasonable fees, in-
6 cluding fees for the reasonable use of the insti-
7 tutes' facilities by others;

8 Sec. 6. 20-A MRSA §10104, sub-§2, ¶F, as amended
9 by PL 1983, c. 422, §19, is further amended to read:

10 F. Accept and expend all funds for
11 post-secondary vocational education received by
12 the department from:

13 (1) The General Fund;

14 (2) Gifts and donations either from public
15 or private sources which are offered uncon-
16 ditionally or under conditions approved by
17 the state board; or

18 (3) Fees charged pursuant to paragraph D.

19 Sec. 7. 20-A MRSA c. 415, as enacted by PL 1981,
20 c. 693, §§5 and 8, is repealed.

21 Sec. 8. 20-A MRSA c. 425, as enacted by PL
22 1981, c. 693, §§5 and 8, is repealed.

23 Sec. 9. 20-A MRSA c. 427, as amended, is re-
24 pealed.

25 Sec. 10. 20-A MRSA §§13005 and 13006, as enacted
26 by PL 1981, c. 693, §§5 and 8, are repealed.

27 STATEMENT OF FACT

28 Section 1 repeals the establishment of the
29 Post-Secondary Education Commission of Maine and
30 resolves an inconsistency between 2 laws enacted dur-
31 ing the last session, Public Law 1983, chapter 799,
32 section 1, which repealed the Post-Secondary Educa-
33 tion Commission of Maine and Public Law 1983, chapter

1 812, section 108, which amended the Post-Secondary
2 Education Commission of Maine law. This provision is
3 intended to repeal the Post-Secondary Education Com-
4 mission of Maine law entirely and finally and in the
5 Maine Revised Statutes, Title 5. It also repeals the
6 establishment of the Indian Scholarship Committee al-
7 so in the Maine Revised Statutes, Title 5. The com-
8 mittee is not operative.

9 Sections 2 and 3 clarify the role of the commis-
10 sioner in special education hearing procedures. The
11 Office of Special Education, United States Department
12 of Education, has notified states participating in
13 Public Law 94-142, the Education of All Handicapped
14 Children Act of 1975, of an interpretation related to
15 the qualifications of state level reviewing officials
16 which conflicts with Maine laws. States which re-
17 quired legislative change have been provided a tran-
18 sition period. The Maine Revised Statutes, Title
19 20-A, section 7207, requires the commissioner "to is-
20 sue a decision." The Office of Special Education
21 Programs has concluded that with chief state school
22 officers a presumption arises that such persons are
23 involved in education and care and are generally pre-
24 cluded serving as state-level review officials.

25 The Maine Revised Statutes, Title 20-A, section
26 7207 carries the single headnote of "Hearing proce-
27 dures." It had been adopted on somewhat of an ad hoc
28 basis and then amended in a piecemeal fashion. Con-
29 tained within the Maine Revised Statutes, Title 20-A,
30 section 7207 is the only reference in the special ed-
31 ucation laws to surrogate parents. This bill spins
32 the surrogate parent issue out of the same section
33 which deals with due process hearings and provides it
34 with its own identity. Under the bill, it becomes
35 the Maine Revised Statutes, Title 20-A, section
36 7207-A.

37 The Maine Revised Statutes, Title 20-A, section
38 7207-B, contains the main thrust of the hearing pro-
39 cedures set forth under the Maine Revised Statutes,
40 Title 20-A, section 7207. Under the Maine Revised
41 Statutes, Title 20-A, section 7207, sub-§2, the com-
42 missioner's role in the decision-making process is
43 removed. The Office of Special Education, United
44 States Department of Education, has notified Maine,

1 as a state participating in Public Law 94-142, the
2 Education of All Handicapped Children's Act of 1975,
3 of its interpretation that the current requirement
4 that the commissioner "issue a decision" in due process
5 hearings violates federal law. Since a legislative
6 change is required to correct this problem, the
7 Office of Special Education has assured Maine that it
8 will not take any action on this matter until after
9 the Legislature has had an opportunity to amend the
10 laws. The need for the change is based on the Office
11 of Special Education's conclusion that there is a
12 presumption that chief state school officers are un-
13 avoidably biased since they are involved in the edu-
14 cation and care of all students attending or eligible
15 to attend public schools.

16 The Maine Revised Statutes, Title 20-A, section
17 7207-B, subsection 3, clarifies the commissioner's
18 authority to issue subpoenas to attend due process
19 hearings. Currently, under the Maine Administrative
20 Procedure Act, the Maine Revised Statutes, Title 5,
21 section 9060, the only way to obtain subpoenas for
22 such hearings would be to involve the Attorney General
23 whenever a request is made. Under the Maine Ad-
24 ministrative Procedure Act, the Maine Revised Stat-
25 utes, Title 5, section 9060, the Legislature has rec-
26 ognized that if the department has authority within
27 its own laws to issue a subpoena, then it may do so
28 without having to involve the Attorney General. Sub-
29 poenas which are issued in the name of the Department
30 of Educational and Cultural Services is the most ex-
31 peditious and direct way to deal with the issue.

32 Section 4 repeals outdated language regarding ed-
33 ucation of the mentally retarded, a program which is
34 now governed by the comprehensive special education
35 law and federal law.

36 Sections 5 and 6 clarify that the State Board of
37 Education has the authority to make the
38 vocational-technical institute facilities available
39 to other parties for a fee, and that those fees are
40 included within the term "fees" set forth in the
41 Maine Revised Statutes, Title 20-A, section 10104,
42 subsection 2, paragraphs D and F.

Section 7 repeals the State Tuition Equalization Fund for students in private schools which has not been operative for some years.

Section 8, the National Defense Education Program, repeals a law based on a prior federal law which no longer exists.

Section 9 repeals a former scholarship program, the North American Indian Scholarship, which is no longer funded or operative.

Section 10 repeals the Teacher Placement Office within the Department of Educational and Cultural Services. The personnel positions assigned to this office will be reallocated to the Teacher Certification Office to meet the heavy demands made on that office as a result of Public Law 1983, c. 845, "An Act to Revised the Laws Governing Certification of Educational Personnel." Although section 13006 makes reference to section 13004, that is an incorrect reference resulting from the recodification. Both sections 13005 and 13006 were originally codified as the Revised Statutes, Title 20, sections 1801 and 1802, which dealt exclusively with the Teacher Placement Office.

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