

MAINE STATE LEGISLATURE

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1 (New Draft of S.P. 274, L.D. 732)
2 FIRST REGULAR SESSION
3

4 ONE HUNDRED AND TWELFTH LEGISLATURE
5

6 Legislative Document

No. 1369

8 S.P. 509

In Senate, April 22, 1985

9 Reported by Senator Berube of Androscoggin from the Committee on
10 Human Resources and printed under Joint Rule 2. Original bill sponsored by
11 Senator Clark of Cumberland. Cosponsored by Representative Crouse of
Caribou, Senator Gill of Cumberland and Representative Matthews of
Caribou.

JOY J. O'BRIEN, Secretary of the Senate

12
13 STATE OF MAINE
14

15 IN THE YEAR OF OUR LORD
16 NINETEEN HUNDRED AND EIGHTY-FIVE
17

18 AN ACT to Assure Advocacy Services for
19 Children with Learning Disabilities.
20

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

23 Sec. 1. 22 MRSA §3551, last ¶, as enacted by PL
24 1979, c. 553, §2, is amended to read:

25 The Governor of the State shall designate an
26 agency, independent of any state or private agency
27 which provides treatment, services or habilitation to
28 persons with developmental disabilities, to serve as
29 the Protection and Advocacy Agency for the Develop-
30 mentally Disabled in Maine pursuant to the United
31 States Code, Title 42, sections 6001 through 6012.
32 The agency so designated shall have the authority to
33 pursue legal, administrative and other appropriate
34 remedies to assure the welfare and protect the rights
35 of persons with developmental disabilities and per-
36 sons with learning disabilities.

1 Sec. 2. 22 MRSA §3552, sub-§1, as amended by PL
2 1983, c. 539, §2, is further amended to read:

3 1. Advocacy. "Advocacy" means speaking for,
4 pleading for, supporting, advising, espousing the
5 rights of or interceding on behalf of persons with
6 developmental disabilities or exceptional students in
7 facilities included in section 3558 or learning dis-
8 abled children before public or private agencies, or-
9 ganizations, institutions or individuals serving de-
10 velopmentally disabled persons or other eligible
11 persons.

12 Sec. 3. 22 MRSA §3552, sub-§4-A is enacted to
13 read:

14 4-A. Learning disability. "Learning disabili-
15 ty" means a specific learning function disorder ex-
16 hibited by a person under age 22 in one or more of
17 the basic psychological processes involved in under-
18 standing or in using language, spoken or written,
19 which may manifest itself in an imperfect ability to
20 listen, think, speak, read, write, spell or do mathe-
21 matical calculations.

22 Sec. 4. 22 MRSA §3554, as amended by PL 1979, c.
23 645, §§3 to 7, is further amended to read:

24 §3554. Investigations

25 1. Complaint. When the agency receives a com-
26 plaint which gives reason to believe that the rights
27 of a developmentally disabled or learning disabled
28 person have been or are being violated, an investiga-
29 tion may be conducted, subject to subsection 2, un-
30 less the complaint is beyond the scope of the
31 office's authority or not within the office's priori-
32 ties. The complainant shall be informed whether an
33 investigation will be conducted, and if not, the rea-
34 son therefor and whether any other appropriate mecha-
35 nisms for remedy exist. A complaint may be referred
36 to another person as appropriate.

37 2. Investigation. The agency may conduct inves-
38 tigation upon its own initiative if there is reason
39 to believe that the legal rights of a developmentally
40 disabled or learning disabled person have been or are

1 being violated. Prior to initiating its investiga-
2 tion, the agency shall notify the developmentally
3 disabled or learning disabled person or, if he is a
4 minor or has been judged incompetent, his legal
5 guardian, of the specific rights which the agency al-
6 leges have been or are being violated. If the devel-
7 opmentally disabled or learning disabled adult has
8 not been judged incompetent, then the agency must
9 first receive his written consent to the investiga-
10 tion. If the developmentally disabled or learning
11 disabled minor is competent to understand the pur-
12 pose, significance and result of the investigation,
13 then the agency shall inform him of his right to stop
14 the investigation. The investigation shall stop if he
15 expresses a clear desire that it stop.

16 3. Entrance in and upon premises. In the course
17 of an investigation, for the purpose of investigating
18 actual or possible neglect, abuse, exploitation or
19 violation of rights of the developmentally disabled
20 or learning disabled person, authorized agency per-
21 sonnel may enter, at any reasonable time, in and upon
22 the premises of any state agency, commission, board
23 or office or any subdivision of the State or the
24 premises of any private agency receiving state or
25 federal funds for the provision of services to the
26 developmentally disabled or learning disabled, to
27 communicate with providers or recipients of service
28 and to inspect and copy any information, materials or
29 records relevant to an investigation within reason-
30 able limits and in a reasonable manner, subject to
31 section 3555. Communication with any service recipi-
32 ent shall be under circumstances which are not detri-
33 mental to the best interest of that individual.

34 4. Records. Any authorized agency personnel con-
35 ducting an investigation shall have ready access to
36 all records relevant to the alleged violation of the
37 developmentally disabled or learning disabled
38 person's rights. These personnel shall have the op-
39 portunity to consult with clients whenever necessary
40 for the performance of their duties. Persons shall
41 not refuse access to relevant client records, or the
42 opportunity for consultation, as long as it is re-
43 quested at a reasonable time and in a reasonable man-
44 ner. A hospital, institution or mental health or de-
45 velopmental disability facility shall provide ade-

1 quate privacy for the purpose of consultation with
2 clients and examination of client records.

3 Authorized agency personnel inspecting informa-
4 tion, materials and records pursuant to an investiga-
5 tion may copy them when personally identifiable mate-
6 rial has been removed for the purpose of copying.
7 Where personally identifiable data has not been re-
8 moved, the agency personnel may copy them only after
9 consent is received pursuant to section 3555.

10 Sec. 5. 22 MRSA §3555, sub-§3, as enacted by PL
11 1979, c. 645, §8, is amended to read:

12 3. Consent. Data that personally identifies the
13 developmentally disabled or learning disabled person
14 can be copied or disclosed only after receipt of that
15 person's written consent or, if that person has been
16 judged incompetent or is a minor, then written con-
17 sent must be received from:

18 A. The parent or guardian of a developmentally
19 disabled or learning disabled minor. If the per-
20 son is a ward of the State, the public guardian
21 shall give consent unless it shows that such con-
22 sent would not be in the person's best interest;

23 B. The guardian of the developmentally disabled
24 or learning disabled adult, provided the guardian
25 has this power; or

26 C. The guardian ad litem of developmentally dis-
27 abled or learning disabled person who is the sub-
28 ject of the information, materials or records.

29 If the developmentally disabled or learning disabled
30 minor is competent to understand the purpose, signif-
31 icance and result of the use and disclosure of iden-
32 tifiable information, then the agency shall inform
33 him of his right to stop that use and disclosure. The
34 use and disclosure of identifiable information shall
35 stop if he expresses a clear desire that it stop.

36 Sec. 6. 22 MRSA §3556, as enacted by PL 1979, c.
37 553, §2, is amended to read:

38 §3556. Review of guardianship

1 The appropriate court shall, upon an agency peti-
2 tion which alleges adequate grounds, review the
3 guardianship of a developmentally disabled or learn-
4 ing disabled person.

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STATEMENT OF FACT

6 This new draft adds a definition of learning dis-
7 ability and conforms the rest of the law concerning
8 developmentally disabled advocacy with the language
9 and intent of the original bill.

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