

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 119

H.P. 83

House of Representatives, January 17, 1995

**An Act to Promote Fairness and Due Process within Collegiate Athletics
in the State.**

Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative LIBBY of Buxton.

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

4 **Sec. 1. 20-A MRSA c. 437 is enacted to read:**

6 **CHAPTER 437**

8 **COLLEGIATE ATHLETIC ASSOCIATION**
COMPLIANCE ENFORCEMENT PROCEDURES ACT

10 **§12901. Short title**

12 This chapter may be known and cited as the "Collegiate
Athletic Association Compliance Enforcement Procedures Act."

14 **§12902. Definitions**

16 As used in this chapter, "collegiate athletic association,"
18 "athletic association" or "association" means a collegiate
20 athletic association that, in fact, monopolizes all or any
22 significant part of an intercollegiate athletic sport on a
national level.

24 **§12903. Hearing required as prerequisite to finding of violation;**
procedures applying at hearing

26 1. Formal hearing required. A collegiate athletic
28 association may not impose a penalty on an institution of higher
30 education operating in this State, nor may a collegiate athletic
32 association require or cause an institution of higher education
34 to impose a penalty on any student or employee, unless the
findings upon which the penalties are based are made at a formal
hearing in conformity with the rules in this section. An
association may adopt rules prescribing the procedures for such a
hearing, including the method of selecting a presiding officer,
provided that those rules are not inconsistent with this Act.

36 2. Standard of proof. Any finding must be in writing and
38 supported by clear and convincing evidence.

40 3. Written notice required. Prior to the hearing, an
42 employee or student who is charged with misconduct must be
44 notified in writing of the specific charges against that
46 individual, that a hearing will be held at a specific date and
48 time to determine the truth of the charges, and that a finding
that the misconduct occurred may result in penalties imposed on
the institution or imposed by the institution on the individual.
The institution must be notified in writing of the hearing on the
charges.

2 4. Rights of accused. An individual or institution
notified of a hearing has the right to have counsel present, to
interrogate and cross-examine witnesses and to present a complete
4 defense.

6 5. Rules of evidence apply. The rules of evidence that
apply at civil trials in this State apply at the hearings.
8

10 6. Disclosure required. An individual charged with
misconduct that might result in a penalty and the institution
with which the individual is associated are entitled to full
12 disclosure of all facts and relevant matters to the same degree
as a defendant in a criminal case and have the same right to
14 discovery as in criminal and civil cases.

16 7. Interrogation. Prior to the formal hearing required
under this section, an association may interrogate individuals to
18 determine whether a violation of association rules has occurred.
Any interrogation must be conducted in conformity with the
20 procedures of section 12905.

22 8. Suppression of evidence. An individual or institution
may suppress at the hearing evidence garnered from interrogation
24 of any party if the evidence was not obtained in accordance with
section 12905 or was indirectly obtained because of
26 interrogations not in conformity with section 12905.

28 9. Public hearing. Any hearing is open to the public
unless the party charged with misconduct or the institution
30 involved objects.

32 10. Statute of limitations. A hearing must commence within
6 months of the date on which the institution of higher education
34 first receives notice from the association that it is
investigating a possible violation of its rules. If the
36 institution informs the association of the possibility of a
violation, the hearing must commence within 9 months of the date
38 notice is provided to the association. The running of the
6-month or 9-month period is tolled if the institution or
40 individual being investigated causes a delay, whether or not for
good cause. Prior to the hearing, an individual charged with a
42 violation or the institution with which that individual is
affiliated may petition the Superior Court for a determination of
44 whether the provisions of this subsection have been violated.
The filing of such a petition tolls the running of the 6-month or
46 9-month period.

48 11. Superior Court review. Findings made pursuant to the
hearing under this section are subject to review in the Superior

2 Court to determine whether the evidence is sufficient to support
3 the findings.

4 **§12904. Penalties**

6 1. Must be reasonably related. A penalty an association
7 imposes on an institution or a penalty an association requires an
8 institution to impose on a student or employee must bear a
9 reasonable relationship to the violation committed and the
10 penalty must be commensurate with those imposed in similar
11 situations for similar violations.

12
13 2. Subject to review. A penalty imposed on an institution
14 or an individual is subject to review in Superior Court.

16 **§12905. Rights in interrogations**

18 1. Must be informed of investigation. In any interrogation
19 of an individual suspected of violating association rules, when
20 the association has reason to believe that the individual has
21 violated association rules, that individual must be informed that
22 the investigation for misconduct might result in the imposition
23 of a penalty on the individual or on the institution with which
24 that individual is affiliated.

26 2. Right to counsel. When informed under subsection 1, the
27 individual being interrogated is entitled to have counsel present
28 at any further interrogation and need not respond until counsel
29 is present. The individual interrogated is entitled to a
30 transcript of the full interrogation made at the expense of the
31 association by a certified court reporter. Before proceeding,
32 the association or its agent shall inform the individual being
33 interrogated of these rights and obtain written acknowledgement.

34
35 3. Suppression of evidence. In a proceeding or hearing
36 held to determine whether a violation has occurred under section
37 12903, any party who has been subject to an interrogation, or the
38 institution with which the party is associated, may seek to
39 suppress evidence obtained as a result of that interrogation if
40 it was not conducted in accordance with this section.

42 **§12906. Limitation of rights**

44 This Act does not limit the right of any individual or
45 institution to claim the abridgement of any other due process
46 right not enumerated in this Act.

48 **§12907. Prohibitions**

2 1. Findings must be made. An association may not impose a
penalty on any institution for a violation of the association's
4 rules unless the findings that are the basis for the penalty are
made and the penalty is imposed in accordance with this Act.

6 2. Penalty must be in accordance with Act. An association
may not impose a penalty on an institution for failure to take
8 disciplinary action against an employee or student for violation
of association rules unless the findings that are the basis for
10 the penalty are made and the penalty is imposed in accordance
with this Act.

12 3. Termination. An association may not terminate the
14 membership of an institution because of the enactment or
application of this Act, nor may an association impose a penalty
16 upon an institution for seeking redress under this Act.

18 4. No penalty for seeking redress. An association may not
impose a penalty against any member institution because a student
20 or an employee seeks redress under this Act.

22 **§12908. Liability**

24 1. Damages. An association in violation of this Act is
liable for damages to an aggrieved institution or individual
26 incurring injury as a result of the violation. Damages include,
but are not limited to, all financial loss incurred due to the
28 imposition of a penalty. An association found in violation of
this Act is liable for the costs, litigation expenses and
30 attorney's fees of any party prevailing against it.

32 2. Equitable relief. An institution or individual
aggrieved as a result of this Act is entitled to appropriate
34 equitable relief.

36 **§12909. Exclusions**

38 This Act does not apply to the following:

40 1. Academic qualifications. Investigations conducted and
penalties imposed by a collegiate athletic association that
42 relate solely to academic qualifications; and

44 2. Institution investigations. Investigations conducted
solely by the institution of higher education or by the
46 institution's association representative.

48 **§12910. Waiver**

2 1. By subject. An institution, student or employee who is
subject to an investigation and penalties may waive any of the
rights granted by this Act.

4
6 2. In writing. A waiver must be in writing, must be made
knowingly, freely and voluntarily and must specify each right
being waived.

8
10 3. Revocable. A waiver may be revoked at any time by the
institution, student or employee granting the waiver.

12 4. No requirement of waiver. A collegiate athletic
association may not require a waiver or impose harsher penalties
14 if the institution, student or employee refuses or fails to grant
a waiver.

16 **§12911. Application**

18
20 1. Created rights. Any rights created under this Act apply
to any matter or investigation not concluded as of the effective
date of this section.

22
24 2. Contracts. The provisions of this Act apply
notwithstanding any contract or agreement entered into before, on
or after the effective date of this section. Any contractual
26 provision to the contrary is invalid and unenforceable. A
provision of this Act may not be waived by any member institution
28 as a condition of continued membership in the association or
otherwise.

30 **§12912. Cumulative remedies**

32
34 The remedies provided in this Act are cumulative and in
addition to any other remedies provided by law.

36 **STATEMENT OF FACT**

38
40 This bill regulates collegiate athletic associations by
establishing procedures to be followed when the association
42 commences an investigation of a student or employee of an
institution of higher learning. The procedures created by this
bill ensure that the investigatory process by the association is
44 fair to the affected individuals by establishing a standard of
evidence to be used, by allowing the subject of the investigation
46 to have counsel present at hearings and to interrogate and
cross-examine witnesses, and by requiring that hearings be
48 subject to the Maine Rules of Evidence. This bill sets a statute
of limitations and establishes penalties.