

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1638

S.P. 533

In Senate, March 24, 1997

**An Act to Establish a Higher Standard for Appropriate Education of
Students with Disabilities.**

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator PENDLETON of Cumberland.

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

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Sec. 1. 20-A MRSA c. 303, sub-c. I, as amended, is repealed.

Sec. 2. 20-A MRSA c. 303, sub-c. I-A is enacted to read:

SUBCHAPTER I-A

GENERAL PROVISIONS

§7211. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Least restrictive environment.** "Least restrictive environment" means the educational placement that ensures that, to the maximum extent appropriate, children with special needs, including children in public or private institutions or other care facilities, are educated with children who do not have special needs and that special classes, separate schooling or other removal of children with special needs from the regular educational environment occurs only when the nature or severity of the special needs is such that education in regular classes with the use of supplementary aids and services can not be achieved satisfactorily.

2. **Regular education.** "Regular education" means the school program and pupil assignment that normally leads to college preparatory or technical education or to a career.

3. **School-age child.** "School-age child" means any person 3 years of age or older and under 22 years of age who has not attained a high school diploma or its equivalent.

4. **School-age child requiring special education.** "School-age child requiring special education" means any school-age child with special needs who requires special education as determined in accordance with the rules set forth by the department.

5. **School-age child with special needs.** "School-age child with special needs" means a school-age child who, because of a disability consisting of a developmental delay or an intellectual, sensory, neurological, emotional, communication, physical, specific learning or health impairment or combination of disabilities, is unable to progress effectively in regular education and requires special education services in order to successfully develop the child's individual educational potential; except that, no child may be determined to be a

2 school-age child with special needs solely because the child's
3 behavior violates the school's disciplinary code. Use of the
4 word "disability" in this subsection may not be used to provide a
5 basis for labeling or stigmatizing the child or defining the
6 needs of the child, and may not limit the services, programs and
7 integration opportunities provided to the child.

8 6. Special education. "Special education" means
9 educational programs and assignments, namely special classes,
10 programs or services, designed to develop the educational
11 potential of school-age children with special needs, including
12 but not limited to educational placements of children by school
13 committees, the Department of Mental Health, Mental Retardation
14 and Substance Abuse Services and the Department of Human Services
15 in accordance with the rules of the department.

16 §7212. Rules

17
18 The department shall adopt, in cooperation with the
19 Department of Mental Health, Mental Retardation and Substance
20 Abuse Services and the Department of Human Services, rules
21 regarding programs for school-age children with special needs.
22 Rules adopted pursuant to this section:

23
24 1. Special needs defined. Must define "special needs" in a
25 manner that emphasizes a thorough narrative description of each
26 child's developmental potential so as to minimize the possibility
27 of stigmatization and to ensure the maximum possible development
28 in the least restrictive environment of a child with special
29 needs. This definition must be sufficiently flexible to include
30 children with multiple special needs; and

31
32 2. Routine technical rules. Are routine technical rules
33 under Title 5, chapter 375, subchapter II-A.

34
35 §7213. Efforts to meet needs in regular education program

36
37 Prior to referral of a school-age child for evaluation under
38 the provisions of this chapter, the principal of the child's
39 school shall ensure that all efforts have been made to meet that
40 child's needs within the regular education program. These
41 efforts may include, but are not limited to:

42
43 1. Modification. Modifying the regular education program,
44 the curriculum, teaching strategies, environments or materials;

45 2. Support services. Using support services;

46
47 3. Consultative services. Using consultative services; and
48

2 4. Teams. Using building-based teams to meet the child's
3 needs in the regular education classroom.

4
5 The efforts and their results must be documented and placed
6 in the child's school record. The efforts may not be construed
7 to limit or condition the right to refer a school-age child for
8 an evaluation under the provisions of this chapter.

10 **§7214. Entitlement to participate in programs**

12 Children receiving or requiring special education are
13 entitled to participate in the following programs:

14 1. Additional aid. Additional direct or indirect
15 instruction consultation services, materials, equipment or aid
16 provided to children or their regular classroom teachers that
17 directly benefit school-age children requiring special education;

18 2. Supplementary instruction or treatment. Supplementary
19 individual or small group instruction or treatment in conjunction
20 with a regular classroom program;

21 3. Integrated programs. Integrated programs in which
22 children are assigned to special resource classrooms but attend
23 regular classes to the extent that they are able to function in
24 regular classes;

25 4. Full-time class or treatment. Full-time special class
26 teaching or treatment in a public school building;

27 5. Home. Teaching or treatment at home;

28 6. Day school or facility. Full-time teaching or treatment
29 in a special day school or other day facility;

30 7. Hospital. Teaching or treatment at a hospital;

31 8. Residential school. Teaching or treatment at a
32 short-term or long-term residential school;

33 9. Occupational training. Occupational or preoccupational
34 training in conjunction with the regular occupational training
35 program in a public school;

36 10. Occupational training with special teaching.
37 Occupational and preoccupational training in conjunction with
38 full-time special class teaching in a public school building, at
39 home, special day school or other day facility, hospital or
40 short-term or long-term residential school; and
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2 11. Combination. Any combination or modification of
4 programs listed in subsections 1 to 10 or other programs,
6 services, treatments or experimental provisions that obtain the
8 prior approval of the department.

10 §7215. Early admission

12 Admission to special education programs on the preschool
14 level at an earlier age than the age at which schooling is
16 ordinarily provided is regulated by the department in conjunction
18 with the Department of Human Services and the Department of
20 Mental Health, Mental Retardation and Substance Abuse Services
22 and is restricted to children with substantial disabilities who
24 are judged by those departments to require such programs.

26 §7216. Evaluation of needs

28 A child may not be assigned to a special education class
30 unless it is first determined by an evaluation of the child's
32 needs and the particular special education program that the child
34 is likely to benefit from such program. Periodically thereafter,
36 and in no event less often than annually, the child and the
38 program must be reevaluated to determine whether the child is
40 benefiting from the program in accordance with the procedures set
42 forth in this chapter. When the program is not benefiting the
44 child and another program may benefit the child, or the program
46 has benefited the child sufficiently to permit reassignment, the
48 child must be reassigned and, in the event of consistent failure
of a program to benefit children assigned to it, the program must
be abolished or altered.

32 §7217. Identification of school-age children with special
34 needs; diagnosis of needs; proposal of program

36 In accordance with the rules of the department issued
38 jointly with the Department of Human Services and the Department
40 of Mental Health, Mental Retardation and Substance Abuse Services
42 and with the assistance of the department, each school
44 administrative unit shall identify the school-age children who
46 have special needs, diagnose and evaluate the needs of those
48 children, propose a special education program to meet those
needs, provide or arrange for the provision of a special
education program, maintain a record of the identification,
diagnosis, proposal and program actually provided and make such
reports as the department may require. Until proven otherwise,
every child is presumed to be appropriately assigned to a regular
education program and presumed not to be a school-age child with
special needs or a school-age child requiring special education.

2 **§7218. Admission; placement; referral**

4 A school administrative unit may not refuse a school-age
6 child with special needs admission to or continued attendance in
8 public school without the prior written approval of the
10 department, and without complying with the department's rules and
12 procedures for disciplining students with special needs, when
14 applicable. During the pendency of administrative or judicial
16 proceedings, a court of competent jurisdiction has the authority
18 to change a child's educational placement, including removing the
20 child from school, in any circumstances when the school board
22 shows that the child's behavior poses a substantial likelihood of
 injury to self or others. This section may not be construed to
 abrogate any authority concerning discipline for such a child
 that is available to a school administrative unit under rules and
 procedures or any other law. A child who is refused or removed
 may not be denied an alternative form of education approved by
 the department through a tutoring program at home, through
 enrollment in an institution operated by a state agency or
 through any other program that is approved for the child by the
 department.

24 A child may not be placed in a special education program
26 without prior consultation, evaluation, reevaluation and consent
 as set forth and implemented by rules adopted by the department.

28 **§7219. Notification after referral; evaluation; assessment;**
 treatment

30 1. Notification. Within 5 days after the referral of a
32 child enrolled in a regular education program by a school
34 official, parent or guardian, judicial officer, social worker,
36 family physician or person having custody of the child for
38 purposes of determining whether the child requires special
40 education, the school administrative unit shall notify the
42 parents or guardians of the child in writing, in the primary
44 language of the home, of the referral, the evaluation procedure
 to be followed and the child's right to an independent evaluation
 at a clinic or facility approved by the department under rules
 adopted jointly by the department and the Department of Mental
 Health, Mental Retardation and Substance Abuse Services and the
 right to appeal from any evaluation, first to the department, and
 then to the courts.

46 2. Evaluation. Within 30 days after notification under
48 subsection 1, the school board shall provide an evaluation in
 accordance with this subsection.

50 A. This evaluation must include an assessment of the

2 child's current educational status by a representative of
3 the local school department, an assessment by a classroom
4 teacher who has dealt with the child in the classroom, a
5 complete medical assessment by a physician, an assessment by
6 a psychologist, an assessment by a nurse, social worker or
7 guidance or adjustment counselor of the general home
8 situation and pertinent family history factors and
9 assessments by such specialists as may be required in
10 accordance with the diagnosis, including, when necessary,
11 but not limited to, an assessment by a neurologist, an
12 audiologist, an ophthalmologist, a specialist competent in
13 speech, language and perceptual factors and a psychiatrist.

14 B. The department jointly with the Department of Mental
15 Health, Mental Retardation and Substance Abuse Services and
16 the Department of Human Services shall adopt rules to
17 specify qualifications of persons assessing the child.

18 C. The department, the Department of Mental Health, Mental
19 Retardation and Substance Abuse Services and the Department
20 of Human Services, through their joint rules, may define
21 circumstances under which the requirement of any or all of
22 the assessments under paragraph A may be waived so long as
23 an evaluation appropriate to the needs of the child is
24 provided.

25 D. Those persons assessing the child shall maintain a
26 complete and specific record of diagnostic procedures
27 attempted and their results, the conclusions reached, the
28 suggested courses of special education and medical treatment
29 best suited to the child's needs, and the specific benefits
30 expected from such action. A suggested special education
31 program may include family guidance or counseling services.
32 When the suggested course of study is other than regular
33 education, those persons assessing the child shall present a
34 method of monitoring the benefits of the special education
35 and conditions that would indicate that the child should
36 return to regular classes and a comparison of expected
37 outcomes in regular class placement.

38 E. If a child with special needs requires medical or
39 psychological treatment as part of a special education
40 program provided pursuant to this chapter or if the parent
41 or guardian requires social services related to the child's
42 special needs, the treatment or services, or both, must be
43 made available in accordance with rules adopted jointly by
44 the department, the Department of Human Services and the
45 Department of Mental Health, Mental Retardation and
46 Substance Abuse Services, in connection with the child's
47 special education program. Reimbursement of the costs of
48 such treatment or services, or both, must be made.
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2 **§7220. Independent evaluation**

4 Upon completion of the evaluation conducted pursuant to
6 section 7219, the child may obtain an independent evaluation from
8 child evaluation clinics or facilities approved by the department
10 jointly with the Department of Human Services, the Department of
12 Mental Health, Mental Retardation and Substance Abuse Services,
14 or, at private expense, from any specialists.

16 **§7221. Confidentiality of evaluation**

18 The written record and clinical history from an evaluation
20 conducted pursuant to section 7219 and an independent evaluation
22 conducted pursuant to section 7220 are confidential, except that
24 they must be made available to the parents, guardians or persons
26 with custody of the child. Separate instructions, limited to the
28 information required for adequate care of the child, may be
30 distributed only to those persons directly concerned with the
32 care of the child. Evaluations and assessments of children and
34 special education programs remain confidential and may be used
36 solely for the administration of special education, including,
38 but not limited to, inspection by the department to ensure that a
40 special education program does benefit the children assigned to
42 it.

44 **§7222. Hearings**

46 The department may hold hearings regarding the evaluation
48 conducted pursuant to section 7219. The parents, guardians or
50 persons with custody may refuse the education program suggested
by the initial evaluation and request a hearing by the department
into the evaluation of the child and the appropriate education
program. The hearing officer shall order educational placement
and services determined appropriate and consistent with this
chapter to ensure the child's maximum possible development in the
least restrictive environment. A presumption exists to direct
placement in the regular educational environment. The order may
provide for the placement or services requested by the school
board, the placement or services requested by the parent, either
of those placements or services with modifications or alternative
programs or services that are required to ensure the maximum
possible development of the child. The parents, guardians or
persons with custody may either consent to or reject the
placement, program or services. If the placement, program or
services are rejected by the parents, guardians or persons with
custody, and the program desired by the parents, guardians or
persons with custody is a regular education program, the
department and the local school board shall provide the child
with the education program chosen by the parents, guardians or

2 persons with custody except when the placement would seriously
3 endanger the health or safety of the child, substantially disrupt
4 the program for other students or, if the child is currently
5 placed in a special education program, deny the child a free,
6 appropriate public education. In such circumstances, the local
7 school board may proceed to the Superior Court with jurisdiction
8 over the residence of the child to make such showing. The court
9 upon such showing is authorized to place the child in an
10 appropriate education program.

11 If the parents, guardians or persons with custody reject the
12 educational placement recommended by the department and desire a
13 program other than a regular education program, they may proceed
14 to the Superior Court with jurisdiction over the residence of the
15 child, and the court is authorized to order the placement of the
16 child in an appropriate education program.

17 **§7223. Placement pending evaluation, assessment or hearings**

18 During the course of the evaluations, assessments or
19 hearings provided for in this chapter, a child must be placed in
20 a regular education program unless the placement endangers the
21 health or safety of the child or substantially disrupts the
22 education program for other children.

23 **§7224. Duties of parent or guardian**

24 A parent or guardian of a child placed in a special
25 education program may not be required to perform duties not
26 required of a parent or guardian of a child in a regular school
27 program.

28 **§7225. Subsequent evaluation**

29 Within 10 months after placement of a child in a special
30 education program, and at least annually thereafter, the child's
31 educational progress must be evaluated in accordance with section
32 7219. If the evaluation suggests that the initial evaluation was
33 in error or that a different program or medical treatment would
34 now benefit the child, appropriate reassignment or alteration in
35 treatment must be recommended to the parents, guardians or
36 persons having custody of the child. If the evaluation of the
37 special education program shows that the program does not benefit
38 the child to the maximum extent feasible in the least restrictive
39 environment, then the child must be reassigned.

40 **Sec. 3. 20-A MRS §7252-A, first ¶,** as enacted by PL 1987, c.
41 395, Pt. A, §76, is amended to read:

42 Special education programs may be established for the
43 delivery of special education services to exceptional students in

2 accordance with ~~section-7204,--subsection-4~~ subchapter I-A. A
4 special education program may be offered by a school
6 administrative unit, an approved private school or a state
8 licensed agency. All special education programs offered by
10 approved private schools or state licensed agencies shall:

12 **Sec. 4. 20-A MRSA §7253, sub-§1**, as enacted by PL 1981, c.
14 693, §§5 and 8, is amended to read:

16 **I. General criteria.** Programs and services established
18 through this agreement shall must meet the requirements set forth
20 in ~~section-7204,--subsection-4~~ subchapter I-A.

22 **Sec. 5. 20-A MRSA §7254**, as enacted by PL 1981, c. 693, §§5
24 and 8, is amended to read:

26 **§7254. Contractual programs for nonresident children**

28 Another state, subdivision or private person, firm or agency
30 may contract with a private school in this State to provide
32 special education for children who are not residents of this
34 State. A program for these nonresident children shall--be is
36 subject to approval by the commissioner only with respect to the
38 requirements of ~~section-7204,--subsection-4~~ subchapter I-A.

40 **Sec. 6. 20-A MRSA §15613, sub-§5, ¶E**, as enacted by PL 1989,
42 c. 524, §§2 and 3, is amended to read:

44 E. Transportation costs for state agency clients, when
46 provided in accordance with rules established by the
commissioner under ~~section-7204~~ chapter 303, subchapter I-A,
shall must be paid by the department in the year of
allocation at 100% of actual costs.

36 **SUMMARY**

38 The purpose of this bill is to provide a flexible and
40 uniform system of special education program opportunities for all
42 children requiring special education; to provide a flexible and
44 nondiscriminatory system for identifying and evaluating the
46 individual needs of such children; and to facilitate the
realization of the educational potential of each child. This
bill, which is based on Massachusetts law, replaces the general
provisions that govern the identification, evaluation, assessment
and placement of children requiring special education.