

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

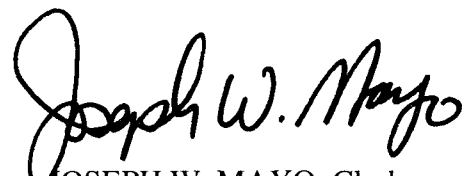
No. 2026

H.P. 1419

House of Representatives, March 24, 1999

**An Act to Make Certain Provisions for Exceptional Students Consistent
with Federal Laws and Regulations.**

Submitted by the Department of Education pursuant to Joint Rule 204.
Reference to the Committee on Education and Cultural Affairs suggested and ordered
printed.


JOSEPH W. MAYO, Clerk

Presented by Representative BRENNAN of Portland.
Cosponsored by Representative WESTON of Montville, Senators: BERUBE of
Androscoggin, SMALL of Sagadahoc.

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

PART A

Sec. A-1. 20-A MRSA §1001, sub-§9-B, as enacted by PL 1997, c. 594, §1, is amended to read:

9-B. **Disciplinary sanctions for exceptional students.** They retain the authority to sanction an exceptional student as defined in section 7001, subsection 2 for misconduct that violates school rules. Notwithstanding the duties of school administrative units as described in section 7202, the school board may authorize the superintendent, principal or assistant principal to enforce this subsection by allowing the superintendent, principal or assistant principal to suspend an exceptional student up to a maximum of 10 days individually or cumulatively for infractions of school rules. When an exceptional student is suspended for 10 days or less individually or cumulatively within a school year for a violation of school rules, the school board is not required to provide a tutor, transportation or any other aspect of the student's special education program. Discipline of exceptional students must be consistent with the requirements of the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1415(k).

Sec. A-2. 20-A MRSA §7001, sub-§2, ¶C, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

C. Requires special education because of ~~an impairment in~~ one or more of the following:

- (1) ~~Vision~~ Visual impairments including blindness;
- (2) Hearing impairments, including deafness;
- (3) Speech and language impairments;
- (4) ~~Cerebral-or-perceptual-functions~~ Specific learning disabilities;
- (5) ~~Physical-mobility-functions~~ Orthopedic impairments;
- (6) ~~Behavior,-or-~~ Emotional disturbance;
- (7) ~~Mental---development---or---maturation-~~ Mental retardation;
- (8) Autism;

- 2 (9) Traumatic brain injury;
- 4 (10) Other health impairment;
- 6 (11) Deafness and blindness;
- 8 (12) Multiple disabilities; or
- 10 (13) Developmental delay for children 5 to 9 years of
age.

12 **Sec. A-3. 20-A MRSA §7001, sub-§3,** as enacted by PL 1981, c.
14 693, §§5 and 8, is repealed.

16 **Sec. A-4. 20-A MRSA §7001, sub-§4, ¶C,** as enacted by PL 1981,
c. 693, §§5 and 8, is amended to read:

18 C. Requires special services because of ~~impairment-in~~ one
20 or more of the following:

- 22 (1) ~~Vision~~ Visual impairments, including blindness;
- 24 (2) Hearing impairments, including deafness;
- 26 (3) Speech and language impairments;
- 28 (4) ~~Cerebral-or-perceptual-functions~~ Specific learning
disabilities;
- 30 (5) ~~Physical-mobility-functions~~ Orthopedic impairments;
- 32 (6) ~~Behavior;-or~~ Emotional disturbance;
- 34 (7) ~~Mental---development---or---maturation.~~ Mental
retardation;
- 36 (8) Autism;
- 38 (9) Traumatic brain injury;
- 40 (10) Other health impairment;
- 42 (11) Deafness and blindness;
- 44 (12) Multiple disabilities; or
- 46 (13) Developmental delay for children birth to 5 years
48 of age.

50 **Sec. A-5. 20-A MRSA §7201, sub-§7** is enacted to read:

2 **7. Incarceration in adult correctional facility.** The
3 obligation to make a free appropriate public education available
4 to all children with disabilities does not apply to an individual
5 18 to 20 years of age who, prior to incarceration in an adult
6 correctional facility, was not identified as being a child with a
7 disability under section 7001 or did not have an individualized
8 education program developed in accordance with rules adopted by
9 the commissioner to implement chapter 301. This section must be
10 administered consistent with the requirements of the federal
11 Individuals with Disabilities Education Act.

12 **Sec. A-6. 20-A MRSA §7206, sub-§1,** as amended by PL 1989, c.
13 69, §1, is further amended to read:

14 **1. Complaint.** An interested party may file with the
15 commissioner a written complaint alleging that a school
16 administrative unit or private school serving exceptional
17 students, ~~within 180 days preceding receipt of the complaint,~~ has
18 failed to comply with this chapter. The complaint must allege a
19 violation that occurred not more than one year prior to the date
20 that the complaint is received unless a longer period is
21 reasonable because a violation is continuing or the complaint is
22 requesting compensatory services for a violation that occurred
23 not more than 3 years prior to the date the complaint is received.

24 **Sec. A-7. 20-A MRSA §7206, sub-§4,** as amended by PL 1993, c.
25 483, §4, is further amended to read:

26 **4. Appeal.** ~~An interested party may appeal the~~
27 ~~commissioner's order to the United States Department of~~
28 ~~Education~~ A parent or a school administrative unit may challenge
29 a complaint investigation report by requesting a due process
30 hearing within 30 days of the receipt of the complaint
31 investigation report.

32 **Sec. A-8. 20-A MRSA §7206, sub-§7** is enacted to read:

33 **7. Complaint investigators; immunity.** The State shall
34 train complaint investigators. For the purposes of this section,
35 while carrying out their official duties, complaint investigators
36 are considered state employees and are entitled to the immunity
37 provided state employees under the Maine Tort Claims Act.

38 **Sec. A-9. 20-A MRSA §7207-B, sub-§1, ¶¶C and D,** as enacted by
39 PL 1985, c. 318, §3, are amended to read:

40 C. The use of mediation; and

41 D. The procedures for conducting the hearings; and

2 It makes state law permitting discipline of exceptional
students consistent with the requirements of the federal
4 Individuals with Disabilities Education Act and clarifies that
the 10 days of suspension is for individual or cumulative days in
one school year.

6
8 It makes state law consistent with recent changes in the
federal regulations governing the time frame in which an
10 individual may request a complaint investigation. The appeal
process is amended to require an administrative hearing in order
12 to appeal a complaint investigation report because recent
amendments to the federal regulations governing complaint
14 investigations have removed the provision permitting appeal to
the United States Department of Education. It also extends the
16 same statutory immunity to complaint investigators as currently
exists for hearing officers in the Maine Revised Statutes, Title
20-A, section 7207.

18
20 It requires the Commissioner of Education to amend the rules
regarding the procedures for due process hearings to include the
22 procedures for determining the award of attorney's fees
consistent with the requirements of the federal Individuals with
24 Disabilities Education Act. It also requires the commissioner to
amend the rules regarding the procedures for due process hearing
26 rules to include the procedures for mediations and provides
mediators the same immunity provided state employees under the
28 Maine Tort Claims Act, making the immunity consistent with the
requirements of the federal Individuals with Disabilities
Education Act.

30
32 It makes state law consistent with the requirements of the
federal Individuals with Disabilities Education Act concerning
34 offering special education services in adult correctional
facilities to inmates 18 to 20 years of age who were identified
36 as requiring special education and were actively receiving such
services prior to incarceration in the adult correctional
facility.

38
40 It makes changes to the categories of disability for
exceptional students consistent with the categories in the
42 federal Individuals with Disabilities Education Act.

44 Part B of this bill corrects a cross-reference to a section
that is repealed in Part A.