

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

SECOND REGULAR SESSION-2014

Legislative Document

No. 1591

H.P. 1162

House of Representatives, December 30, 2013

An Act To Amend the Process Controlling the Transfer of a Student between School Administrative Units

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 23, 2013. Referred to the Committee on Education and Cultural Affairs pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland

MILLICENT M. MacFARLAND

Clerk

Presented by Representative HUBBELL of Bar Harbor.

Cosponsored by Representatives: DEVIN of Newcastle, JOHNSON of Greenville, KUSIAK of Fairfield, McCLELLAN of Raymond, Senators: CRAVEN of Androscoggin, JOHNSON of Lincoln, LANGLEY of Hancock, SAVIELLO of Franklin.

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

2 **Sec. 1. 20-A MRSA §5205, sub-§6, ¶A**, as amended by PL 2013, c. 337, §1, is
3 further amended to read:

4 A. Two superintendents may approve the transfer of a student from one school
5 administrative unit to another if:

6 (1) They find that a transfer is in the student's best interest. For purposes of this
7 subparagraph, a transfer is in the student's best interest if the student or the parent
8 of the student demonstrates that the student has significant and unique
9 educational, health or safety needs that:

10 (a) Are school-related;

11 (b) Cannot be met by the school administrative unit in which the student
12 resides; and

13 (c) Would be met as a result of the transfer and the student's maintaining
14 nonresident status; and

15 (2) The student's parent approves.

16 The superintendents shall notify the commissioner of any transfer approved under
17 this paragraph. ~~If either of the superintendents decide~~ decides not to approve the
18 transfer, ~~the superintendents that superintendent~~ shall provide to the parent of the
19 student requesting transfer under this paragraph a written description of the basis of
20 ~~their that superintendent's determination that the transfer is not in the student's best~~
21 ~~interest.~~

22 **Sec. 2. 20-A MRSA §5205, sub-§6, ¶B**, as repealed and replaced by PL 2013, c.
23 424, Pt. J, §1, is amended to read:

24 B. On the request of the parent of a student requesting transfer under paragraph A,
25 the commissioner shall review the transfer. The commissioner shall review the
26 superintendents' determination and communicate with the superintendents and with
27 the parent of the student prior to making a decision. ~~The~~ If the commissioner finds
28 that the determination of one or both of the superintendents to deny the transfer is not
29 arbitrary and capricious, the commissioner may approve or shall disapprove the
30 transfer ~~and~~. If the commissioner finds the determination is arbitrary and capricious,
31 the commissioner may approve the transfer. In either case, the commissioner shall
32 provide to the parent of the student and to the superintendents a written decision
33 describing the basis of the commissioner's determination ~~that the transfer is or is not~~
34 ~~in the student's best interest.~~

35 **Sec. 3. 20-A MRSA §5205, sub-§6, ¶F**, as enacted by PL 2013, c. 337, §2, is
36 amended to read:

37 F. If dissatisfied with the commissioner's decision, a parent of a student requesting
38 transfer or either superintendent may, within 10 calendar days of the commissioner's
39 decision, request that the state board review the transfer. The state board shall review
40 the ~~commissioner's~~ superintendents' determination and communicate with the

1 commissioner, the superintendents and the parent of the student. ~~The~~ If the state
2 board finds that the determination of one or both of the superintendents to deny the
3 transfer is not arbitrary and capricious, the state board may approve or shall
4 disapprove the transfer. ~~The~~ If the state board finds that the determination is arbitrary
5 and capricious, the state board may approve the transfer. In either case, the state
6 board shall make a decision within 30 45 calendar days of receiving the request and
7 shall provide to the parent of the student, the superintendents and the commissioner a
8 written decision describing the basis of the state board's determination ~~that the~~
9 ~~transfer is or is not in the student's best interest.~~ The state board's decision is final
10 and binding.

11 **SUMMARY**

12 Under current law, a student or the parent of a student may request a transfer to a
13 school administrative unit in which the student does not reside. The superintendents of
14 both the sending and the receiving school administrative units may approve the transfer if
15 they find that it is in the best interests of the student. The decision is appealable to the
16 Commissioner of Education, who may approve or disapprove the transfer. That decision
17 is appealable to the State Board of Education, which may approve or disapprove the
18 transfer.

19 This bill provides a standard for what constitutes a student's best interest. The bill
20 requires that, if the decision of one or both of the superintendents to deny the transfer is
21 appealed, the Commissioner of Education must uphold the decision unless the
22 commissioner determines that the decision to deny the transfer was arbitrary and
23 capricious, in which case the commissioner may approve the transfer. If that decision is
24 appealed to the State Board of Education, the board must uphold the decision to deny the
25 transfer unless the board determines that the decision was arbitrary and capricious, in
26 which case the board may approve the transfer.