

# MAINE STATE LEGISLATURE

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LAWS  
OF THE  
STATE OF MAINE

AS PASSED BY THE

One Hundred and Seventh Legislature

AT THE

1ST SPECIAL SESSION

JANUARY 19, 1976 TO APRIL 29, 1976

AND

2ND SPECIAL SESSION

JUNE 14, 1976

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN  
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**PUBLIC LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
One Hundred and Seventh Legislature  
AT THE FIRST SPECIAL SESSION  
January 19, 1976 to April 29, 1976  
AND THE SECOND SPECIAL SESSION  
June 14, 1976

Supplementary to the Acts and Resolves of the Regular Session

[supplied from page 3097 of volume]

## CHAPTER 732

## AN ACT Relating to Exceptional Children.

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the experience of the past 2 years has shown that the mandatory special education legislation and accompanying guidelines and regulations enacted by the 106th Legislature and adopted by the Department of Educational and Cultural Services need to be revised without delay in order to provide for the effective and efficient delivery of services to handicapped students throughout Maine; and

Whereas, in view of contemplated changes in school funding procedures, it is vital that the special education legislation be revised at once; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1.** 20 MRSA § 859, 5th ¶, last sentence, as enacted by 1975, c. 69, § 2, is repealed.

**Sec. 2.** 20 MRSA c. 404, as enacted by PL 1973, c. 609, § 1, and as amended, is repealed and the following enacted in place thereof:

## CHAPTER 404

## EXCEPTIONAL CHILDREN

## § 3121. Policy and purpose

It is the declared policy of the State that all children be provided with equal educational opportunities. The purpose of this chapter is to insure that all administrative units operating schools provide equal educational opportunities for all exceptional children as defined. Educational opportunities for such children shall be provided by means of the addition of appropriate supportive assistance to regular educational programs. Exceptions to this policy shall be made only after supporting evaluative data, indicating that a child cannot be properly served in a regular program, have been submitted to and approved by the commissioner.

## § 3122. Supportive assistance; private schools; state-operated institutions; Governor Baxter School for the Deaf

1. Supportive assistance. The commissioner shall provide, or cause to be provided by administrative units operating schools, all supportive assistance and services, as defined in guidelines and regulations he establishes, required by exceptional children to the end that they may benefit from equal educational opportunities.

2. Private schools. It is within the jurisdiction of the commissioner to require that classes in schools and institutions, wholly or partly supported by the State, that are not supervised by public school authorities, be organized in accordance with guidelines and regulations established by him for the conduct of classes within the public school system.

3. State-operated institutions. Any exceptional child committed or otherwise legally admitted to any state-operated institution for the mentally ill or mentally handicapped shall have the right to attend the public school in the administrative unit in which such institution is located, or in any adjoining administrative unit. The head of such institution shall make application for such attendance to the superintendent of the administrative unit involved, under the same conditions as apply to regular pupils residing in such administrative unit and in accordance with guidelines and regulations of the Department of Educational and Cultural Services relating to special education.

4. Governor Baxter School for the Deaf. The Governor Baxter School for the Deaf, established by chapter 446 of the private and special laws of 1897 and by chapter 44 of the private and special laws of 1953, is to be devoted to the education and instruction of deaf children. The school shall be located in the County of Cumberland and the State shall have the entire charge, responsibility and expense of maintaining the school. The government of the school is vested in the Department of Educational and Cultural Services, which shall have charge of the general interests of the school and shall see that its affairs are conducted in accordance with law. The department may employ officers, teachers and other employees as it may deem advisable subject to the Personnel Law. The department may prescribe the system of education and course of study to be pursued in the school.

Any child between the ages of 5 and 20 years, as defined in section 3123, subsection 1, diagnosed as deaf, shall attend the Governor Baxter School for the Deaf during the scholastic year, unless it can be shown that a program adequate to his needs is available on a local or regional basis within the State or unless the commissioner approves an alternative.

The superintendent of the administrative unit in which such child resides, with the consent of the child's parent or legal guardian may enroll such child in the Governor Baxter School for the Deaf and the sums necessary for the support of such child while attending the school shall be paid by the Department of Educational and Cultural Services in accordance with its guidelines and regulations.

It shall be the responsibility of the Governor Baxter School for the Deaf to provide annual evaluation of all children enrolled in the school. These evaluations shall be sent to the superintendents of the administrative units from which such children are enrolled. Each administrative unit may request technical assistance from the Governor Baxter School for the Deaf in matters relating to the education of deaf children in accordance with guidelines and regulations of the department.

#### § 3123. Definitions

As used in this chapter, unless otherwise indicated by the context, the following words shall have the following meanings.

1. Exceptional children. "Exceptional children" means any persons who

reach the age of 5 years on or before October 15th of any school year and until the end of the school year in which such persons reach the age of 20 years who require special services in the area of vision, audition, speech and language, cerebral or perceptual functions, physical mobility functions, behavior, mental development or maturation, or multiples of these functions, as defined by the commissioner, so that their educational progress and potential may be realized.

2. Special education. "Special education" means classroom, home, hospital, institutional or other instruction; educational diagnosis and evaluation; transportation and other supportive assistance, services, activities or programs, as defined by the commissioner, required by exceptional children.

3. Special education facility. "Special education facility" means a public or private school, or portion thereof, intended for use in meeting the educational and related needs of exceptional children.

#### § 3124. Local responsibility

Each administrative unit operating schools shall identify all children within its jurisdiction who require special education and supportive assistance. Each such administrative unit shall provide educational diagnosis and evaluation as may be necessary for the planning and implementation of a special education program for each exceptional child. Each such administrative unit shall provide special education and supportive services for exceptional children within its jurisdiction by any or by a combination of any of the methods indicated.

Activities related to identification, educational diagnosis and evaluation, planning and implementation, and the provision of services shall be conducted in accordance with guidelines and regulations established by the commissioner.

Nothing in this chapter shall be construed to authorize or require physical examinations or medical treatment of any child whose parent objects thereto on the grounds that he relies solely upon nonmedical remedial care and treatment in accordance with a recognized religious method of healing.

#### § 1325. Methods of providing programs

1. Local programs. An appropriate program for exceptional children may be established by any administrative unit operating schools, providing it is approved by the commissioner with respect to requirements for admission, qualification or certification of staff, plan of instruction, adequacy of facilities and supportive services, professional supervision and teacher-student ratio.

2. Contractual programs. An administrative unit may arrange with or tuition to another administrative unit or any public or private agency or institution approved by the commissioner with respect to the components listed in subsection 1. When such arrangements are effected with a private agency, they shall be in accordance with guidelines and regulations established by the commissioner and shall be described in a contract, subject to approval in advance by the commissioner.

3. Cooperative agreements. An administrative unit may enter into a cooperative agreement with one or more other administrative units in order to provide educational programs or supportive services for exceptional children.

Programs established through cooperative agreements shall be approved by the commissioner with respect to those components listed in subsection 1. Cooperative agreements are particularly encouraged when it can be demonstrated that they will more effectively provide special educational programs than the other 2 methods listed in subsection 2.

4. Other. In addition to, or in place of, those methods listed in this section, an administrative unit may make any other provisions, subject to approval in advance by the commissioner, to insure the education of all exceptional children.

#### § 3126. State aid and review

The State shall provide financial aid to administrative units for special education, as defined, in accordance with guidelines and regulations established by the commissioner.

All administrative units shall provide the commissioner with such information as may be required to insure compliance with the policy set forth in this chapter. Each administrative unit shall submit a plan of its services to exceptional children to the commissioner for approval, in accordance with guidelines and regulations that he establishes.

It is the intent of the Legislature that a representative of the commissioner visit each special educational program in the State each year for the purpose of review and assistance.

The commissioner, upon the request of any administrative unit, may provide technical assistance in the formulation of any plan or subsequent report required of administrative units. Any such assistance shall not be designed to transfer either in whole or in part the responsibility for or actual development of the plan or report. The commissioner shall give final approval to all plans and reports.

#### § 3127. Denial of state aid

If, at any time after July 1, 1976, an administrative unit is found by the commissioner to have failed to provide appropriate education to all exceptional children who are by law entitled to receive the same from such administrative unit, the commissioner may withhold all or such portion of the state aid for the administrative unit as in his judgment is warranted. The denial of state aid may continue until the failure to provide appropriate education for exceptional children is remedied.

No action pursuant to denial of state aid shall be taken by the commissioner, except after public hearing by the State Board of Education, on due notice and on a record that establishes the failure of the administrative unit to provide an appropriate education for exceptional children.

Notwithstanding the provisions of this section, if the commissioner is presented with substantial evidence by an administrative unit that significant hardship exists, he may waive enforcement of this chapter until July 1, 1977.

#### § 3128. Records

Each administrative unit operating schools shall make and keep current such records of exceptional children as are identified by guidelines and regulations established by the commissioner. Each such administrative unit shall institute procedures which guarantee the confidentiality of such records as required by state and federal law.

The commissioner shall make and keep current by annual review a state plan for the education of all exceptional children in Maine. This state plan shall be made available for public inspection on request.

#### § 3129. Facilities

Administrative units, agencies of the State and its subdivisions, and any private persons or entities constructing, renovating or repairing facilities with or aided by public funds, which facilities are intended to be used for the education of exceptional children shall obtain approval in advance from the commissioner. Such approval shall be in accordance with established regulations pertaining to school construction and to laws relating to construction for the physically handicapped. If an administrative unit submits plans and specifications for a building or other structure that does not include appropriate accommodations for its exceptional children, the commissioner shall require assurance that the submitting authority has other facilities adequate to meet the needs of its exceptional children.

#### § 3130. Tuition computation

1. Public school tuition. Any administrative unit operating a full-time special education program and accepting students on a tuition basis shall compute a tuition rate. The tuition rate shall not exceed the actual per pupil cost incurred in operation of the special program. Allowable expenditures used to determine the per pupil cost shall be defined in guidelines and regulations established by the commissioner.

2. Private school tuition. The commissioner shall approve all private school tuition rates charged for special education programs.

The tuition rates charged by private schools for special educational programs shall not exceed the actual per pupil cost incurred in the operation of the special program during the preceding school year. Allowable expenditures used to determine the per pupil cost shall be defined in guidelines and regulations established by the commissioner. Financial reports detailing the allowable expenditures and the computation of the tuition rate shall be filed by July 1st of each year, in such form as the commissioner may require, by each private school accepting special students on a tuition basis.

The commissioner shall establish a tuition rate for new special educational programs in private schools based on the estimated allowable costs of the new program.

Increases in the tuition rate charged by private schools for special educational programs from one year to the next may not exceed 15% unless evidence is presented to the commissioner that a hardship will exist if a higher rate of increase is not approved, and such evidence is deemed sufficient by the commissioner.

#### § 3131. Due process; preschool children; contributions; savings provision



1. Due process. The guidelines and regulations established by the commissioner shall establish procedures to assure and protect the rights of due process for all children referred to in this Title.

2. Preschool children. The commissioner may authorize expenditures to institutions and organizations for speech and language education of hearing and language impaired children who have not become of compulsory school age.

3. Contributions. The commissioner is authorized to receive contributions and donations to be used in conjunction with appropriations made to carry out provisions and requirements of this chapter. The Department of Educational and Cultural Services is designated as the agency for cooperation with the Federal Government in any program for the education of exceptional children.

4. Savings provision. Nothing contained in this chapter shall be construed to prevent or impair the administration or enforcement of any other provisions of the laws of this State.

#### § 3132. Regulations and guidelines

The commissioner is authorized to make any rules and regulations necessary for the administration of this chapter. Prior to the promulgation of any rules and regulations, the commissioner shall hold a public hearing of which at least 7-days' notice has been given in the appropriate newspapers throughout the State. Any rules and regulations prepared after the public hearing shall be published in the appropriate newspapers in order to provide reasonable notice to the public affected thereby, at least once, at least 14 days before they become effective. Any rules or regulations shall be effective only after a 60-day public review period following the public hearing. They may be amended or repealed at any time by the commissioner after like notice, hearing and publication of the portions amended or repealed.

Notwithstanding the foregoing paragraph, whenever the commissioner reasonably determines that the public safety, health or welfare is threatened, he may issue and shall publish emergency regulations which are effective immediately without a hearing or prior publication, provided that thereafter he holds a public hearing as provided in this section. Such emergency regulations shall be effective for no more than 90 days after issuance.

No rules or regulations pursuant to this chapter shall be effective prior to July 1, 1976.

Sec. 3. 34 MRSA c. 251, as amended, is repealed.

**Emergency clause.** In view of the emergency cited in the preamble, this Act shall take effect July 1, 1976, except section 3132 of Title 20 of section 2 of this Act which shall take effect when approved.