

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>



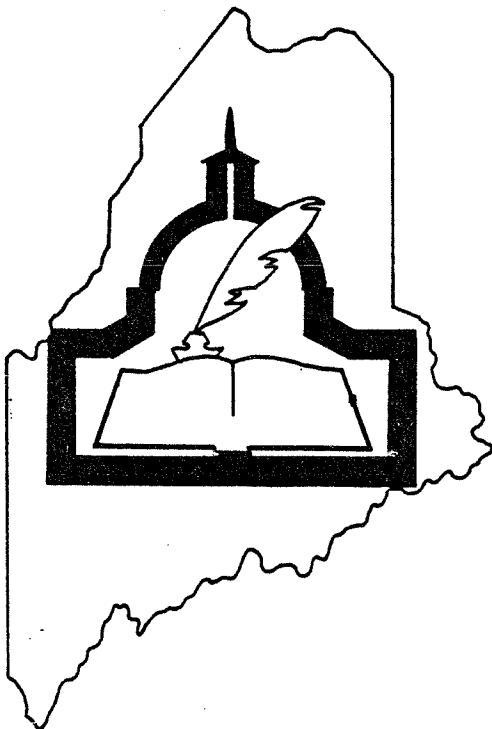
Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

RESIDENTIAL PLACEMENT STUDY

Joint Standing Committee on Education

Members: Sen. Howard M. Trotzky, Chairman
Sen. Richard H. Pierce
Sen. Nancy R. Clark
Rep. Laurence E. Connolly, Jr. Chairman
Rep. Stephanie Locke
Rep. A. Mavourneen Thompson
Rep. Ada K. Brown
Rep. Raynold Theriault
Rep. Neil Rolde
Rep. Darryl N. Brown
Rep. Kenneth L. Matthews
Rep. Marian E. Gowen
Rep. Thomas W. Murphy, Jr.

Staff: Lars H. Rydell
Legislative Assistant



RESIDENTIAL PLACEMENT STUDY

Joint Standing Committee on Education

REASON'S FOR STUDY

The reasons for the study were twofold. One was a concern over the possibility of inappropriate placements of special education students in residential programs. The other was an interest in monitoring the investigatory reports on Governor Baxter School for the Deaf by the Attorney General and the Departments of Human Services and Educational and Cultural Services.

I. APPROPRIATE PLACEMENT

The committee was concerned with two factors. One concerned the implicit economic incentives in the school subsidy formula; and the other was the effectiveness of the departmental review of placements. The pupil evaluation team (PET) has the initial responsibility for determining the appropriate placement for a student under both federal and state laws. State law also recognizes the role of the superintendent in reviewing all decisions and indirectly the school board and legislative body of the school unit in providing funds. Finally, State law requires for the Department of Education to monitor the local special education programs and to review and approve all residential placements.

A. ECONOMIC INCENTIVES.

Economic incentives means that, all things being equal, people or organizations are motivated to maximize their economic gains and to minimize their economic costs. Responding to economic incentives could also be defined as sound fiscal manage-

ment of public monies. Schools' societal mandate and their obligation under state and federal laws is to educate the nation's younger generation and in particular to provide an appropriate education, or equal educational opportunity, for handicapped students. However, within the perimeters provided by these mandates, it would be sound public management to provide the required educational services at the lowest cost.

The issue is particularly relevant regarding the residential placement of special education students because there is usually a considerable difference between the cost of a residential placement for student and the provision of a local program. The difference operates both ways. In the case of emotionally or behaviorally disturbed or physically handicapped students, the school system is responsible for paying the cost of both the local program and the residential program. In these cases, cost to the local unit for the residential program is much greater than a program provided locally. In other cases, predominantly the education of deaf students at Governor Baxter School, but also in a number of instances with mentally retarded students, the State will pay the total cost of the residentially based program. In such cases it is less expensive for the local unit to place a student in a residential program than to provide a program locally.

Testimony received by the committee did not reveal a unanimous opinion as to whether the implicit economic incentives within the state/local division of financial responsibility affected placement decisions. There was some support from the

Education Department and others for the position that the economic incentives reduced residential placements of emotionally disturbed students and stimulated the growth of local programming for students with this type of handicap. On the other hand there was considerable resistance to the suggestion that an incentive mechanism might also be in effect regarding placements at Baxter School.

L.D. 1990, AN ACT Recodifying the Law Regarding Exceptional Students in Residential Placements, attempted to address this issue by making a consistent division of the costs between the local school units and the State. It would have made the local unit responsible for paying the cost of the educational program for a student regardless of where the student was placed. The State, in turn, would assume responsibility for board and care for all placements. In short, the local school unit would have assumed the cost of tuition at Baxter School and the State would have assumed the cost of board and care at residential treatment facilities.

The advantages of this division were first of all that it would have largely removed the economic factor from program placement decisions. The cost to local units would have been relatively the same whether they placed the student in a residential setting or provided a local program. Second, by the State assuming the cost of board and care, it would theoretically cost the State the same if the support services were provided in a residential setting or in the local community. The State could, therefore, decide to reallocate the residential board and care money to local social, psychological and family support

services if it felt that a better or more economical service could be provided locally. Now the State saves the cost of local service when the local unit pays to have a child placed in a residential program. The State's assumption of responsibility for these components of service would have provided a basis for the State to address the concern voiced by many local special education personnel that emotionally disturbed students are often placed in residential programs, not because the student needs a residential environment to benefit from an educational program, but because there are no local services available to meet the student's or his family's social, psychological and homemaker needs.

The Committee heard testimony from members of the Interdepartmental Committee, representing the Departments of Education, Human Services, Corrections, and Mental Health and Mental Retardation, describing a pilot project that the four departments were initiating to provide a coordinated package of local social, psychological and family support services. If successful, the package of services should help avoid residential placements which are not dictated by purely educational needs of students.

RECOMMENDATION 1:

The Committee supports the pilot project being developed by the four departments. The Committee decided not to re-introduce L.D.1990.

B. DEPARTMENTAL REVIEWS OF RESIDENTIAL PLACEMENTS.

The Department of Education is given the explicit responsibility of approving all residential placements. Specifically, 20 MRSa §3121 (2) states in part:

Placement of exceptional children in residential schools or institutions or in private day schools shall be authorized only after supporting evaluative data justifying such placements have been submitted to and approved by the commissioner (Emphasis added).

The department fulfills its responsibilities under this subsection by requiring units to submit an EF-S-01 form. The "evaluative data" justifying the placement is limited to two yes/no check-off questions.

Does the Pupil Evaluation Team recommend this placement?

Copies of all data supporting this placement request are on file with the Local Administrative Unit.

The department feels that these questions coupled with the actual review of the "supporting evaluative data" of a sample of the residential placements conducted in connection with the departments monitoring of local programs is adequate to fulfill their obligations under the statutes. The department monitors local programs on a 3-5 year cycle.

The committee asked the Advocates for the Developmentally Disabled, under a grant from the Human Services Council, to review the adequacy of the process and to prepare a report for the committee. The Advocates report is attached.

The report suggests the addition of the following items to the information submitted by the local school unit.

1. A summary of evaluative data relevant to placement decision on file with LEA.

2. A Summary of the child's needs and how the proposed facility will meet those needs.

3. A description of the locally available educational services and why they are not appropriate as well as what additional educational services would be necessary to make them appropriate.

4. A description of the locally available support services and why they are not adequate to meet the child's needs as well as what additional support services would be necessary to make them adequate.

As presented to the committee, the intent of these changes would be to provide a brief description of the evaluative data indicating why a residential placement is appropriate and reasons for selecting the proposed facility. In addition, in an effort to collect information which would help the Department of Education aid local units in developing regional education programs, information would be requested as to what additional educational services would be necessary to provide the needed educational program in the local area. By collecting this information on a regional basis, the department could match units with similar needs and encourage the development of regional programs. Similarly, in order to help the other departments plan for the provisions of social, psychological and family support services needed to keep these students in the local area, a description of the required support services is requested.

RECOMMENDATION 2:

The committee felt that the Department of Education should give serious consideration to revising its rules governing the information it requires local units to submit along with their application for approval of a residential placement. The added information would aid the department both in judging whether a placement is necessary and in developing regional educational and support services to limit the need for residential placements. Based on the department's indication that it would revise its rules governing residential placements, the committee decided not

to submit legislation. The Committee, however, urges the 111th and future legislatures to monitor the departments carrying out of its responsibility to approve residential placements.

C. STATE PUPIL EVALUATION TEAM AND STATE WARDS.

A second aspect of the Advocates report concerned the determination and revising of the individual education plans for state wards. The State statute provides for placement by a local school unit and follow up by a State Pupil Evaluation Team for state wards. The present relationship between the authority and responsibility of local Pupil Evaluation Team and the State Pupil Evaluation Team, however, appears to be confused. There are no clear rules as to when the responsibility is transferred from one to the other. This lack of clarity can mean that a state ward is left without a team at either level to monitor the appropriateness of his/her placement or progress.

RECOMMENDATION 3:

The committee strongly recommends that the department review its rules and procedures governing the State Pupil Evaluation Team and the sharing of responsibility for state wards between the State Team and local school unit. The rules should clearly assign the responsibility for each state ward either to the State Team or a local school administrative unit. Procedures should also be established which govern when and how responsibility for a state ward may be transferred between the State Team and the local unit.

D. ACCESS TO CONFIDENTIAL RECORDS.

In the course of its study the Advocate encountered difficulty in obtaining approval from DE&CS to review information submitted by local units supporting their decision to place a child. The department's position was that these were confidential records of local school systems. The Advocates observed that if the department had wished to conduct a study of

how the process worked they would have been able to review the records in spite of any legal restrictions on access to confidential records. The Advocates felt that it was logical to extend this same access to a study requested by the Legislature and conducted by an independent agency outside the executive branch. The department and the Advocates reached an agreement on an amendment to the statute which would require local school administrative units to assist the Advocates in obtaining parental permission for access to records.

RECOMMENDATION 4:

The committee recommends the following amendment to education statutes.

20-A MRSA §7202, sub-§9 is enacted to read:

9. Securing parental permission. For the Protection and Advocacy Agency conducting investigations pursuant to 22 MRSA, chapter 961:

A. Assist the Protection and Advocacy Agency in its investigations and

B. Facilitate access to relevant case records by

1. Notifying parents or guardians of the investigation and

2. Requesting parental consent for the Protection and Advocacy Agency to have access to case records.

Parents may refuse to give their consent for the Protection and Advocacy Agency to have access to their child's records.

The Advocates also discussed their problems with gaining access to DHS records in connection with their investigations of state wards and child abuse and protective services clients. The Advocates and DHS had presumably earlier worked out an agreement to cover access, but the Advocates feel the individuals responsible for the records in DHS are not releasing them to the

Advocates in a timely manner. The Advocates recommended a change in the statutes which would clarify their right to access.

RECOMMENDATION 5:

The committee felt that the following addition to the statutes should be submitted to the Legislature recognizing it was probably an issue which would be more logically dealt with by the Joint Standing Committee on Health and Institutional Services.

22 MRSA §4008, sub-§3, ¶E is enacted to read:

E. The Protection and Advocacy Agency in connection with investigations conducted in accordance with chapter 961. The determination of what information and records are relevant to the investigation shall be made by agreement between the department and the Protection and Advocacy Agency.

II. GOVERNOR BAXTER SCHOOL FOR THE DEAF

The committee monitored the reports stemming from the investigations of Governor Baxter School. Three investigations were conducted which covered both the allegations of child abuse and sexual misconduct by staff members and allegations concerning the adequacy of the educational program.

A. ATTORNEY GENERAL'S REPORT

The Attorney General investigated the allegations of child abuse and sexual misconduct by certain staff members of the Governor Baxter School. The report concluded that there was sufficient evidence to conclude that the allegations were correct. However, because of one or a combination of the following factors the Attorney General did not feel criminal action could or should be brought against those accused.

First, the alleged actions took place before the 6 year statute of limitations and hence could not be prosecuted now. Second, the alleged instances of sexual misconduct while certainly "improper", were not committed against minors, as defined in existing state law, and hence were not violations of the criminal code. The Attorney General recommended several changes to the criminal code and personnel laws which would revise the definition of what is criminal misconduct in regard to sexual contact between teachers and students and which make physical or sexual abuse grounds for harsher disciplinary action under the personnel law.

RECOMMENDATION 6:

The committee supports the recommendations by the Attorney General to clarify and strengthen the criminal code and personnel law.

Third, the Attorney General was concerned about the adverse publicity court action would have on the student and parents involved. The Attorney General was not at all sure that the allegations of physical abuse would be supported by the courts since the Criminal Code permits a reasonable degree of force to be met in certain disciplinary situations. It would be difficult for the State to prove in each case that there was no justification for the degree of force used. Also there is no case law to indicate how the court would interpret the education statutes which govern teachers use of physical means of controlling students.

The Attorney General also concluded that The Department of Education had not been sufficiently diligent in investigating or referring the original allegations of abuse and misconduct. In addition the Attorney General and others recommended that staff at Baxter School should be trained both in recognizing and reporting child abuse and in non physical means of classroom discipline.

B. REPORT TO THE COMMISSIONER OF THE DEPARTMENT OF HUMAN SERVICES.

The Report to the Commissioner of the Department of Human Services centered on the allegations of child abuse. The department was most concerned with new or continuing cases of abuse. The division of responsibility with the Attorney General was that the AG had responsibility for the past cases and possi-

ble criminal cases while DHS focussed on investigating present instances and in correcting any problem with reporting. They followed up on all leads brought to their attention and reported back that all the allegations referred to them by the committee, or which surfaced from testimony to the committee, were already part of their active file.

One possible area of confusion concerning the obligation to report cases of abuse concerned an interpreter for the deaf who alleged knowledge of current cases of abuse but was unable to report them because of the confidential relationship between interpreter and client. The department felt that interpreters were covered by existing statutes but felt that a clarification in the statute of those professionals required to report might be desirable. The department representative testifying before the committee favored a general requirement which would require all individuals to report. This would eliminate any possible confusion as to which professionals were and which were not required to report. The blanket requirement would also include non-professionals and general citizens. However, the department indicated that most of their referrals come from neighbors and other individuals who do not have a professional relationship with the abused child and hence establishing the requirement would not change the practice of reporting.

RECOMMENDATION :

The committee is supportive of a clarification or change which would tighten the reporting requirements for child abuse.

C. THE REPORT OF THE COMMISSIONER OF EDUCATIONAL AND CULTURAL SERVICES.

The report of the Commissioner of Educational and Cultural Services dealt with three main areas. First, the report reviewed the historical record of the department's response to the allegations of abuse as they had become known. Second, it conducted an extensive review of the educational program provided at the school. Third, it contained a review by DHS of the school's compliance with health and safety standards.

A general concern voiced by the members of the committee concerning these last two components of the report was that since they both seemed to have been based on standards of review or monitoring procedures carried out by DHS on private facilities or by DE&CS on local school units, why had not the departments conducted their reviews earlier and on the same general schedule as for these other facilities. The opinion was voiced by committee members that if the State is going to monitor private facilities and local school units, it should be careful to apply the same review procedures and health and safety and education standards to its own programs. The department assured the committee that a cooperative agreement had been developed by the four departments involved in delivering or monitoring health, social, and educational services to create an inter-departmental team to monitor state run programs and that the team had established a schedule to carry out these program reviews.

A. HEALTH AND SAFETY STANDARDS.

The report found the health and safety standards at the school lacking in a number of selected areas. The school has

developed a plan to correct these. There were no recommendations for changes in the statutes. The department assured the committee that the school would be regularly monitored and comply with relevant statutes in the future.

B. EDUCATIONAL PROGRAM

The report found there to be numerous violations of state and federal laws governing the provision of educational services to handicapped children. These included the due process rights of students and their parents, the rights of students to any appropriate or equal educational opportunity, and the right to the provision of the educational program in the least restrictive environment compatible with program requirements and student needs. The department presented its action plan and timelines for correcting the violations. The committee was generally supportive of the department's plan to correct the violations of the educational laws.

The committee, however, was concerned with reducing the possibility that similar violations would develop in the future and discussed the need for advocacy services at Baxter School. The Advocates for the Developmentally Disabled, and other individuals and handicapped rights groups, supported the committee's request for state funding of two advocate positions whose primary responsibility would be to aid students at state run and private residential facilities. The Advocates felt that students in residential facilities are particularly vulnerable because of the more limited family/child contact for students living away from home. Advocacy services need to be strengthened to make

up for the lack of oversight normally provided by parents and the local school unit.

RECOMMENDATION 7:

The education committee recommends legislation to add \$39,294 to the Department of Educational and Cultural Services budget to allow the Protection and Advocacy Agency to hire two additional advocates. The committee feels that at least one of the advocates hired should be able to communicate with deaf individuals by means of sign language.

The Governor's Budget Bill is amended by adding a new section as follows:

Administration -- Education

All other \$39,294

Provides funds for 2 advocates in the State Protection and Advocacy Agency who shall provide advocacy services for school age children in State institutions and community residential settings.

C. CHILD ABUSE AND DEPARTMENTAL RESPONSIBILITY

The committee, in the process of reviewing all three reports, was concerned with what happened, why it happened and how to make sure it doesn't reoccur in the future. The committee reviewed the chain of events laid out by the Department of Education's report and followed the testimony presented at the State Personnel Board hearing on the dismissal of one departmental official. The committee members tried to determine whether the failure to deal with the problem when it first occurred was due to the failure of individuals with administrative responsibility over the school, or whether there was some underlying problem with the administrative structure within the department and with the governance structure of the school.

The State Personnel Board upheld the commissioner's dismissal of the department employee. However, it did so on the grounds that the commissioner had the right to dismiss employees at that level without proving just cause. The board explicitly commended the employee for his years of services and for the manner in which he carried out his duties. The testimony available to the committee, therefore, did not clearly support the contention of malfeasance or nonfeasance of departmental personnel. Notwithstanding this general conclusion the committee recognized that more aggressive administrative oversight by department personnel could have probably corrected the problem at an earlier stage.

The committee also heard testimony expressing the opinion that the fact that the abuse and educational program problems continued over an extended period of time was due to systemic deficiencies. The single line of command both within the department and at the school concentrated the authority for running the programs, overseeing compliance with state and federal laws, investigating complaints and dispensing discipline on single individuals at the school and in the department. The failure of the department to employ its routine procedures for monitoring special education programs at Baxter School has been discussed above and has presumably been corrected. The issue of governance is covered below under the discussion of the Committee on the Future of Baxter School. The general conclusion from the testimony presented to the committee, however, was that residential institutions often become isolated from their surroundings and become closed worlds. Though difficult to accomplish and

maintain, there needs to be a continual process of oversight by individuals and agencies outside the institution. These can include governing boards, state agencies, independent advocates, and parents.

D. COMMITTEE ON THE FUTURE OF BAXTER SCHOOL

The Education Committee heard testimony from representatives of the Committee on the Future of Baxter School. The Futures Committee had not completed its report and the discussion with the Education Committee revealed some continuing disagreements among the members as to the general philosophy of deaf education.

A general conclusion of the Futures Committee, however, seemed to be to support the concept of turning Baxter School in to a resource center for deaf education in the state. This transformation is a definite shift away from a traditional role of providing centralized services and toward helping develop locally based services. However, such a change would fall short of regionalizing the services. The resource center concept would include the development of educational programs for parents of deaf children and for teachers in local school units. In theory it would also imply that students educated at the GBSD would be there for shorter periods of time and for help with specific problems and not to receive their total education at the school. It may also include the development or provision of certain services on a more local or regionalized basis. As presented to the Education Committee, the concept of a regional center still needed considerable clarification.

The Futures Committee was also concerned with the governance structure at the school. The members were leaning toward recommending the creation of a board of trustees. However, they had not made a definite recommendation as to what form this would take.

Another concern voiced by the Futures Committee was the need to intervene early in a deaf child's life with the provision of services. Though the members did not describe how it would be structured or implemented, they expressed the opinion that services for deaf children should start at birth.

Those members of the Futures Committee involved with vocational services felt that the vocational programs at Baxter School had to be strengthened and programs at other vocational facilities in the state need to make their programs accessible to deaf students. There was a disagreement among the Futures Committee members as to whether the problem of inadequate vocational training for deaf students was primarily due to the lack of basic educational preparation of the students, or to the lack of preparation and adaption of the receiving vocational education schools (including the lack of interpreter services). They all agreed that both components played a part.

RECOMMENDATION 8:

The Education Committee was supportive of the work of the Committee on the Future of Baxter School and would help the Futures Committee submit any legislative recommendations it decides to present.