

MAINE STATE LEGISLATURE

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**STATE OF MAINE
119TH LEGISLATURE**

FIRST REGULAR SESSION

**BILL SUMMARIES
JOINT STANDING COMMITTEE
ON
EDUCATION AND CULTURAL AFFAIRS**

JULY 1999

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Sen. Robert E. Murray, Jr.

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ONE HUNDRED NINETEENTH LEGISLATURE
FIRST REGULAR SESSION

Summary Of Legislation Before The Joint Standing and Select Committees
August 1999

We are pleased to provide this summary of all bills that were considered by the Joint Standing and Select Committees of the Maine Legislature this past session. The document is a compilation of bill summaries which describe each bill and relevant amendments, as well as the final action taken. Also included are statistical summaries of bill activity this session for the Legislature and each of its joint standing and select committees.

The document is organized for convenient reference to information on bills considered by the committees. It is organized by committees and within committees by bill (LD) number. The committee report(s), prime sponsor for each bill and the lead co-sponsor(s), if designated, are listed below each bill title. All adopted amendments are listed by paper number. Two indices, a subject index and a numerical index by LD number are provided for easy reference to bills. They are located at the back of the document. A separate publication, History and Final Disposition of Legislative Documents, may also be helpful in providing information on the disposition of bills. These bill summaries also are available at the Law and Legislative Reference Library and on the Internet (www.state.me.us/legis/opla).

Final action on each bill is noted to the right of the bill title. The abbreviations used for various categories of final action are as follows:

CARRIED OVER..... *Bill carried over to Second Regular Session*
CON RES XXX..... *Chapter # of Constitutional Resolution passed by both Houses*
CONF CMTE UNABLE TO AGREE..... *Committee of Conference unable to agree; bill died*
DIED BETWEEN BODIES..... *House & Senate disagree; bill died*
DIED IN CONCURRENCE..... *One body accepts ONTP report; the other indefinitely postpones the bill*
DIED ON ADJOURNMENT..... *Action incomplete when session ended; bill died*
EMERGENCY..... *Enacted law takes effect sooner than 90 days*
ENACTMENT FAILED..... *Bill failed to get vote required for enactment or final passage*
NOT PROPERLY BEFORE THE BODY..... *Ruled out of order by the presiding officers; bill died*
INDEF PP..... *Bill Indefinitely Postponed*
ONTP..... *Ought Not To Pass report accepted*
OTP ND..... *Committee report Ought To Pass In New Draft*
OTP ND/NT..... *Committee report Ought To Pass In New Draft/New Title*
P&S XXX..... *Chapter # of enacted Private & Special Law*
PUBLIC XXX..... *Chapter # of enacted Public Law*
RESOLVE XXX..... *Chapter # of finally passed Resolve*
UNSIGNED..... *Bill held by Governor*
VETO SUSTAINED..... *Legislature failed to override Governor's Veto*

Please note the effective date for all non-emergency legislation enacted in the First Regular Session (unless otherwise specified in a particular law) is September 18, 1999.

major definitional changes proposed by the bill were to: (1) add three new handicapping conditions included in the 1997 IDEA--autism, traumatic brain injury and other health impairment, (2) add three new handicapping condition included in the 1999 federal regulations--deafness and blindness, multiple disabilities and developmental delay for children age five-nine (optional under the federal regulations), (3) replace impairment based on "behavior" with "emotional disturbance" and (4) replace impairment based on "cerebral or perceptual functions" with "specific learning disability;"

2. Make state law permitting discipline of exceptional students consistent with the requirements of the federal IDEA and clarify that the 10 days of suspension is for individual or cumulative days in one school year;
3. Make state law consistent with recent changes in the federal regulations governing the time frame in which an individual may request a complaint investigation. The appeal process would be amended to require an administrative hearing in order to appeal a complaint investigation report because recent amendments to the federal regulations governing complaint investigations have removed the provision permitting appeal to the United States Department of Education. It also proposed to extend the same statutory immunity to complaint investigators that currently exists for hearing officers in the Maine Revised Statutes, Title 20-A, section 7207;
4. Require the Commissioner of Education to amend the rules regarding the procedures for due process hearings to include procedures for determining the award of attorney's fees consistent with the requirements of the federal IDEA. It also would require the commissioner to amend the rules regarding the procedures for due process hearing rules to include a process for mediation of special education disputes and provide mediators the same immunity provided state employees under the Maine Tort Claims Act, making the immunity consistent with the requirements of the federal Individuals with Disabilities Education Act; and
5. Make state law consistent with the requirements of the federal IDEA by limiting special education services in adult correctional facilities to inmates 18 to 20 years of age who were identified as requiring special education and were actively receiving such services prior to incarceration in the adult correctional facility.

Part B of this bill proposed to correct a cross-reference to a section that is repealed in Part A; see also LD 209.

This bill was submitted on behalf of the Department of Education.

Committee Amendment "C" (H-669) proposed to repeal the category of impairment based on "behavior" in the definitions of "exceptional student" and "preschool handicapped child" and to replace that term with the term "emotional disability." The Department of Education would be directed to study the use of emotional and behavioral indicators in the identification of exceptional students and preschool handicapped children and report to the Joint Standing Committee on Education and Cultural Affairs by December 31, 1999.

The amendment also proposed to strike from the bill "developmental delay" as a category in the definitions of "exceptional student" and "preschool handicapped child" and direct the Department of Education to study the appropriateness and impact of including "developmental delay" as a category of disability under special education law and to report to the Joint Standing Committee on Education and Cultural Affairs by December 31, 1999.

The amendment further proposed to strike the section of the bill which would have limited special education services to incarcerated persons 18 to 20 years of age who had previously been identified as needing and who were actively receiving those services prior to incarceration in an adult correctional facility. Finally, it proposed to add a fiscal note to the bill.

Originally voted as a divided report with two OTP-AM committee reports, this bill was recommitted and reconsidered by the committee which unanimously supported Committee Amendment "C".

Enacted law summary

Public Law 1999, chapter 424 amends state special education law in several ways. In the definitions of "exceptional student" and "preschool handicapped child," it repeals the category of impairment based on "behavior" and replaces that term with the term "emotional disability." The Department of Education is directed to study the use of emotional and behavioral indicators in the identification of exceptional students and preschool handicapped children and report to the Joint Standing Committee on Education. The department is also directed to study the appropriateness and impact of including "developmental delay" (an optional category of disability under the federal Individuals with Disabilities Education Act) as a category of disability under state special education law. Both study reports are due to the Joint Standing Committee on Education and Cultural Affairs by December 31, 1999. Other major definitional changes accomplished by the bill are to: (1) add three new handicapping conditions included in the federal 1997 Individuals with Disabilities Education Act--autism, traumatic brain injury and other health impairment, (2) add three new handicapping condition included in the 1999 federal regulations promulgated under IDEA--deafness and blindness, multiple disabilities and developmental delay for children age five-nine (optional under the federal regulations) and (3) replace impairment based on "cerebral or perceptual functions" with "specific learning disability."

Chapter 424 also makes state law permitting discipline of exceptional students consistent with the requirements of the federal IDEA and clarifies that the 10 days of suspension is for individual or cumulative days in one school year. Similarly it makes state law consistent with recent changes in the federal regulations governing the time frame in which an individual may request a complaint investigation. The appeal process is amended to require an administrative hearing in order to appeal a complaint investigation report because recent amendments to the federal regulations governing complaint investigations have removed the provision permitting appeal to the United States Department of Education. It also extends the same statutory immunity to complaint investigators as currently exists for hearing officers in the Maine Revised Statutes, Title 20-A, section 7207.

The new law requires the Commissioner of Education to amend the rules regarding the procedures for due process hearings to include a process for determining the award of attorney's fees consistent with the requirements of the federal IDEA. It also requires the commissioner to amend the rules regarding the procedures for due process hearing rules to include procedures for mediation of special education disputes and to afford mediators the same immunity provided state employees under the Maine Tort Claims Act, making that immunity consistent with the requirements of the federal Individuals with Disabilities Education Act.

LD 2027

An Act to Enable the Formation of Public Charter Schools

CARRIED OVER

Sponsor(s)
 POWERS
 AMERO

Committee Report

Amendments Adopted

LD 2027 proposes to allow certain educational bodies to approve the establishment of charter schools, a new type of public school, to be a part of the State's program of public education. Charter schools are created to offer students and parents a choice of public schools. This bill would accomplish the following.

1. It would establish that charter schools may be existing public schools or school units, new schools or existing nonprofit, nonsectarian schools that convert to charter status. Sponsors may include a local school board, the board of a Maine postsecondary institution or an identified governmental entity charged with approving and overseeing charter schools.
2. It would establish that charter school staff include teachers holding teaching certificates. Teachers in charter schools may be employees of the charter school and have the right to organize and bargain collectively in a separate unit; or teachers may choose to operate the charter school themselves, as partners or members of a cooperative.
3. It would require that charter schools are open to all students equally, though they may specialize in serving a particular age group, a specific geographic area or a student population with specific needs. A charter school could