

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

H.P. 49 - L.D. 79

**An Act to Ensure a High-quality Education for Students with Disabilities by Clarifying the Definition of "State Agency Client" and Who Provides Special Education Programs and Services**

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

**Sec. 1. 20-A MRSA §1, sub-§34-A**, as amended by PL 2017, c. 148, §4, is repealed.

**Sec. 2. 20-A MRSA §1, sub-§34-B** is enacted to read:

**34-B. State agency client.** "State agency client" means a child with a disability who is 3 years of age or older and under 22 years of age who requires an individualized education program in order to access a free, appropriate public education and who is:

A. In the care or custody, or both, of the Department of Health and Human Services and whose placement, either with a person who is not the child's parent, legal guardian or relative or in a residential setting, is facilitated by a caseworker from the Department of Health and Human Services and funded, in whole or in part, through the MaineCare program or the Department of Health and Human Services, and that placement is for reasons other than educational reasons; or

B. In the custody or under the supervision of the Department of Corrections, including, but not limited to, a juvenile on conditional release, an informally adjusted juvenile, a probationer or a juvenile on community reintegration status from the Long Creek Youth Development Center and who is placed, for reasons other than educational reasons, pursuant to a court order or with the agreement of an authorized agent of the Department of Corrections, outside the juvenile's home.

Notwithstanding paragraphs A and B, "state agency client" also means a child who is under 3 years of age and has a diagnosed, established condition or a biological factor that has a high probability of resulting in developmental delay.

**Sec. 3. 20-A MRSA §7007, first ¶**, as enacted by PL 2011, c. 19, §1, is amended to read:

Related services must be provided by qualified individuals employed or contracted by the school administrative unit, intermediate educational unit, public school or other public agency that receives federal or state funds to provide early intervention or free, appropriate public education services to children with disabilities in accordance with rules adopted by the department pursuant to section 7005.

**Sec. 4. 20-A MRSA §7202, first ¶**, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

Each school administrative unit ~~operating schools~~ shall:

**Sec. 5. 20-A MRSA §7206, sub-§1**, as amended by PL 2009, c. 571, Pt. U, §1, is further amended to read:

**1. Complaint.** An interested party may file with the commissioner a written complaint alleging that a school administrative unit or private school, intermediate educational unit or other public agency serving children with disabilities has failed to comply with this chapter. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received or the complaint must request compensatory services for a violation that occurred not more than 2 years prior to the date the complaint is received.

**Sec. 6. 20-A MRSA §7206, sub-§5**, as amended by PL 1983, c. 862, §60, is further amended to read:

**5. Enforcement.** If the ~~unit~~ school administrative unit, intermediate educational unit, public school or other public agency against which a complaint has been filed under subsection 1 fails to comply with ~~the commissioner's order~~ an order issued by the commissioner, the commissioner:

A. May withhold financial aid from the school administrative unit, intermediate educational unit, public school or other public agency until it complies with the commissioner's order; and

B. Shall refer the matter to the Attorney General, who shall take appropriate action to bring the school administrative unit, intermediate educational unit, public school or other public agency into compliance.

**Sec. 7. 20-A MRSA §7251, first ¶**, as amended by PL 1987, c. 395, Pt. A, §73, is further amended to read:

A school administrative unit or public school may establish an appropriate special education program.

**Sec. 8. 20-A MRSA §15689-A, sub-§1**, as amended by PL 2017, c. 284, Pt. C, §54, is further amended to read:

**1. Payment of state agency client costs.** State agency client costs are payable pursuant to this subsection. As used in this subsection, "state agency client" has the same meaning as defined in section 1, subsection ~~34-A~~ 34-B.

A. The commissioner shall approve special education costs and supportive services, including transportation, for all state agency clients placed in residential placements by an authorized agent of a state agency.

B. Special education costs authorized by this subsection for state agency clients must be paid by the department in the allocation year at 100% of actual costs.

C. The commissioner shall pay only approved special education costs and supportive services, including transportation, authorized by this subsection for state agency clients and may not allocate for those special education costs and supportive services, including transportation, incurred by the school administrative unit for state agency clients in the base years starting July 1, 1985, and every base year thereafter.

D. Transportation costs for state agency clients, when provided in accordance with rules established by the commissioner under section 7204, must be paid by the department in the allocation year at 100% of actual costs.

E. The commissioner may pay tuition to school administrative units or private schools for the education of institutional residents within the limits of the allocation made under this section.

F. The commissioner may deduct from these funds and pay on behalf of the state agency clients allowable school-based costs that represent the State's portion of MaineCare payments. A transfer of payment by the department to the Department of Health and Human Services must be made pursuant to a schedule agreed upon by the Department of Health and Human Services and the department and in a manner that remains in compliance with federal intergovernmental transfer requirements.

**Sec. 9. 34-A MRSA §1206, sub-§1, ¶F**, as enacted by PL 1985, c. 789, §§5 and 9, is amended to read:

F. "State agency client" means the same as set out in Title 20-A, section 1, subsection ~~34-A~~ 34-B.

**Sec. 10. 34-B MRSA §1208, sub-§1, ¶G**, as enacted by PL 1985, c. 789, §§7 and 9, is amended to read:

G. "State agency client" has the same meaning as in Title 20-A, section 1, subsection ~~34-A~~ 34-B.