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SENT BY EMAIL ONLY

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Re: DRM Comments on Proposed “Revised Master Contractual Agreements for Private Schools Offering Special Education Programs”

Dear Ms. Cyr:

Thank you for the opportunity to comment on these proposed master contractual agreements. As we stated in our initial comments in November 2025, which we reiterate and incorporate here:

MDOE should abandon this draft agreement and instead work with the legislature to put forth legislation, this year, to address MDOE’s longstanding failure to fix a structural problem it has been on notice of since OSEP made clear in Letter to Stockford over 20 years ago that the IDEA itself would not fix it. Maine needs to ensure that it has clear statutory authority to require that any schools receiving public education dollars fully comply with federal and state laws designed to ensure access to equal educational opportunity for children with disabilities. And MDOE should, as part of this, ensure that private schools who elect to receive public dollars must fully comply with the IDEA and also, as New Jersey has done, establish that private schools can be proper and even necessary parties in due process proceedings under the IDEA. The type of voluntary compliance MDOE is seeking here will not address the problems – and it certainly won’t if anything like this draft agreement is the only source of MDOE’s leverage.

Unfortunately, the changes the Department made do not address our primary concerns. Simply put, the proposed contracts are not aligned with MDOE’s supervisory obligations under the IDEA. See: 20 U.S.C. § 1412(a)(10)(B)(i)(In order to be eligible to receive funds under the

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IDEA, Maine must ensure that children placed in private schools to receive a free and appropriate public education, and specifically “the State educational agency shall determine whether such schools and facilities meet standards that apply to State educational agencies and local educational agencies and that children so served have all the rights the children would have if served by such agencies.”); 34 C.F.R. § 300.146(“Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency...(b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of this part...and (c) Has all of the rights of a child with a disability who is served by a public agency.”).

On February 17, 2005, the Maine DOE received *Letter to Stockford* from the Office of Special Education Programs, which contains the following language:

If students with disabilities attend a private school in Maine because the State or public agency has placed the child in the school or offered that placement for the child, then MDE and the school district must ensure that these students receive required special education and related services at public expense, at no cost to the parents, in accordance with an individualized education program (IEP)...These students retain all the rights under the IDEA they would have if served directly by a public agency, and MDE and its public agencies must ensure that this occurs.

Letter to Stockford simply reiterated what was already clear from statute – if Maine relies on private schools to deliver a FAPE to students, then those students must have all the same rights as if they were served by a public school, full stop. The letter then goes on to say that securing this compliance, which the IDEA requires, is a question of state and not federal law:

Let us be clear-- The IDEA gives the State and other public agencies no regulatory authority over private schools; and the question of whether the State or public agency contracts with a private school to meet IDEA requirements is an issue between the State or public agency and the private school. Similarly, the issue of whether a State or public agency can require a private school that accepts a publicly-placed student with disabilities to take on these contractual obligations is a matter between the State and the private school under State law. Federal law does not encourage or prohibit the imposition of such requirements as a condition of placing these students in the private school. Regardless of the option that MDE utilizes for educating students with disabilities at private schools, MDE must ensure that the education provided constitutes FAPE for these students, consistent with the requirements of IDEA.

Maine has failed to adequately answer this call in the 21 years since this letter. And as MDOE is aware, the consequences for students with disabilities have been significant as they are often denied access to the schools that serve all the other students in their communities or they are summarily removed from private placements for disability related behavior.

These proposed contracts, especially Section 7 - “Removal or Discharge”, will provide these schools a permission structure to continue this behavior by creating procedures for “Removal”

and Discharge” and “Emergency Termination” that are not at all aligned the procedural safeguards in the IDEA (see generally 20 U.S.C. § 1415), including the right to “stay put” and the protections against disciplinary changes in placement. And in doing so, these proposed contracts are more likely than not to make these problems worse and not better.

Why not just require private schools who seek to receive public funds to sign a master contractual agreement that requires them to comply fully with the IDEA, including with regard to changing the educational placement of children with disabilities?

The proposed language does not even require that a manifestation determination is conducted prior to an “emergency termination” of a student. The proposed language introduces new concepts that have no relationship to the IDEA (or anything currently existing in Maine law), such as “written termination plans”. The proposed language contains many terms, again unrelated to the IDEA, that will be used by private schools to, apparently unilaterally *and pursuant to a contract with the Maine DOE*, terminate educational placements of children with disabilities, including “clear and present threat” and “serious injury” and “repeated acts of violence” without any regard to the procedural safeguards under the IDEA, including the protections against a change in educational placement due to behaviors that are a manifestation of a child’s disability. The result will be children left without educational placements with local education agencies who don’t operate high schools and/or rely on outside private placements holding the bag, and children with disabilities and their families will suffer educational and other harm.

These proposed contracts do not satisfy Maine’s general supervisory obligations under the IDEA and they should not move forward as written. Anything that does move forward should simply require that in order to receive public funds to educate Maine children, private schools must fully comply with the IDEA.

Again, we would be happy to discuss our concerns with you or anyone else at MDOE working on this project. I can be reached at areilly@drme.org or 626.2774 x220.

Respectfully Submitted,



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