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February 10, 2026

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Re: Response and Comments to Updated Draft Master Services Agreement

Dear Assistant Attorney General Forster & Director Frazier,

We are writing to provide our comments on the most recent draft Master Services Agreement ("Updated MSA") that the Maine Department of Education ("MDOE") released on January 9, 2026, on behalf of the undersigned Special Purpose Private Schools ("SPPSs"). As an initial matter, we would like to express our appreciation of the MDOE's efforts to revise the MSA following the prior comment period and willingness to continue seeking input and engaging in a dialogue with the affected schools.

At the outset, we appreciate the progress that has been made in this second draft of the Updated MSA. This second version removed many of the chief concerns that we have identified in the original Master Services Agreement, including some unwieldy legal processes that did not seem to be workable. We also appreciate the ability to continue to work with the Department and provide comments on this ongoing draft. We begin by providing comments regarding the current draft of the Updated MSA and close with a discussion regarding a proposed alternative approach that has been presented and discussed by some attorneys serving public school districts and local educational agencies ("LEAs"). In short, the proposed alternative (requiring a regulatory change to subject SPPSs to due process proceedings) creates a real risk of narrowing the availability of critical student placements across Maine.

With that said, there are several issues that need to be addressed for the Agreement to move forward.

1. **Section 2(a): Approval**

At the outset, we would request clarification on the language under Section 2(a), "Admissions and Placement," which provides in relevant part, "The School shall not admit students under the provisions of this Agreement unless approved through the Department's School approval process." Specifically, the undersigned schools wish to clarify whether provisional approval shall qualify as "approv[al] through the Department's school approval process." Many of the undersigned schools have operated under provisional approval status pending some delays in processing, and we would expect that those delays would not prevent those schools from admitting new students.

2. **Section 2(b): Admission**

Additionally, under Section 2(b), "Admissions and Placement," the draft Agreement provides as follows:

> The School must have a publicly available admissions policy that provides the criteria for admission as well as the process for determining how all students are evaluated for admission. The admissions policy must ensure, at a minimum, that students with disabilities with an LRE that corresponds to educational settings available at the School (as identified in Section 1 above) are admitted in a non-discriminatory manner.

While many of the undersigned schools have admissions policies, there is some concern regarding the meaning and anticipated feedback regarding the schools' "criteria for admission," and "process for determining how all students are evaluated for admission. Pursuant to longstanding nondiscrimination law and as a matter of policy, the undersigned are bound to consider each applicant on a case-by-case basis to determine whether they offer (or can offer) appropriate programming, based upon the needs of the student. Because the criteria and process requirements are unclear, and because many of the undersigned schools report hearing negative feedback from the Department regarding a reliance on "student fit" when considering a student for admission, we feel it appropriate to seek clarification regarding this provision. It is imperative that nothing in this Master Agreement call into question the nondiscrimination obligations under the Maine Human Rights Act, and the IDEA and Section 504 of the Rehabilitation Act.

3. **Section 2(d): Agreement with SAU**

There is a concern regarding the language in Section 2(d). Specifically, the current form of the Master Agreement requires a separate written agreement with the sending school administrative unit ("SAU"), which "identifies, for each service listed on the student's IEP, whether the Placing SAU or the School shall be responsible for that service at the frequency and intensity identified in the IEP." The concern is that, while the agreement at the outset of a student's placement is a snapshot in time, the student's IEP is a living document. While the undersigned schools recognize the importance of clarifying the parties responsible for evaluations and services, rather than freeze

the obligations at the outset, this section should be clarified to allow ongoing reformation as the student's program evolves.

4. **Section 4: Single Point of Contact**

Section 4, "Single Point of Contact," seems to unnecessarily restrict the undersigned and similar special purpose private schools from using its designated or specialized staff from performing their appropriate functions. Specifically, in Section 4's requirement that "The School [] designate **an individual to be the single point-of-contact for all communications** regarding programming for students with disabilities and will obtain a single point of contact from each Placing SAU," the Master Agreement seems to limit the availability of specialized or knowledgeable staff to *communicate* regarding the student. We cannot imagine that this was the Department's intent in crafting Section 4. While we understand and can agree that there may be a point of contact with whom an SAU or parent may direct questions or seek answers, by limiting **all** communications to come from that contact, this creates the inadvertent and impractical result that a student's providers, teachers, reviewers, or other assigned staff would be restricted from having official communications regarding the student's progress or performance. This language could be redrafted to indicate that the single point of contact *to receive* or *to coordinate* all communications regarding the student, or to whom communications *may be directed* from the District or the student's parent(s) or guardian(s).

5. **Section 5(c): Progress Reports**

In Section 5 "Provision of Services," there are various requirements the Master Agreement imposes on schools for adhering to a student's IEP and for meeting with the IEP team. We would call your attention to Section 5(c), which provides in relevant part, "On a quarterly basis, the School shall provide to the Placing SAU progress reports that document progress toward IEP goals and objectives." This conflicts with the analogous provision in the Maine Unified Special Education Regulations ("MUSER"), Section IX.3.*I*.6., which provides that such progress reports shall be "at least as often as the Sending SAU issues progress reports for its in-district students." For many of the undersigned schools, these progress reports are issued on a trimester or semester basis, and providing these reports on a quarterly basis would create an entirely new responsibility outside of MUSER's requirements.

Relatedly, this discrepancy illustrates an important point regarding the Master Agreement. That is, many of the Agreement's provisions *somewhat* mirror, but do not align with MUSER's requirements. While we understand the purposes of this Master Agreement are to clarify the procedural safeguards upon discharge or termination of a student's placement in a private school, these other sections of the Agreement that are wholly unrelated to that purpose are already set forth in MUSER. Stating them separately in this Agreement using different standards or different language creates unnecessary confusion and vagueness. Moreover, there is no need to rephrase or restate obligations that already exist in MUSER, as those requirements continue to apply in full force to the undersigned schools.

6. Section 7(b): Emergency Removal

Separately, there are two questions relating to the definitions that are used to determine whether the termination of services is a planned or emergency termination, the definition of a "clear and present threat to health and safety," which triggers an emergency termination. Specifically, there are two questions regarding the four-part definition for which signers of this contract would benefit from clarification.

First, the aspect of the definition of "clear and present threat to health and safety" that refers to serious injury of a student or staff member in Section 7(b)(v)(1)(a) states, in relevant part, that "serious injury" is defined as any injury "requiring emergency medical attention or hospitalization." We would like clarification regarding what constitutes "emergency medical attention." While hospitalization seems clear, for many of the undersigned schools, emergency medical treatment can constitute a visit to urgent care or to an on-site nurse for immediate medical treatment. Moreover, hospitalization and emergency treatment may not be the best measure of the true risk of harm or potential for injury. For example, if tied to a certain type of treatment or medical outcome, this standard may put the schools' students and staff, and the student at issue, at undue risk when applied practically. In one scenario, where a student engages in dangerous behaviors and break the arm of an individual seeking to intervene and de-escalate the behaviors if caught the wrong way, but the very same behaviors may lead only to a sprain simply by happenstance. A student who engages in biting behaviors may cause serious, permanent, or, in some cases, life threatening injuries if they happen to bite near the face or throat but may also cause less serious injuries if biting in the hands or fingers. This standard is retrospective and must wait until someone is seriously injured, even though the risk may be real and present.

Instead, the undersigned schools would propose a definition that is more measurable, consistent, and focused on *preventing* harm. For example, by stating that serious injury must not be "generalized concerns or minor behavioral issues," for example, the definition can more predictably differentiate between substantial injuries and not minor ones. The definition can also include "a demonstrable and significant risk of injury," and that "the school has exhausted reasonable efforts to address the risk within the current placement." This proposed language tracks closely how hearing officers evaluate the same concerns in the public-school environment. By contrast, tying interventions and educational decisions to medical outcomes seems to force schools to wait until after catastrophe, rather than allowing the schools to prevent it.

Second, in the alternative definition in Section 7(b)(v)(1)(c), which discusses "repeated acts of violence," the definition of clear and present threat to health or safety ties emergency terminations to these "acts of violence against peers *and* staff." (Emphasis added.) We anticipate this may have been a drafting oversight and would not want repeated acts of violence against students only or staff only to prevent the schools from having the ability to make decisions in emergency circumstances. This language should read that a clear and present threat is defined to include "Repeated acts of violence against peers and/or staff . . .".

7. Section 7(b)(2): Emergency Termination Process

One of the more substantial concerns regarding this draft Agreement is the Section 7(b) termination process. Specifically, in order to effectuate a termination of services, even after the school has notified the Placing SAU, there is an IEP team meeting, and the school has made a commitment that it will try every available means to maintain the student's placement while a successor placement can be sought, the Agreement provides that "[t]he School shall not terminate the placement of any student, even in emergency circumstances, until the Placing SAU is informed, *acknowledges responsibility for a successor placement, and schedules an emergency IEP team meeting*." While the undersigned schools understand that this draft follows the Massachusetts approach, and this language appears in the Commonwealth's regulations, we have substantial concerns regarding the potential for impasse if, for example, the district disagrees with the school's decision or simply refuses to take responsibility. The IDEA and MUSER both place the responsibility for finding a successor placement on the Placing SAU and, as stated in our comments to the first draft, there are no mechanisms to enforce the requirement that the Placing SAU schedule or hold an IEP Meeting within the two-week time frame. The concern is that this language creates a substantial likelihood that we will continue to see some of the same legal ambiguities creating a breakdown in the process and potential litigation that this Master Agreement is trying to prevent. We would request that the language tying a termination to the Placing SAU's "acknowledgment" be stricken from the Master Agreement, and if there is no mechanism to enforce the Placing SAU scheduling and holding an emergency IEP team meeting, that any termination of services should not be foreclosed if the Placing SAU fails to schedule an emergency IEP team meeting within two weeks.

8. Potential Alternative Approaches

In recent discussions and based upon the understanding of concerns articulated by representatives of many of the local educational agencies and school districts, the undersigned schools anticipate that the Department may be hearing proposed alternative approaches to the current draft. One of those proposals includes a recommendation that private schools be subject to the same standard as public schools. Specifically, this recommendation proposes a regulatory or statutory change that would subject private schools to due process proceedings and would limit private schools to seek only a 45-day special circumstances removal

For private schools to be limited to either (1) a special circumstances removal, or (2) a due process petition to a hearing officer for removal based on substantial likelihood of injury is clearly not required by the IDEA. The language quoted above from Judge Nivison in the *Spurwink v. Maine Department of Education* case confirms the IDEA does not mandate this result. This would be a new policy choice by Maine's Department of Education.

We do not support this policy choice for several reasons.

First, this will have immediate and detrimental effects on the provision of special education services throughout the state of Maine. If the Department insists that private schools may respond only through special-circumstances removals or by initiating due process proceedings, the

immediate and foreseeable consequence will be to disincentivize schools from accepting students with the most complex and intensive needs.

Critically, many of the SPPSs that serve students (in particular in the rural areas of the state) are small and have limited budgets. While a public agency has recourse to seek additional funding to offset litigation costs, these SPPSs do not have the luxury. Many of the smaller SPPSs impacted by this change would face the potential for insurmountable legal costs, even if they were to succeed in a due process proceeding. This creates a very substantial, very real possibility that small institutions will be forced to close.

Faced with heightened procedural risk, and the potential that the private school could be ordered to readmit a student that they have determined they cannot safely serve, these schools will understandably limit their willingness to take on challenging or risky placements, resulting in fewer available options for the highest-need and historically least-served students. This approach would narrow, not expand, access to educational services and undermine Maine's longstanding reliance on a diverse continuum of placements to meet student needs. This is a direction that reduces capacity, increases exclusion, and ultimately works against the interests of students, families, and the Department.

Second, this approach makes assumptions that does not match the structure of a private school's legal structure. Service providers on staff with undersigned SPPSs are ethically obligated to provide educational programming that they can competently and responsibly deliver. When the student's needs require supports that fall outside that mission or capacity, they must act. This does not only affect students with behavioral needs. For example, many of the schools impacted by this proposed Updated MSA serve a medically fragile student population. It is common for the schools and students to revise care plans when a student's medical presentation changes to avoid situations where those students are not appropriately being cared for. Here, if a hearing officer can indefinitely order a student re-admitted, the SPPS is compelled to continue enrollment places the SPPS in a position of providing services it is not qualified, staffed, or licensed to offer, undermining the integrity of its educational program and violating core professional standards. As noted in our November 15 letter, this is not merely a practical challenge; it is a deep ethical problem. These schools should not be forced to choose between following the Master Agreement and adhering to professional norms, accreditation standards, and their duty of care.

Third, the Department should be doing everything in its power to encourage, not discourage, special purpose private schools to work with students with disabilities who may present challenging or risky behavioral or medical needs. Maine's educational framework should encourage private schools to be nimble, innovative, and willing to take thoughtful risks in service of students with complex needs. Schools are more likely to develop new programs, accept students whose needs may evolve, and offer individualized supports when they know there is a lawful, clearly defined ability to discontinue services if a placement proves unworkable despite good-faith efforts. That flexibility enables schools to respond dynamically to student needs. Many of the undersigned schools have created programs, contracted with providers that they do not generally offer, or enrolled students as a trial or provisional basis to assess whether they can meet the student's needs. This is a key policy feature for Maine's highest-need students and a critical lifeline for public schools, who are seeking referrals for placement because they cannot serve these

students. A system that recognizes the importance of professional judgment and allows schools to adjust course expands capacity, and ultimately increases access for students who might otherwise have no viable placement options. Public policy that disincentivizes this kind of responsiveness harms the public schools who will lose already scarce placement options, harms the students who will not receive services, and harms the private schools, who want to offer these resources for Maine's student populations. Without the assurance that, if in the private school's professional and ethical judgment they can no longer safely or effectively serve a student, they will be able to notify the Placing SAU and the IEP Team of the need to find another placement, schools will understandably err on the side of caution, to the detriment of students and families who most need creative, responsive solutions.

Fourth, and perhaps most critically, it is unnecessary. Private schools and public schools are not similarly situated for the purposes of the state's obligation to ensure that a student enjoys the procedural safeguards guaranteed by the IDEA. The LEAs, in the event of a disagreement among the IEP team, make placement decisions. The private schools do not. Private schools either accept a student's placement, or they do not. When an entity that is responsible for the ultimate authority in making placement decisions removes a student from educational services, that student is no longer being served in their LRE, and it is logical, therefore, that the burden should be higher on those entities to remove a student from programming, rather than to seek a successor placement. If a private school removes the student from educational services, the LEA is then obligated to find a successor placement. Nothing in 20 C.F.R. § 300.146(c) requires the Department to force private schools to continue to educate students that those schools do not believe they can safely educate.

Conclusion

In summary, we appreciate the ability to continue to work with the Department to identify a practical, student-driven approach to this legal issue. It is no secret, as we discussed previously, that Maine is facing a serious shortage of special purpose private schools serving children with disabilities, like the undersigned schools in this letter. Long waitlists of students entitled to these services and statewide staffing shortages have exacerbated these issues, particularly for the most acutely high-needs students.

At the same time, growing evidence indicates that the number of students requiring the type of intensive services SPPS provide is increasing substantially. A policy decision that limits SPPS from suspending or terminating services, even when staff are being rendered unconscious or "permanently disfigured," they cannot suspend or terminate services for a student without violating Department of Education mandates, it will limit those schools' willingness to take on the highest-need students, exacerbate staff recruiting and retention crises that already plague the industry, and create dangerous conditions that unnecessarily risks student and staff safety.

Thank you for your time and attention to the input of this group. We look forward to continuing to work through this cooperatively.

Sincerely,

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On behalf of:

Clarvida – Merrymeeting
The Collaborative School
Dragonfly Academy
Essential Learning Solutions, LLC
The Maine Association of Community Service Providers (MACSP)
Maine School Solutions, LLC
Kidspeace
NFI North
Spurwink Services, Inc.
Waypoint, Maine