The Margaret Murphy Centers for Children
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Re: Response and Comments to Updated Draft Master Services Agreement

Dear Assistant Attorney General Forster & Director Frazier,

The Margaret Murphy Centers for Children submits the following comments in response to the second Priority Notice issued on January 9, 2026, by the Maine Department of Education ("DOE") and the revised draft Master Contractual Agreements for Private Schools Offering Special Education Programs. MMCC restates and incorporates by reference its comments dated November 25, 2025, to the extent that they remain applicable and relevant. The following comments are in addition to those comments and not a substitute for them. As before, MMCC comments are submitted by senior director Michelle Hathaway, Psy.D. in consultation with MMCC staff and outside legal counsel. Before addressing some specific language issues, MMCC offers the following comments as part of the overall context.

First, the statutory authority on its face requires what the statute calls "a master *contractual agreement* between the agency or private school and the commissioner (emphasis added)…." DOE's process to date, the comments to draft documents, and the texts of its notices inviting comments, are all more consistent with rulemaking than with contract negotiation although the statute plainly contemplates a *contractual agreement*. In a real contract, both parties have the right and the power to decline to agree to any specific term or condition. Contractual agreements are negotiated, not imposed by the drafting party on its own letterhead. MMCC has engaged in very productive negotiations with a group of school administrative units ("SAU") and their able counsel about these very same issues. That Agreement, when

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soon concluded, will be entirely sufficient to meet DOE's apparent objectives. DOE's imposed "contractual agreement" should explicitly operate only where there is no agreement in place between an SAU and an SPPS or where DOE has determined that an existing contract is legally insufficient for some articulated reason.

Second, in the drafting of any statute, rule, or contract it is well to have clearly in mind what problems are intended to be ameliorated or resolved by operationalizing the document in practice after its completion. Although the DOE document may be excessively micro-detailed it is not necessarily inconsistent with the long-established practices of MMCC concerning how students are admitted, not placed, and how issues are collaboratively addressed by MMCC and SAUs. The principal point of departure appears to be about an exceptionally rare scenario. MMCC has been in operation since 2000 and in all that time, in all its schools, serving all its many students, in collaboration with many SAU's, there have been about a half dozen occasions on which MMCC determined that it needed to discharge a student. Two scenarios involved students bringing knives into the building/bus and pulling these knives on staff with threats to harm them. The MDOE will never be able to write language which gives the SAU or the IEP team or any judge or anyone else the authority to compel MMCC to allow knives in their buildings. That is not negotiable, if this is truly a contractual arrangement. Relationships with parents will be addressed further below but one of the other cases at MMCC involved credible parental threats against staff members. Neither the dedicated and hard-working staff members at MMCC nor anyone else can be compelled to endure that in a contract between the School and MDOE. If parents cannot conduct themselves appropriately, it is tragic that their children who need the services that MMCC so skillfully provides will lose the opportunity. That, however, is on the parents.

There is no authority in MDOE or anywhere else to compel MMCC to continue to search for new staff to replace those who decide to move on to other work rather than be at risk of the threats being carried out or even having to listen to them. The point is that MMCC always participates to the fullest extent possible in the IEP process to try to find ways and means to serve its students effectively and safely, including program modifications and additional staffing, provided the MDOE or DHHS is willing to fund it. All the MDOE language about what it will take for MMCC to discharge a student appears to assume that there is never a good reason for doing so and that the SAU, and/or the parents and/or the IEP team should have an absolute veto over MMCC's decision even in matters of the physical safety of other students or staff. This is absolutely untenable and all the clever drafting in the world is never going to make it appropriate. A requirement that MMCC is to be disabled from protecting its students and staff from harm until some SAU or some parents are assured of a satisfactory alternative "placement" in Maine is illusory because MMCC is committed to pursuing all safe and appropriate avenues to provide student

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programming. We have a longstanding and well documented history of being able to accept the highest needs students, with great success in programming for them the vast majority of the time.

To the extent that this language is being written for other special purpose private schools that do not properly participate in IEP processes in cases of non-emergency grounds for discharging a student it misses the mark when it really matters. MMCC will go to as many due process events as are required as long as nobody is endangered while the waiting occurs. MMCC is willing to try every reasonable appropriate alternative service provided it has the capacity to provide it effectively and safely *and* is properly financially reimbursed for delivering a service that may require different or additional staff. MDOE's aspirational language seems to be predicated upon the idea that there is *never* a situation in which a student must be separated from a school. Those situations are rare, but serious. The draft provisions, whether in a rule or a contract of adhesion or a real contract will be unnecessary 99% of the time and tragically dangerous whenever applicable.
Some specific comments follow:

1)Vocabulary matters. The term "placement" is misleading because it implies that an SAU has the authority to place a student in any special purpose private school and that a private school has no authority to decline to serve the student even if the school knows that it is not a suitable "placement." Private schools admit applicants on the basis of each school's best judgment about which applicants are best able to benefit most from what the school can offer. Of course that is done on a nondiscriminatory basis. For a school that lacks the capacity to serve a student with a particular kind of disability it is false and insulting to suggest that such judgments amount to discrimination as distinguished from good judgment. Special purpose private schools exist to serve students with disabilities. To decline to try to do the impossible and later deal with the fallout from the inevitable dissatisfaction of the parents or the SAU is not discrimination. It is prudence.
We provided feedback in the first round of commenting that sought to clarify "admission criteria." It is, and has been our operational understanding, that we review the needs of the student being referred and assess our ability- to include environmental needs, physical needs, staffing needs and appropriate peer and instructional needs when considering a referral. It is and should be understood that we do not deny students based on any reason other than not being able to meet their presenting clinical and educational needs, as outlined in our admission policy. Perhaps this is sufficient and not well understood from the language in the contract.

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2)Many parents are supportive of and participate fully in order to facilitate and enable MMCC to serve their children best. Parents who simply fail or refuse to complete paperwork to establish DHHS eligibility and nevertheless demand services for which the parents cannot afford to pay, and for which DHHS would pay if the paperwork was completed, are an increasing challenge, and those parents are not the problem of the school. In addition, some parents are not able to get their children up and out the door for school, resulting in significant absenteeism and truancy, to which DHHS is not responsive to. Some families have their own emotional and behavioral limitations, to include history of incarceration and make threats of violence to staff and to the general school population. Families refuse to sign paperwork allowing implementation of the treatment plan and behavior plan. Families have refused to get their child vaccinated. Families have allowed children with multiple mental health diagnosis' to readily access guns and knives, creating significant safety threats to our school community. We often feel at the mercy of parent involvement and engagement, no different than that of public school personnel, but the inability to provide treatment in a day treatment SPPS facility negates the purpose of the placement.

3)To that point, paragraph 3(b) purports to obligate every school to "…have a procedure for assuring that it is informed by a parent or guardian of any changes…." MDOE should think that through. MMCC and every properly run school has a process for receiving such parental communications and communicating to parents how the process works. To require a school to design a process that *assures that a parent does something that a parent refuses to do* is preposterous. DOE would be far better advised to make a rule saying the children of parents who are uncooperative are ineligible for special education services or find mechanisms to compel parental compliance, or for DOE to supplant the parents as decision makers and complete the appropriate paperwork *in loco parentis*. Blaming the schools because the parents fail or refuse to do what the parents are supposed to do for their children is bad government. As a school system, we have been well served by our very clear attendance policy, enacted after significant truancy. This has been shared by MDOE personnel with other schools as a model policy. We fear this will be stripped from us in this agreement.

4)The word "discipline" ought to be defined in this document because there is a material difference between disciplining a student and protecting the other students from physical harm. Indeed, it is unlikely that any special purpose private school imposes discipline in the old-fashioned sense. Clarity in this term is sought.

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5)As a matter of clarity, the document should define and consistently use terms like "suspension," "dismissal," "removal," discharge," and "termination." MMCC suggests that "termination" be used only with respect to the termination of the agreement ending the relationship, meaning that the school may no longer serve any of the students. It is inherently ambiguous to use the word termination both to describe the end of the entire arrangement between the school and DOE or the SAU and the very rare "discharge" of one student for good cause after all the due process efforts to find a work around. More specifically, Paragraph 7(b)(ii) is at best impossibly overstated. The school is required to make a commitment to the SAU that it will try every available means to maintain the student's placement until the placing SAU and/or DHHS has had sufficient (how much is sufficient?) time to search for an alternative placement. The potential for slow walking the search is palpable, the burden of maintaining a relationship while others do not want it to end is misplaced. It would be better if DOE or the legislature obligated DOE and DHHS to provide or support the kinds of services needed that are beyond the scope of this or that school.

6) Paragraph 7(b)(v)(1) needs serious editing. The term "clear and present threat" is defined as serious injury not any injury, i.e., a real injury that some imaginary proxy who didn't experience any imaginary injury thinks is not so serious. Apparently, injuries that do not require emergency medical intervention or hospitalization are nothing justifying action. Does criminal activity require a conviction, or an allegation, or a judgment by the school, or a judgment by DOE, or agreement from DRM? What bullying is classified as "severe" is assessed at DOE or the SAU, not by the person being bullied, both of which want to avoid having to find another "placement" for a bully. The trophy, however, goes to the idea of *repeated* acts of violence against peers and staff where the students' behaviors have not changed as a result of programming modifications. How many people have to be beaten up and how often, to what degree of severity, to meet this standard? This is obviously written by somebody who doesn't expect to get beaten up, and who dreads having to find a new "placement." Again, we have extensive history of working with children with some of the most severe levels of aggressive behavior with great success, but we must point out this nuance.

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7) Paragraph 7(b)(v)(2) seems to be the primary reason that all the other words in all the other sections are written. The phrase "terminate the placement," presumably the same as discharge, even in an emergency situation, cannot occur until the placing SAU acknowledges its responsibility for successive placement. This empowers the SAU to decline to acknowledge and thus stop the clock indefinitely. Of course, the SAU *has* this responsibility, whether it is acknowledged or not. The primary point of IDEA is that the public SAU has the responsibility to provide the services or make arrangements for them. Where the sending SAU has failed to provide the services in its own facility or successfully place the student in a suitable private facility, it is inherently the SAU's obligation to find the next placement or do the work itself. This approach nullifies the inherent authority of the private school to protect the other students and its staff. Of course, the final discharge or termination, whichever term is going to be used can be postponed indefinitely if the student is absolutely, categorically, 100% unable to harm or threaten anybody else in the building. If the student in question is at home getting programming via Zoom or some other such modality and nowhere near the building, maybe it can go on forever and maybe the discharge can be avoided. On the other hand, if the point of this is that the dangerous student must be allowed to continue to endanger or harm people while the SAU or IEP team, or somebody else, carefully, cautiously, and most of all slowly considers what else to do, that is a nonstarter. If this is a contract negotiation it is a "dealbreaker." If it's a rule, it is certainly the right and probably the duty of the schools to seek judicial review of it. In a situation experienced in an MMCC program last year, the IEP team agreed that the student needed a more restrictive placement. The student was approved for residential programming, was accepted into a program and the parent declined when offered an open bed. We later learned that the Special Education Director resisted making outside referrals until nine months after agreeing to do so- and counter to what our team was told. All told, we maintained the student for a full year before another placement was sought- at continued risk of harm to both the student, their peers and staff. In this situation, MMCC went above board in programming for this child, and the parent and SAU failed in meeting their obligations/agreements to the team.

Of further note, last Summer, MMCC worked diligently to support a child in acute behavioral crisis- ripping his own adult teeth out of his mouth, breaking his own toes, gouging out esophageal tissue, bruising his face and limbs and attacking staff. FBA's and FA's were conducted, psychiatry was consulted daily- ultimately this child was hospitalized for what was likely medication induced psychosis and was absent for three months. Despite having to staff him with up to eight adults and needing to call 9-1-1 for administration of injected sedatives, we maintained his placement while the family desperately sought a hospital in New England that could accept him. Although he was/is approved for residential care, there is not a program in the country that accepts MaineCare that is willing to accept him as his needs are too

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great. He was accepted into an acute crisis center in Rhode Island. The Special Education Director was not willing to discuss alternative placement or consider our bid to discharge as "there is no one else who will take him."

We are very aware that one of the largest problems we face with our highest needs students is that if we discharge them due to inability to keep them/others safe, SAU's literally have no other alternative. Although the MDOE is seeking to replicate much of the language Massachusetts has adopted, we must be honest in the recognition that this State is far superior in the offerings available to children needing acute crisis intervention, medication management, residential programming and wrap around services. Often times when we are unable to meet those student's needs, it is because they need psychiatry, wrap around care, in home support or residential services that simply do not exist for children in this State with high needs. Existing programs will not take the students that we cannot serve and this is terrifying to Directors and it comes with an exorbitant price tag when considering the next level of placement. We know this, and when ever possible, have worked to avoid this next level of restrictiveness but we cannot always prevent it. Our service system is very broken and fragmented right now, and we are all feeling this as we try to program for the neediest of students.

8) Paragraph 8 uses the word "termination" not with respect to the discharge of a student but the complete end of the entire contract. Presumably the end of the contract means that the school is no longer able to help any students and all the other students who are flourishing there will have to go someplace else. That seems an overreaction to an untimely correction of a violation of this "agreement" or a corrective action plan. One would suppose that the DOE would prefer to retain the discretion to close the school instead of making its closing automatic or obligatory.

In short, MMCC is always committed to trying anything reasonable to help every child it serves. The involuntary imposition of this contract of adhesion or rule without rulemaking is apparently to try to prevent some other school from wrongly or prematurely discharging a student in a rare case. We certainly can see the need for continued clarity in process and support and ensuring that all parties adhere to MUSER and process. At the same time, we are left without assurances that all parties within the child's team adhere to the same expectations, and/or are concerned we will be placed into a position of maintaining students or parents who pose serious risk to our school community.

We have been and will continue to work with SAU's on a contract with mutually agreed upon terms and conditions. We would encourage the MDOE to consider this contract (expected to be signed this week) as it truly considers all vested parties, their interests and student rights. We understand the history of events that has

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contributed to this current focus, and we seek to be good partners and providers of very specialized services in Maine. We thank you for your continued endeavors in seeing this important work through to the end.

Sincerely,
Michelle Hathaway, PsyD, BCBA-D
Senior Director
The Margaret Murphy Centers for Children