

DRM Comments on Draft “Master Agreement”

As MDOE is aware, DRM has expressed concerns for years regarding the ways in which Maine’s use of private schools to deliver public education impacts children with disabilities – who are often excluded on the front end through discriminatory admission practices and or removed from school or otherwise subjected to changes in educational placement when private schools take actions while refusing to provide students and their families the procedural protections afforded under the IDEA. This results in students being left without a school, sometimes for very long periods of time; and it undermines the core protections of the IDEA for many others. Unfortunately, this proposal will not fix these problems. And worse, it is likely to exacerbate them by creating a permission structure that will allow them to proliferate.

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 here. We were struck at the IDEA SAP meeting last week when concerns were raised by the Maine Parent Federation about schools likely refusing to sign this agreement and Director Frazier said - we don’t expect anyone to sign this. We are not sure what to make of that but I guess we share the pessimism about this agreement. Please, start over and move to a statutory fix – if private schools in Maine receive state and federal dollars (passed through MDOE and a sending LEA), then they should be subject to the same rules and have the same responsibilities as public schools. We think many of these responsibilities are already clear, but we know MDOE has taken the position that it does not

have statutory authority to compel a private school to comply with the IDEA – so we had hoped to see a proposal to address the actual problem.

We understand that MDOE reached out to attorneys who represent private schools and public schools in the development of this draft “master agreement” prior to this draft being released for comment. We would be happy to discuss our concerns with MDOE staff. Please reach out anytime. Until then, here are some brief thoughts:

Section 1. In this section, you list the related services under the IDEA in a check box format – allowing any private school that seeks to provide special education to, apparently, NOT check one of the boxes. If a private school, such as one of the academies that serve entire communities as the default public high school just decides not to check any boxes here, do they still get to contract with MDOE to deliver an approved special education program? What would be the legal basis for such an exemption for a private school to provide legally required related services, such as nursing services for a student who needed such services to access a FAPE? Or assistive technology necessary to ensure access to the general education curriculum? This will create a permission structure for these schools to say they do not provide the basic things that a child with a disability might need to have equal access to their educational programs and activities – and it would put MDOE in the position of approving a special education program that states at the outset it does not provide legally required services under the IDEA. Why?

Sections 2 and 3: We have the same concerns about Section 2 as Section 1 – it will provide a permission structure for schools to opt out of providing services to many students with disabilities. A school could, as we expect at least several will, check the first box and nothing more, or perhaps the first two boxes. While it would be wonderful if this was because we thought the private schools were doing a great job of using universal design principles and pushing supports in to the general education setting for students with support needs. Unfortunately, we are fairly certain that is not the case. When this section is read in conjunction with Section 3, which requires a non-discriminatory admissions policy (yea!) BUT only when the students have an “LRE that corresponds to educational settings available at the school (as identified in Section 2 above)”, it simply provides a road map to exclude children. Based on your draft agreement, the easiest way for a private school to exclude many students with disabilities, apparently with the permission of MDOE, would be to check only the first box and then they can, consistent with the contract, exclude

anyone with a need for specialized instruction delivered outside the classroom for more than 21% of the day. Is this what MDOE wants? Where will those children go who won't be served by that school but also who have no other high school because all or nearly all of their peers move to the "private" school for high school? Would the private school still get to operate a special education program approved by MDOE?

Section 6: We have a number of concerns about this section and would be happy to discuss them. But it basically boils down to the concern that, again, this will serve as a permission structure to violate the federally protected rights of students. And in some cases it looks like this contract would compel public schools to take actions ("use of applicable special circumstances removals", etc.) that will violate the federally protected rights of students, when a private school simply informs the public school that they cannot safely continue to serve the Student (we understand there are steps and it is more complicated, but it boils down to this – if a private school decides it won't serve a student, that Student's stay put rights will not be sufficiently protected by this agreement). This agreement is really concerned with the imagined rights of schools to exclude students and not the right of students not to be excluded for manifestations of their disabilities. If it were otherwise, the word manifestation would be in the draft agreement. It does not need to be this complicated. Just make clear, as New Jersey and other states have done, that private schools serving students protected under the IDEA are proper parties in IDEA proceedings and must fully comply with the IDEA.

Thank you and please reach out with any questions.

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