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## Written Comment for Master Agreement between the Maine Department of Education and Approved Private Schools

Dear Commissioner Makin and the Maine Department of Education Team,

On behalf of the Maine Administrators of Services for Children with Disabilities (MADSEC), thank you for the opportunity to provide public comment on the proposed Master Agreement between the Maine Department of Education and Maine Approved Private Schools. MADSEC supports efforts to create clarity and consistency; however, concerns remain regarding operational feasibility, ethical and legal implications, and the impact between SAUs, SPPSs, and private academies.

### Key Concerns and Questions

- Public schools are legally responsible for FAPE, yet are not signatories, raising possible legal and procedural conflicts
- Requirement for public schools to file expedited hearings when the private school is requesting discharge of the student, not the public school
  - A conflict of interest between SAUs and SPPSs
  - Ethical issues (attorney cannot represent both)
  - Liability concerns (public school insurance does not cover filings when public school files)
- Need for clear guidance for private school admission policies for waitlists, program-specific enrollment, program capacity limits
- Undefined terms like “imminent risk” and “no longer appropriate placement” create inconsistent decision-making.
- Given the embedded checklist, is the intent that the private school can select which special education services they provide regardless of the services and supports listed in the student’s IEP even though the private school is an approved school for special education programming, including who is responsible for conducting evaluations
- Conflicting deadlines for program approval - Section 8(b) requires policy submission by July 01, 2026, but private schools in the current monitoring cohort have been directed to submit by January 02, 2026, which would be impossible without a final Agreement



- Vagueness in the Agreement language
- Question whether such changes should be made through rule making rather than an Agreement
- Language requiring “regular education services” (Section 4) does not align with SPPS settings that are 100% special education.

#### **MADSEC Recommendations**

- Create a separate agreement for Special Purpose Private Schools from other approved private schools
- Clarify all consequences for non-signature, noncompliance, and how the Agreement interacts with school approval and funding.
- Define vague terms such as “imminent risk” and “no longer appropriate placement.”
- Use MUSER XVIII.4.B language to describe service responsibilities (“implementing the child’s IEP...”).
- Align deadlines with the finalization of the Master Agreement.
- Align language more closely with IDEA / MUSER language

In closing, MADSEC appreciates the Department’s intentions in pursuing a statewide Master Agreement and the opportunity to provide comments on the proposed language. We strongly urge the Department to revise the Master Agreement to include language from the attached red-line version for clarity and better alignment to IDEA and MUSER and to further discuss the ethical and legal implications of requiring the public school to file an expedited hearing on behalf of another entity, i.e. private school.

Thank you for your consideration and continued work to best support public and approved private schools, and most importantly, students with disabilities in Maine’s educational framework.

Respectfully,

*Gay Anne McDonald*

Gay Anne McDonald  
Executive Director  
MADSEC



[DOE letterhead]

# MASTER AGREEMENT

Between an Approved Private School Seeking to Offer  
a Special Education Program and the Commissioner of Education

## STATUTORY AUTHORITY:

### **20-A M.R.S.A. §7252-A. Early intervention; special education programs; approval**

. . . A special education program may be offered by a school administrative unit, an approved private school or a state licensed agency. All . . . special education programs offered by approved private schools or state licensed agencies must:

- 1. Supervision.** Be provided under the supervision of the school administrative unit responsible for the education of the child with a disability enrolled in the program;
- 2. Description.** Be described in a master contractual agreement between the agency or private school and the commissioner; and
- 3. Approval.** Be approved in advance of the enrollment of any child with a disability.

In accordance with 20-A M.R.S.A. §7252-A(2), to ensure compliance with State and Federal laws and regulations and to establish a common framework that defines the roles of the participants in order to provide education programming to students with disabilities served in private programs, [Name of Private School] (the “School”) and the Commissioner of Education hereby enter into the following Master Agreement governing the operation of a special education program. Nothing in this Agreement removes any obligation of the School to obtain the applicable school and/or program approval, or to comply with any applicable State or Federal law or regulation.

Nothing in this Agreement prevents the School from entering into contractual agreements with one or more school administrative units that place students at the School (Placing SAUs), so long as those agreements do not conflict with this Master Agreement.

1. Services provided (MUSER X.2.A, XI). The School provides the following special education and related services:

- ☐ Assistive technology services
- ☐ Audiology services

- ☐ Counseling services
- ☐ Interpreting services (cut hearing aids)
- ☐ Medical service
- ☐ Orientation and mobility services
- ☐ Occupational therapy
- ☐ Physical therapy
- ☐ Psychological services
- ☐ Recreation services
- ☐ Rehabilitation services (cut leisure services)
- ☐ School health and nurse services
- ☐ Social work services
- ☐ Speech-language pathology services
- ☐ Transportation

Based upon the needs of the enrolled students, the School may be able to expand the services offered, and to provide additional services in addition to those checked above.

2. Educational settings (MUSER X.2.C.2). All students with disabilities are entitled to receive special education and related services in the least restrictive environment (LRE). The School offers the following educational settings:

- ☐ Special Education outside the regular classroom less than 21 percent of the day (MUSER X.2.C.2.a).
- ☐ Special education inside the regular class no more than 79 percent of the day and no less than 40 percent of the day (MUSER X.2.C.2.b).
- ☐ Special education inside the regular class for less than 40 percent of the day (MUSER X.2.C.2.c).
- ☐ Separate School-Special Education outside public or private school for greater than 50 percent of the school day (MUSER X.2.C.2.d).

The School shall have policies and procedures in place to transition students with disabilities to less restrictive placements in accordance with the determinations of a student's IEP Team.

3. Admissions. 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, including students with disabilities, 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 2 above) are admitted in a non-discriminatory manner.

4. Provision of services. For each student with a disability enrolled at the School, the School shall provide regular education, special education and related services in accordance with each student's IEP. The School may not make any changes to a student's IEP without following the procedure in Section 6 below.

5. Attendance. The School shall maintain a record of the student's attendance, including any removal of the student by the School from their educational program, regardless of whether it is specifically identified as "disciplinary." The record of the removal shall identify the reason it occurred. Early release from educational programming constitutes a removal. The School shall inform the Placing SAU when a student is absent or out of program for 10 cumulative school days in the school year, and any subsequent 10 cumulative days out of program in that school year so that the SAU can make a determination whether an IEP Team meeting is required.

6. Removal or discharge (20 U.S.C. §1412(a)(10)(B); 34 C.F.R. §300.146(c)). The School shall have a policy for removal or discharge of students with disabilities that includes the following:

- a. Before ~~making any changes to a student's IEP or educational program (including the ordering~~ removal or discharge of the Student from the School), the School shall provide written notification to the Placing SAU and to the student's parents, informing them of the intention to remove or discharge and the reasons for that intention. The Placing SAU shall then ask the Placing SAU to reschedule and hold an IEP Team meeting, ~~even if the student's parent agrees with the proposed change. The IEP Team meeting shall be held~~ as soon as possible, taking into consideration the parent's right to attend, and no later than 10 business school days after receiving the School's request notice of intent.
- b. If the IEP Team does not reach consensus on a proposed ~~change to a student's IEP or educational placement~~ removal or discharge of the student, the following steps shall occur, ~~and the Placing SAU and the School are in disagreement~~:
  - i. The Placing SAU and the IEP team shall develop an interim placement proposal for the Student and begin a search for an appropriate successor placement for the child. The School shall provide assistance to the Placing SAU regarding effective implementation of the interim placement. The Placing SAU shall issue a Written Notice documenting the decisions

made, including the School's decision to remove or discharge the student from its program. If the School does not believe that it has the capacity to carry out a student's IEP safely and successfully, and/or believes that it is no longer an appropriate placement for a student—even after the consideration of changes to the IEP including additional supports—the Placing SAU shall provide Written Notice to the parent of a change of placement and begin the search for a successor placement.

- ii. While the Placing SAU searches for a successor placement, the student shall continue to attend the School in accordance with the Student's last agreed upon IEP and placement, and the School and the Placing SAU shall work together in utilizing functional behavioral analysis, introduction or modification of behavior plans, use of applicable “special circumstances” removals by the SAU as set forth in IDEA/MUSER, or other interventions considered appropriate to ensure the student's, other students' and staff's safety.
- iii. If the parent challenges the change of placement removal or dismissal decision by exercising their due process rights, the School shall serve as the “stay put” placement, unless either the IEP team identifies a different and available placement that meets IDEA “maintenance of placement” requirements, or the School informs they inform the Placing SAU that they are unable to maintain the child's current placement do so without a substantial n imminent risk of harm to the health and safety of to the student, other students, and/or school staff.;
- iv. Should the School conclude that maintenance of the student's placement will present a substantial risk of harm to the student, other students, and/or staff, the If the School shall inform informs the Placing SAU and Parents in writing that they cannot continue to serve the student without the imminent risk described above, and the District shall Placing SAU develop an alternative educational plan and shall seek relief judicial relief from any “stay put” order through an expedited due process hearing. The child's stay put placement during that expedited hearing shall be in accordance with applicable standards in the IDEA..
- v. During the due process hearing, the Placing SAU shall ensure that the School has the opportunity to present testimony and documentary evidence and offer legal arguments regarding the placement of the student at the School. The Placing SAU may, however, provide evidence contrary to the position taken by the School.
- vi. If a due process hearing officer or a federal court determines that the student's placement at the School is appropriate, or that there is not a substantial likelihood of injury if the student were to remain in the placement while alternatives are sought, then the Student shall remain at the School pending any appeal or any further judicial action.-

c. The process set forth in Section 6(b) above shall also apply to circumstances when the IEP team concludes that a student's misbehavior is a manifestation of the

child's disability, and the IEP team is unable to reach agreement on an alternative placement for the child.

d.. Nothing in Section 6 above shall in any manner limit the School or the Placing SAU from seeking judicial relief from any of the requirements set forth in that Paragraph.

- c. If the School and one or more Placing SAUs agree on an alternative process to that described above in ~~sub~~paragraph ~~6b~~ that ensures the same outcome: that a student placed at the School has the same rights as a student served at a public school as required by federal law, the School may submit it to the Department for approval to replace ~~sub~~paragraph ~~6b~~ prior to implementation.

7. Relationship to the Placing SAUs (20-A M.R.S.A. §7252-A(2)). The School will 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 School shall permit the Placing SAUs' designees to enter the private school to visit classrooms, meet with the School's designee, and talk to the staff about the progress of individual students.

8. Monitoring and enforcement.

a. Access to records. The School will allow the Department to access the records necessary to determine whether the School is in compliance with this Agreement.

b. To the extent that the School requires parent consent for release of education records to either the Department or the Placing SAU pursuant to MaineCare requirements, the School shall obtain such consents and keep them current over time.

a.c. The School shall provide copies of all Chapter 33 reports to the Sending SAU's superintendent and Director of Special Education in a timely manner. The School shall also notify the Sending SAU's superintendent of schools and director of special education of any incidents of drug violations, weapon violations, or the infliction of serious bodily injury.

b.d. Submission of policies/documentation. The School shall submit the policies referenced in this Agreement on or before July 1, 2026. Documentation of alternative removal/discharge arrangements between the School and one or more Placing SAUs pursuant to Section 6(c) must be submitted to the Department prior to their adoption.

e.e. Monitoring. The Department will establish a routine monitoring cycle for private schools that operate special education programs that is separate from the monitoring of the Placing SAUs.

d.f. Enforcement. As a result of the monitoring process above, in response to a complaint by a parent/guardian or a Placing SAU, or on its own initiative, the Department shall take the following steps to enforce this agreement: giving the School the opportunity to respond, conducting an investigation as necessary, issuing findings of fact and conclusions of law, and providing a corrective action

plan (CAP) for any violation of the Agreement that must be completed within a time specified. If the School disagrees with the findings, conclusions or CAP, the Department will offer an administrative hearing in accordance with the Maine Administrative Procedure Act, 5 M.R.S. §9051 *et seq.* The determination reached at the end of the administrative hearing shall constitute the Department's final agency action.

e.g. Termination. Failure by the School to timely correct a violation of this Agreement or comply with the terms of a CAP shall result in termination of this Agreement at the end of the then-current school year.

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