

LD 98: An Act to Update the Special Education Laws

Good afternoon, Senator Rafferty, Representative Brennan, and Members of the Joint Standing Committee on Education and Cultural Affairs.

My name is Dr. Kathryn Hawes. I am Director of Special Services for MSAD 6 which are the Bonny Eagle Schools. I am providing testimony neither for nor against LD 98.

For the past 28 years, I have worked in Maine's public and private schools on behalf of all students, especially those with disabilities. I fully support the provision of appropriate IEP services and thoughtful planning and preparation for post-secondary goals for all students. I am in support of many of the language changes proposed in LD 98. Relative to the language of extended eligibility until age 22, I understand the Rhode Island ruling (*K.L. v. Rhode Island Board of Education*, 907 F.3d 639 (2018) and the Maine Department of Education Administrative Letter that followed in January of 2021. However, I am concerned about the unintended consequences of these that are negatively impacting our schools, families, and adult students. I believe that some of the language in LD 98 provides much needed clarity while other language falls short. Let me share with you how this is playing out in our schools.

For the past two years, since this Administrative Letter, there has been much dialogue about its interpretation. Initially, this was said to apply to a very small number of students. Hearing from the Maine Department of Education that it would apply to just 69 students statewide I, and many Directors across the state, did the math and figured we might have a student who we consider for this option every 8-10 years. This made sense as many of us have faced a unique situation in which a student needs just one more graduation credit, a transition activity, or a little more focused instruction to be ready for their post-secondary placement but ages out in June of their 20th year. Further, a closer reading of the Rhode Island ruling clarified that the requirement is because, like Maine, Rhode Island offers publicly funded Adult Education services, thereby expanding the expectation for similar publicly-funded services for students with disabilities until the federal IDEA standard of their 22nd birthday. Like same-aged peers in adult education, focused instruction toward specific skills or activities.

From January 2021 through last week, I have found myself in many IEP meetings on behalf of 19 and 20-year-old students, slated to graduate in 2022, 2023 or 2024, who are seeking to remain at the high school for another 2 years. Since they are meeting graduation credits, we turn to their post-secondary transition plans. We ask parents and adult case managers how things are progressing in securing funding for, and placement in, adult services. The response is that adult case managers are advising parents not to get their adult students on waiting lists for funding and / or placements because they and the parents have decided that the student will stay in school until their 22nd birthday. When asked what skills the student needs to work on, the response is more of the same. When asked how much time is needed, the expectation is always a full school day, full school week, for 2 more years in the high school. Many of these students have already been in high school for 6 years. Their peers have moved on and there is no general education funding for these students. Further, it remains unclear how long we will even receive specialized funding for the special education programs of these students. They have received excellent educational programs and are ready to move on to post-secondary settings.

Special purpose private schools have provided services to our high-cost out of district students and prepared them for their next setting. They are ready to assist these adults through the transition and then to accept younger children who have been on waiting lists for these services. There is no MaineCare funding after age 20 to pay for the behavioral health care portion of the already costly tuition so that cost will be passed on to local taxpayers.

I believe the following language in LD 98 will be helpful to students, families, and schools in Maine:

- “Educational programming may be full or part time.” This language allows programming for adult students, aged 20-22, to be completely individualized in length and structure as determined by IEP teams and set forth in student IEPs. Since there is no comparable length or structure for students ages 20-22, aside from Adult Education, which is variable and individually focused.

I believe that clarification is needed in the following areas of LD 98:

- Clarification or acknowledgement and funding to support the true number of students who will have extended eligibility: Discussions around LD 98 have focused on a very small number of students with low incidence disabilities. This is not the case. As written eligibility will be extended for any student with an IEP, anyone suspected of having a disability to whom the school will have a “child find” obligation, students with IEPs who stop attending by have not dropped out of school, etc. This is a much more extensive and costly obligation.
- Clarification of the free, appropriate public education (FAPE) standard: LD 98 states educational programming “must be equitable to that provided to typically developing same age peers”, however there is no clarity in the bill as to the educational program(s) that serves typically developing same age peers. An assumption can be made that Adult Education is an equitable educational opportunity, however LD 98 is unclear on this point.
- Clarification around least restrictive environment: LD 98 states students “... must be educated with children without disabilities” however there is no general education funding or programming for adults who fall within the extended eligibility to age 22.
- Addition of language around the obligation of DHHS and adult service providers in planning for and supporting people ages 20-22 with disabilities. Simply deferring the transition is not in the best interest of students, families, or schools.

Respectfully submitted,



Kathryn Hawes, Ph.D.