

DISABILITY RIGHTS MAINE

February 21, 2023

Submitted By Hand

Senator Peggy Rotundo, Chair
Representative Melanie Sachs, Chair
Committee on Appropriations and Financial Affairs
c/o Office of Fiscal and Program Review
5 State House Station
Augusta, ME 04333

Senator Joseph Baldacci, Chair
Representative Michele Meyer, Chair
Committee on Health and Human Services
c/o Legislative Information
100 State House Station
Augusta, ME 04333

Re: LD 258, Biennial Budget (Part A, Page 193) - Funding to Disability Rights Maine for special education advocacy

Dear Senators Rotundo and Baldacci, Representatives Sachs and Meyer, and members of both committees:

My name is Ben Jones and I am a Managing Attorney at Disability Rights Maine, Maine's protection and advocacy agency for individuals with disabilities. Thank you for the opportunity to appear before you today in support of the proposal in the biennial budget to continue financial support for special education advocacy at Disability Rights Maine ("DRM"). The proposed Biennial Budget (Part A, Page 193), calls for an annual appropriation of \$146,045 for FY 2023-24 and FY 2024-25. This appropriation of general funds through the Department of Health and Human Services is an increase of \$20,000 over the level of funding the State has provided to support educational advocacy at Disability Rights Maine from 2007 to the present. As the Budget states, the increase provides *funding for increased costs resulting from inflation and cost of living wage increases*.

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MAINE'S PROTECTION AND ADVOCACY AGENCY FOR PEOPLE WITH DISABILITIES

Disability Rights Maine is a private non-profit organization, governed by a volunteer board of directors, and designated by the Governor of Maine to serve as Maine's independent protection and advocacy agency for people with disabilities. DRM works to ensure autonomy, inclusion, equality, and access for people with disabilities in Maine through education, strategic advocacy, and legal intervention. We have over fifty staff, fourteen of whom are attorneys, and work within over twenty funding sources across federal and state programs to ensure that Mainers with disabilities: are protected from abuse; are able to control the decisions that affect their lives; receive the services and supports necessary to live independently; have the opportunity to work and contribute to society; and have equal access to the same opportunities afforded other Mainers.

DRM has two attorneys who provide educational advocacy services statewide. Because there are no federal funds earmarked for educational advocacy, the State of Maine has, in recognition of the importance of this work, supplemented our federal funding through this general fund appropriation in the DHHS budget. This funding allows DRM to provide free advocacy and support services to students with disabilities and their families. These funds are used to represent students with disabilities who are: placed inappropriately in segregated or unnecessarily restrictive settings; excluded from school for reasons related to their disabilities; victims of abuse or neglect while at school (including the inappropriate use of seclusion and restraint); or receiving an education that is inadequate to prepare them for transition to post-secondary activities.

The two attorneys supported by this funding handled 109 individual cases in FY 2021 and 134 individual cases in FY 2022 while also providing technical assistance to dozens more families. This individual representation involved a wide range of activities - from assisting parents and students with self-advocacy skills, to filing administrative due process proceedings and complaints with the Maine Department of Education. These services were delivered state-wide, with multiple cases handled in each of Maine's sixteen counties. In addition to individual representation, DRM conducted extensive training and outreach activities, developed educational materials, and worked with diverse partners to seek systemic solutions to common problems. This included work with various partners to educate families about the inappropriate use restraint and seclusion in schools that disproportionately effect students with disabilities.

Since schools reopened to in person learning in the fall of 2021, many students regained access to the free appropriate public education they have a right to receive, which some schools failed to deliver during the Covid-19 pandemic closures. Unfortunately, not all schools have kept the school door open to all students. We have seen a marked increase in calls from families with students who are being denied access to a full day of school – double the amount prior to the Covid-19 pandemic closures. This school year more than any in recent memory has seen school districts and Child Development Services under the incorrect belief that if you don't have staff or programs, you don't have to educate children with disabilities. There is no ambiguity to in the law – they must provide students with disabilities a free appropriate public education.

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DRM continues to use individual and systemic advocacy tools, both formal and informal, to ensure that students with disabilities receive equal access to educational opportunities and to enforce their federally protected rights.

Without this continued state funding, DRM would no longer be able to engage in the important advocacy work to ensure that children with disabilities are provided equal access to educational opportunities in integrated settings, with the services and supports they need to move successfully from school to postsecondary education and training, employment, and independent living.

To help demonstrate the significant impact these funds have on students with disabilities and their families, we have included some case summaries from FY 2021 and FY 2022 with this letter. Thank you for your time and I look forward to answering any questions you may have about this important work.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'Ben Jones', with a long, sweeping horizontal line extending to the right.

Ben Jones
Managing Attorney
Disability Rights Maine

Encl. Disability Rights Maine, *Selected Recent Education Case Summaries*

DRM files due process hearing to secure appropriate educational services and compensatory education: The parent of an 11-year-old Student with autism contacted DRM concerned that the Student was out of school, receiving a fraction of the supports and services in her IEP. The Student had been attending a full time day treatment program and unilaterally, her school day was first reduced due to lack of staff and then the program discharged her. She was without a program for months while the school district searched for another program and in the meantime provided a few hours of tutoring per week and occasional social work services. The DRM attorney supported the family in advocating for the Student's return to a full day of programming with her IEP and when the District did not, DRM represented the Student in filing a due process hearing. After filing, the District found a new program for the Student that the family supported and the Student returned to a full day of school and the parties settled the case with substantial compensatory education for the Student.

DRM advocacy results in hiring of an independent expert and updated behavior and communication support plans to address use of restraint and seclusion: The guardian of a 7-year-old Student with mental illness contacted DRM concerned that the Student was not being provided appropriate behavior supports and isolated from his peers - the Student endured restraint and seclusion unnecessarily and was repeatedly removed from the classroom. The DRM attorney reviewed the Student's records and provided the family with information on the Student's right to a free appropriate public education. The DRM attorney assisted the family in requesting an investigation into the restraints and seclusions. The investigation found that the district erred in failing to provide the family with documentation and they issued new incident reports. The DRM attorney also assisted the family in improving the Student's IEP and placement by preparing them for multiple IEP meetings, resulting in the district hiring an independent behavior expert and updating the Student's behavior and communications plans.

DRM complaint results in restoring Student's access to a full school day: DRM successfully enforced the rights of a 13-year-old Student with mental illness, securing her return to a full school day in person with appropriate mental health supports and access to the regular education classroom. The Student's family contacted DRM concerned that the Student had been removed from school for over 20 days without access to any in person learning or a full school day. The school had first suspended the Student after she had a mental health crisis at school and then placed her on 2 hours of virtual tutoring per day from her home. The Student had a 504 plan and behavior plan and had been referred for special education services months prior. The DRM attorney met with the family and reviewed the Student's records. The DRM attorney prepared the family for an IEP team meeting where the district refused to allow the Student to return to school. The DRM attorney represented the Student in filing a complaint against the district and participated in subsequent IEP meeting and mediation. The DRM attorney successfully secured the Student's right to return to school, in person, for a full school day and settled the complaint with compensatory education for the Student and training for the Student's staff in trauma-informed practices and special education law.

DRM provides self-advocacy support that results in a return to a full school day: The parent of a 14-year-old Student with mental illness contacted DRM concerned that the school district was failing to provide the Student with an appropriate education, including keeping him on an abbreviated school day for over a year. The DRM attorney spoke with the family and provided them with information on the

Student's rights. The DRM attorney reviewed the Student's records and prepared the family for an IEP meeting where they successfully advocated for the Student's return to a full school day and added positive behavior supports and planning.

DRM files a complaint and secures return to in person instruction: A 7-year-old Student with autism returned to a full day of school with appropriate services and supports after DRM filed a complaint to enforce his rights. The Student's family contacted DRM because the Student's placement in a neighboring public school was abruptly ended by the receiving school when they had a staff shortage and the Student was forced onto remote learning even though the Student could only access his education in person due to his disabilities. The DRM attorney represented the Student in a complaint against both the sending and receiving school districts. Through mediation, DRM and the family resolved the case with the Student returning to full time in-person school and compensatory education to address his lack of a full day of school with services.

DRM supports parent in securing return to a full school day: DRM was contacted by the parent of a Student with autism who was told to keep her son home because of school staffing shortages. The DRM attorney provided self-advocacy assistance to the family, assisting them with drafting an email where she requested that the District provide the Student with a full day of instruction and that they make up the services that he missed since being asked to stay home. The District convened an IEP team meeting after receipt of the email and began providing a full day of instruction to the Student and agreed to provide extra special education services over the summer to address the missed time.

DRM helps return 6-year old to a full school day at his neighborhood school: A 6-year-old Student with autism returned to a full day of school with appropriate services and supports after DRM filed a complaint to enforce his rights. The Student's family contacted DRM because the Student's school district had not been providing the Student access to peers in an isolated setting and then school staff quit, so the Student's day was reduced to 2 hours since he had to share remaining staff with another Student. The DRM attorney met with the family, reviewed records, and filed a complaint with the State on the Student's behalf. At an IEP meeting, the school district agreed to provide the Student a full school day, move him to his neighborhood elementary school where he would have access to his peers, and provide compensatory education for what he missed, and the family was able to withdraw the complaint.

DRM advocacy results in return of Student to his classroom: DRM was contacted by the parent of a fifth grader with diagnoses of anxiety and ADHD regarding concerns that he had been improperly removed from his classroom. School staff placed him exclusively in a "behavior room" with three other children without an IEP team meeting or notice to the family. The District required that he remain in the room all day including lunch, specials, and school functions. The DRM attorney helped the caller challenge the District's use of the behavior room as to her son. The DRM attorney provided self-advocacy assistance and the parent was able to secure a return to his classroom and an agreement to conduct a comprehensive evaluation. The DRM attorney attended the IEP meeting to discuss the evaluation and also supported the family in addressing false and misleading aspects of the Student's educational records.

DRM advocacy helps restore access to a full school day: The parent of a 12-year-old Student with Autism contacted DRM concerned that the Student was being provided just 3 hours per day of school when his peers attended over 6 hours per day - the Student's day had been reduced by the school district not based upon his needs, but because he needs the greatest support in the afternoons and the district did not have the staff and/or training. The DRM attorney spoke to the family and provided them with information on the Student's right to a FAPE in the LRE and reviewed the records they provided. The DRM attorney prepared the family for an IEP team meeting where they demanded a full school day and additional supports to keep him in school. The school district not only returned the Student to a full school day, but also facilitated his participation in a social club and offered compensatory education to make up for the time he was out of school.

DRM advocacy helps restore access to a full school day: DRM was contacted by the parent of a fifteen-year old daughter with autism, ADHD, and a mood disorder. Her school had recommended a private school placement but was unable to locate one and would not allow the Student to attend school, providing her only one hour of tutoring a day. The DRM attorney helped the mother request a facilitated IEP meeting through the Maine Department of Education and provided her with legal advice prior to the meeting. The mother participated in the meeting and successfully advocated for the Student's return to in-person instruction.

DRM self-advocacy assistance helps restore access to early intervention services: The family of a 3-year-old Student with autism contacted DRM concerned that the Student was not receiving the special education services that he had a right to from his IEP. After his childcare center lost staff, the state intermediate educational unit responsible for the Student's IEP failed to find an appropriate placement. The DRM attorney provided the family information and resources to advocate through the IEP process to obtain a new placement. The family was successful in advocating for new placement where the Student's IEP would be fully fulfilled and they were happy with the outcome.

DRM self-advocacy assistance helps Student access integrated early intervention services: After DRM's robust self-advocacy assistance, a 4-year-old Student with an autism diagnosis secured placement in a public pre-K program with access to child without disabilities and appropriate positive behavior supports. The family of the Student contacted DRM concerned that the State intermediate education unit (IEU) failed to provide the Student's IEP and was not responding to the parent's request for a public pre-K, as opposed to the IEU's proposal of a segregated program. The DRM attorney met with the family and provided information on the Student's rights and reviewed records. The DRM attorney assisted the family in demanding appropriate services from the IEU and involving a public-school representative. At a follow up IEP Team meeting, the IEU updated the IEP to include a positive behavior support plan, a behavioral health worker, and placement at the public school.

DRM self-advocacy assistance helps client access early intervention services: After DRM's self-advocacy assistance to the family, a 3-year-old Student with an autism diagnosis was found eligible for special education services and compensatory education from the state's intermediate educational unit (IEU). The family contacted DRM concerned that the IEU has delayed for months the Student's evaluation and determining the Student's eligibility for services. The DRM attorney met with the family, reviewed the records they provided and prepared them for an upcoming IEP Team meeting. At

the meeting, the IEU found the Student eligible and agreed to provide compensatory education dating back to when they should have completed the eligibility process.

DRM advocacy helps restore access to a full school day: The parent of a five-year-old with ADHD and anxiety contacted DRM because the school district had limited the Student's classroom and instructional time to only thirty minutes a day, after school hours. The Student's teachers had the parent bring her to class in the afternoon, after all the other children had left for the day. The DRM attorney attended an IEP meeting where the school district agreed to hire an independent behaviorist to evaluate the causes of the Student's behavior. And at a follow up meeting, the school agreed that the Student would return to full time in-person instruction at a community-based school within the District.

DRM helps Student access his education in the least restrictive environment: The parents of a 14-year-old Student with ADHD and learning disabilities contacted DRM because they wanted the Student to attend a school closer to home instead of attending a distant alternative school. Due to the long commute to the alternative school, the school district's refusal to transport the Student, and the parent's own transportation circumstances, the Student was unable to attend class for weeks. The DRM attorney reviewed the Student's education records and helped the parent advocate for his transfer to the local high school. After self advocacy assistance was not successful, the DRM attorney attended an IEP meeting, and the school agreed to transfer the Student to the local high school with the supports he needed to attend a full school day.

DRM advocacy results in appropriate early intervention services and compensatory education: As a result of DRM's assistance, a 4-year-old Student with mental health diagnoses and a physical disability moved into a less restrictive early education setting and received compensatory education for the time that the State intermediate educational unit (IEU) failed to provide the Student with appropriate services. The Student's family called DRM concerned that the Student was without a placement and only receiving part of his individualized education plan. The DRM attorney met with the family and reviewed records. The DRM attorney negotiated with the IEU to ensure that the IEP Team included a public pre-K representative and at the IEP Team meeting, the IEU placed the Student in the public pre-K and proposed compensatory education.

DRM files complaint, then hearing and successfully keeps 6-year old in school: DRM was contacted by the parent of a 6-year-old Student with psychiatric labels who was being prevented from accessing a full school day. DRM filed a complaint with the Maine Department of Education and secured the Student's return to school due to the procedural violations of the IDEA. DRM then supported the family in several IEP meetings to ensure that appropriate programming was in place. Eventually, due to the continued failure of the school to adequately support the Student, the school filed an expedited hearing request which DRM defended against while also filing a due process hearing. The parties ultimately reached an agreement where the school agreed to return the Student to the placement from which he was unlawfully removed, agreed to pay a provider chosen by the family to provide consultation to the school, and a significant compensatory education fund for the Student to address the denials of a FAPE.

District Drops Demand for Risk Assessment and Reversed MDR

The parent of a parent of a Student with a mental illness contacted DRM seeking support to return the Student to school after a long removal. The Student had been removed from school and placed in a 45-day interim alternative educational setting due to an incident which resulted in injury to a staff member. The school also insisted on a “risk assessment” before the Student could return. While the Student was out of school, the school was closed for in person instruction due to COVID-19 and so the Student remained disconnected. The family sought help reconnecting the Student to school. DRM represented the Student at two IEP Team meetings where the District agreed to drop the demand for a risk assessment, reversed the manifestation determination to make sure the records reflected that the behavior in question was directly related to the Student’s disabilities, agreed to conduct some additional evaluation, and developed a plan for an appropriate placement.

Student Gets Appropriate Supports and Restrained Less

The family of an 8-year-old Student with autism contacted DRM because the Student was not being provided with appropriate positive behavioral supports, resulting in unnecessary restraint and seclusion. DRM prepared the family for an IEP meeting where they were unsuccessful in getting the school district to change course. DRM helped the family draft a complaint with the State and provided support through complaint process. The Maine Department of Education’s Report and Corrective Action Plan that resulted vindicated the family, directing the school district to place the Student with behavior experts and optionally a day treatment program if the family supported it along with compensatory education and staff training.

Waitlisted Children Receive Services as Part of DRM Systematic Complaint

- The parent of a 3-year-old Student with autism contacted DRM because the Student was out of school, receiving some of the hours of related services from his IEP, but no instruction and no access to peers. The program where the State’s early education IEU placed the Student closed and the Student was on 6 waitlists for other programs. DRM filed a complaint with the State resulting in a Report and Corrective Action Plan that directed the State’s early education unit, Intermediate Educational Unit (IEU) to immediately provide a placement for the Student and compensatory education. The family also participated in a systemic complaint against the State’s early education IEU, which successfully expanded the capacity of the State’s early education IEU and helped to address the failure of the State’s early education IEU to provide services to 20% of their Students.
- The parent of a 4-year-old Student with autism contacted DRM because the Student was given 2 weeks’ notice that her early education program would be closing - the State’s early education IEU did not have a plan for the Student and she was waitlisted for programs. DRM provided the family with self-advocacy assistance in how to file a complaint with the State. The family participated in a systemic complaint DRM filed with the State about the Students not being served by the State’s early education IEU. The systemic complaint resulted in an audit of the IEU and directed expanded capacity - the family reported that the Student was provided services thereafter.