

# DISABILITY RIGHTS MAINE

February 21, 2024

**Hand Delivered**

Senator Margaret Rotundo  
Representative Melanie Sachs  
Committee on Appropriations and Financial Affairs

Senator Joseph Rafferty, Chair  
Representative Michael Brennan, Chair  
Committee on Education and Cultural Affairs

***Re: LD 2214, Part W***

Senators Rotundo and Rafferty, Representatives Sachs and Brennan, and members of the Committee on Appropriations and Financial Affairs and the Committee on Education and Cultural Affairs:

My name is Atlee Reilly and I serve as the Legal Director of Disability Rights Maine (“DRM”), Maine’s protection and advocacy agency for people with disabilities. DRM provides this testimony neither for nor against Part W of LD 2214, which proposes a fundamental change in how Maine delivers early intervention services to children with disabilities.<sup>1</sup>

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<sup>1</sup> We understand there is a parallel effort to redesign CDS in the Education Committee, with a public hearing scheduled for next week on LD 345. And we understand that the budget language will be the starting point in that process. We have attached a letter sent on 2/15/2024 to the Committee on Education and Cultural Affairs regarding these issues. This letter begins with several pages of individual stories, highlighting the struggles that families currently face across the state in ensuring that their children receive legally required early intervention services in the least restrictive environment. We encourage you to read them and to keep them front of mind as you consider how to move forward with the proposed redesign of the delivery of early intervention services for children with disabilities. Unfortunately, there are many more stories like these.

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MAINE’S PROTECTION AND ADVOCACY AGENCY FOR PEOPLE WITH DISABILITIES

DRM has testified neither for nor against similar CDS transfer proposals during the 128<sup>th</sup>, 129<sup>th</sup>, and 130<sup>th</sup> Maine Legislatures. In doing so, we have consistently supported the concept of the transition of responsibility for the provision of early childhood special education from CDS to local districts. DRM supports the concept because, if done right, this transition would increase access to inclusive high-quality early childhood programs for children with disabilities. This is what the research says is best for all children. And it is what the law requires for children with disabilities.<sup>2</sup> But the core question elicited by past CDS transfer proposals remains the core question today: *How will MDOE ensure that two hundred plus local education agencies succeed in delivering legally required early intervention services to children with disabilities, in the most integrated settings appropriate to their needs, when, for years, CDS has failed to do so?*

After reviewing the new CDS transfer proposal, our position has not changed in any significant way. CDS is not working. And the transition away from CDS needs to take place. But in transferring the legal obligation to serve 3-5-year-old children with disabilities to local schools, Maine must articulate a clear vision and make a commitment to: a) ensuring access to inclusive early care and learning settings for all children; and b) removing any and all barriers to equal access and full participation of children with disabilities in those settings. Failing to do so risks making things worse, which hardly seems possible. It would also be a significant missed opportunity to bring Maine into compliance with federal law and best practice.

We need to do this; but we also need to get it right.

For today, we briefly lift up the following for your consideration:

1. Regional support hubs: The concept of a regional support model, aligned with the nine existing superintendent regions, is a promising new addition to the current CDS transfer proposal. But final language should include detailed requirements for the services and supports to be made available to local schools through these regional hubs. And these support hubs should be funded and established before the transition of responsibility to local schools occurs.
2. Incentivizing inclusive practices: Any plan to transfer responsibilities to local schools must ensure that inclusive practices are incentivized and that the creation of new segregated programs (whether they are regional or within a single school district) is prohibited or heavily disincentivized. Moving away from Maine's inappropriate reliance on segregated placements to deliver early intervention services will be hard work and calls for a clear vision and framework as well as a commitment of the significant resources that will be required. Both are absent in the current proposal.

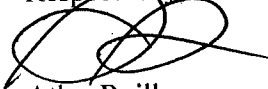
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<sup>2</sup> See generally: U.S. Dep't of Ed. & U.S. Dep't of Health and Human Servs., *Pol'y Statement on Inclusion of Child. with Disabilities Early Childhood Programs* (Nov. 2023), available at: <https://www.acf.hhs.gov/sites/default/files/documents/ecd/policy-statement-on-inclusion.pdf> (hereinafter "Federal Policy Statement on Inclusion"). This is an excellent resource.

3. Meeting the needs of students today and throughout the transfer period: MDOE must be required, as part of any transition plan, to identify and address the past and ongoing failure to provide legally required services to children, through the provision of robust compensatory services. In addition, to ensure that the impacts of the failure to provide legally required early intervention services do not translate to unnecessary segregated placements in kindergarten, MDOE must be required to provide consultation and other support to local school districts to support inclusive educational placements in Kindergarten and beyond for children who have been denied access to the early special education services and the integrated settings to which they were entitled.
4. Ensuring that students and families have access to advocacy services: Even with significantly better planning and a significantly larger commitment of resources than is evident in the current proposal, this transition will be extremely difficult for many schools and, by extension, the children and families they are newly obligated to serve. As a result, increased access to advocacy services will be essential. MDOE should be required to contract for these services as part of any transition plan.

Please reach out to either myself ([areilly@drme.org](mailto:areilly@drme.org)) or Jeanette Plourde ([jplourde@drme.org](mailto:jplourde@drme.org)) if you would like any additional information about these issues going forward. If it would be helpful, DRM will ensure someone is available for any work session(s) that may be held.

Respectfully,



Atlee Reilly  
Legal Director  
Disability Rights Maine



February 15, 2024

SENT VIA EMAIL AND MAIL

Senator Joseph Rafferty, Chair  
Representative Michael Brennan, Chair  
Joint Standing Committee on Education and Cultural Affairs  
c/o Legislative Information Office  
100 State House Station  
Augusta, ME 04333

***Re: LD 1528 / Resolve 2023 Chapter 82: Report on Child Development Services***

Senator Rafferty, Representative Brennan, and members of the Joint Standing Committee on Education and Cultural Affairs:

We would typically wait until a public hearing to write a letter like this. But things regarding Child Development Services (CDS) seem to be moving so fast and in such an unorthodox fashion that we felt the need to pull together some information quickly for your consideration.

The information provided in this letter grows out of our work with young children and families across the state who have been denied access to legally required early childhood special education services and often access to any education whatsoever due to Maine's longstanding and well documented failures to meet its obligations under the Individuals with Disabilities Education Act (IDEA) and the Americans with Disabilities Act (ADA). We write because of stories like this:

*My son is like other 4-year-olds: He loves to play with his toys and loves to go outside with me. The only difference is he is blind. His first opportunity to be with other children—to go to school, to play and learn with other children—was supposed to happen when he turned 3. He had an IEP, but CDS didn't have a place for him to go. I called everywhere, trying to find a place myself. And the one private preschool in our area that had an opening wouldn't let my son enroll because he was blind. They said he needed someone to be with him. So we waited. We waited for over 16 months.*

— Parent of a 4 1/2 -year-old in the CDS York area.

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MAINE'S PROTECTION AND ADVOCACY AGENCY FOR PEOPLE WITH DISABILITIES

Children with disabilities across Maine are waiting for services. Some waits stretch into months; others, over a year. Families trying to ensure their children receive educational programming and services that are required under their agreed-upon Individualized Education Programs continue to be stymied by CDS's lack of placement options, lack of sufficient providers, and problems securing transportation. And children continue to be pushed into segregated settings because of CDS's failure to provide the supplementary aids and services required to support them in the least restrictive environment. Moreover, young children continue to be discriminated against by early childhood programs, including private programs and public programs, when they are denied admission because of their disability-related needs or are punished and removed for disability-related behaviors that arise from not having their needs met. To ground your discussion in these struggles, here is some recent information we have gathered from across the CDS service regions:

#### **AROOSTOOK CDS (includes Aroostook County)**

C. is a 4-year-old girl from Aroostook County. She has a diagnosis of autism and global developmental delay. Her IEP provides, among other things, speech therapy, occupational therapy, and specially designed instruction, to be delivered in a supported program setting. Over the last three years, she has been in three successive programs, bouncing between two locations, as CDS has not been able to provide a consistent placement for her. Adding to disruptive impact that multiple transitions has on a young child, C. has experienced gaps in service for weeks at time during the transitions. After advocating for over two years, the family was successful in having C. approved for 1-on-1 support from an Ed Tech during the week; however, CDS is not currently able to provide it. C.'s IEP remains unfulfilled, and the services to which she is legally entitled remain unmet.

#### **CDS PEDS (includes the greater Waterville area and Farmington)**

When K., a 4-year-old boy with autism and other medical needs, was expelled from a private special purpose preschool where he had been enrolled for over a year, he was put on waitlists for a placement somewhere else. He waited 5 months at home, without his IEP being fulfilled, before a new placement became available.

#### **CDS FIRST STEP (includes Lewiston and Augusta)**

In a majority of classrooms in a Head Start in Southwestern Maine, more than 50% of the children have IEPs, and even more children are in the child find process. It is typical for children to wait for 6 months, sometimes more, for services under their IEPs. For example, one child with Autism (Level 3), has been waiting for specially designed instruction, 5 days a week, 3 hours a day, as well as speech therapy three times a week—for over six months. Teachers and staff plan on the fact that if a 4-year-old child is identified as needing services in October, the child will not get off waitlists in time to receive any services before entering kindergarten. Teachers only talk with families about early identification and no longer speak to the impact that early intervention services will have on children as a majority of children will not receive services before they go to kindergarten. This past year, the program sent more children with disabilities—including

those with autism—to kindergarten without ever having received services under the IEPs than children who did receive Part B services.

#### **CDS REACH (includes the greater Portland area)**

N. is a 3-year-old girl with an autism diagnosis, who went nearly a year without a placement in the CDS REACH area. Her IEP provides her with specially designed instruction 4 times per week for 3 hours; speech services 2 times per week for 30 minutes; OT services 2 times per week for 30 minutes; consultations from a Teacher of Students with Disabilities, a Speech Language Pathologist, and an Occupational Therapist; Assistive Technology and AT Services; and Transportation 4 times per week. Without a placement, she received no specially designed instruction throughout this time. When CDS did not provide speech or OT services, her parents independently pursued the them on their own. Only eventually did CDS start to pay for the therapies. And it was only after the family pursued due process remedies, having waited for nearly a year, that CDS found a placement for N. in a special purpose preschool.

R. is a 3-year-old girl who loves gymnastics and tumbling. She has an IEP under the disability category of “other health impairment” due to a congenital medical condition which requires her to take nutrition through a G-tube. R. has been waiting for over 5 months for specially designed instruction, 3 times a week for 3 hours, in the regular early childhood education classroom under her IEP. Earlier this year, the family’s interactions with CDS led them to believe that their daughter was *required* to attend a more restrictive, special preschool, to receive specially designed instruction; and if they chose not to pursue the special preschool, they would also risk losing speech services for R. The family opted to have their daughter remain at her private daycare, which is inclusive by nature. CDS has not offered an explanation as to why R. cannot be provided with specially designed instruction at the day care, where she is also receiving embedded speech services through CDS.

#### **CDS OPPORTUNITIES (includes the Oxford and Rumford areas)**

D. just turned 5 this month. He has a diagnosis of autism. Last summer, he was excited to begin school at the public pre-K. In late August, the family received an email that D. had been accepted into the program at their local school—only to receive an email later the same day informing them that because of his IEP, he may *not* be able to attend. Ultimately, because CDS could not provide the ed tech under D.’s IEP right away, he was not permitted to enroll. When the family asked about whether this was denying a child with needs an education, the school explained, “Special Education for a child [D.’s] age is all through CDS, and pre-k education isn’t mandatory, which is why it’s different from a kindergarten-age child.”

K. is a 4-year-old boy who has been without some of the services on his IEP for over two years. He has a diagnosis of autism (level 1), and his IEP provides 12 hours of Ed Tech support per week, in addition to speech and occupational therapy. However, CDS has *never* provided K. with Ed Tech services; speech services have been inconsistent; and OT

services have been off-and-on for stretches at a time. Last year, when K.'s family moved to a community with a local pre-K program, they did not remove him from the Head Start program he was already attending—largely because CDS could not provide K. with necessary Ed Tech services to allow him to be supported in the public pre-K setting. However, he is struggling in the Head Start program without necessary supports. In the past week alone, he has been sent home four times—each time requiring his mother to leave her work to pick up and then care for her son at home. K. will be entering the public kindergarten this fall, without having received the supports under his IEP to prepare him for school.

#### **CDS DOWNEAST (includes the Ellsworth and Machias areas)**

S. just turned 5. Last fall, he was excited to start preschool at the local public pre-K in his community and even learned how to say “school” just for the occasion. The day before school started, the local special education director called his mother and asked if S. was going to attend even though CDS was unable to staff the Ed Tech support he was entitled to under his IEP. His mother replied, “Yes, of course, he is entitled to an education just like everyone else.” However, 30 minutes later, CDS telephoned the family to inform them that the school would not allow him to enroll because CDS was not the providing Ed Tech support under his IEP. When S.'s mother questioned CDS and the school, she was told that this was permissible because “school isn't mandatory due to him only being in pre-K.” Her question in reply was, “Then why does every pre-K student get to attend if it's not mandatory, but my son can't?” On the eve of the first school day, S.'s mother had to tell S. that he was not allowed go to school. Although S. was legally entitled to Ed Tech support under his IEP, CDS was unable to provide it—and the local school denied him access to their program without it.

#### **CDS TWO RIVERS (includes the Brewer and Dover-Foxcroft areas)**

J. is a 4-year-old boy with an autism diagnosis. Last fall he entered the public pre-K program in his town. His IEP provides adult support throughout the day, but because he had been thriving in his prior program, the IEP Team decided to trial J. starting the school year without it. When it was determined in October that he did, indeed, need the adult support in the public pre-K setting, it took nearly four months for him to receive it. During that time, the gains he had made in his prior program deteriorated. He struggled significantly to have his needs met, and the school's response largely consisted of excluding him from his education. For example, in a recent 5-week period, he has been allowed to attend school only 4 full preschool days. Instead, he has been suspended, his school hours have been reduced, and his mother (and grandmother, before she was hospitalized) have been called repeatedly to pick him up for the day as early as 9am. He is currently awaiting a placement in his prior program, as his needs were not being met in the public pre-K program while CDS failed to fulfill his IEP.

### **CDS YORK (includes York County)**

B. is a 5-year-old girl who was excited to start pre-K this fall. She has diagnoses of ADHD, sensory processing dysfunction, and PTSD from profound trauma as a very young child. This past summer, she was thriving with her adoptive family, and they were thrilled to enroll her in the local public pre-K program. Her IEP called for a mainstream classroom setting with supports, including specially designed instruction and consultation; occupational therapy; social work services; and access to adult support as needed throughout the school day. However, over two months into the school year, CDS still had not secured any “adult support” staff for B. to access in her day; no special education teacher had been provided; and no social worker services had begun. Meanwhile, without the supports B. needed, she struggled to communicate that her needs were not being met. But rather than understand that her inappropriate behaviors were cries for help, the school repeatedly removed her from the classroom, isolated her in a segregated setting for increasing hours of the day, put her on an “abbreviated school day” some days, did not allow her to come to school at all other days, and repeatedly called her adoptive mother to come pick her up during the preschool day. To make matters worse, because B.’s IEP was “not the school’s responsibility,” the school did not even allow her preschool teachers to access any of the school’s OT tools that the teachers wanted to use to help B. regulate her emotions. The situation was untenable; the child’s exclusion seemed to be *punishment* for her disability; and the family could no longer bear to send their 5-year-old to school knowing she would sit in an office for most of the day. The family removed their child at about the same time the school announced they wished for the child to be placed elsewhere. A new placement was eventually found – in a more restrictive environment and twenty-five miles away from the local public pre-K program that serves children without disabilities. The family must now sell their home and relocate to keep their child in school.

Unfortunately, there are many more stories like these, reflective of systemic inadequacies that have been documented for years, most recently in a report to this Committee on February 1, 2024.<sup>1</sup>

### **MDOE Report on Child Development Services**

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<sup>1</sup> See, e.g., Maine Early Childhood Special Ed. Indep. Rev., Final Phase I Rep., Public Consulting Group (Oct. 30, 2020) (a 107-page comprehensive independent evaluation highlighting the failures of Maine’s CDS-system for implementing its obligations under the IDEA Part C for children birth to age 3 and IDEA Part B-619 for children ages 3-5), available at <https://legislature.maine.gov/doc/4753>; Maine Early Childhood Special Ed. Implementation Plan, Public Consulting Group 65 (Dec. 1, 2020) (a 70-page detailed description and blueprint for implementing the recommendations detailed in the Phase I report), available at <https://legislature.maine.gov/doc/6046>; and Maine Department of Education, “Report on Child Development Services Agency and Successful Delivery Models for Children, ages 3-5, in SAUs” (Feb. 1, 2024), available at <https://legislature.maine.gov/doc/10651>.



Just two weeks ago, the Maine Department of Education submitted its “Report on Child Development Services Agency and Successful Delivery Models for Children, ages 3-5, in SAUs” to the Joint Standing Committee on Education and Cultural Affairs.<sup>2</sup> Through the report, MDOE again recognizes and admits that CDS is failing to meet its two foundational obligations under the Individuals with Disabilities Education Act: 1) to provide eligible students with disabilities with a free and appropriate public education (FAPE); and 2) to ensure that students with disabilities are provided educational services in the least restrictive environment (LRE),<sup>3</sup> stating:

Maine’s Pre-K system is second only to Arkansas in the percentage of students with IEPs who are excluded from the general education settings in local public schools, with 12.5% of Pre-K students receiving education in private, special purpose programs, the most restrictive environment, according to OESP. The national average for these most restrictive placements is between 1% and 2%.

[and]

Since the inception of CDS, service needs have outpaced availability of providers and CDS staff members often struggle to find placements in preschool education classrooms and related special education services.<sup>4</sup>

To remedy these longstanding failures, MDOE proposed a 3-year process to transfer the primary responsibility to provide early childhood special education services for children ages 3-5 from CDS to the over 277 local education agencies currently operating in Maine.<sup>5</sup> Our takeaway from

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<sup>2</sup> Maine Department of Education, “Report on Child Development Services Agency and Successful Delivery Models for Children, ages 3-5, in SAUs” (2/1/2024), available at <https://legislature.maine.gov/doc/10651> (hereinafter, the “MDOE Report”).

<sup>3</sup> See 20 USC §§ 1412(a)(1)(A), (5)(A). Note: The IDEA “presumes that the first placement option considered for each child with a disability is the regular classroom the child would attend if they did not have a disability. Thus, before a child with a disability can be placed outside of the regular educational environment, the placement team must consider the full range of supplementary aids and services that could be provided to facilitate the child’s placement in the regular early childhood setting.” U.S. Dep’t of Ed. & U.S. Dep’t of Health and Human Servs., Pol’y Statement on Inclusion of Child. with Disabilities Early Childhood Programs 6-7 (Nov. 2023); see also 20 USC § 1412(a)(5)(A). In addition, Maine’s current system for delivering legally required early intervention services for children with disabilities, by failing to ensure the delivery of services in the most integrated settings appropriate to the needs of each child with a disability, also likely violates the ADA in many instances. Under Title II of the ADA, no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a). Congress has explicitly identified unjustified “segregation” of persons with disabilities as a “for[m] of discrimination.” 42 U.S.C. §§ 12101(a)(2), 12101(a)(5). See also *Olmstead v. L.C.*, 527 U.S. 581, 597 (1999) (finding that unjustified isolation is a form of discrimination prohibited by the ADA).

<sup>4</sup> MDOE Report at p. 6.

<sup>5</sup> The district count of 277 reflects information available at <https://www.maine.gov/doc/data-warehouse/reporting/enrollment> (last visited Feb. 15, 2024).

the presentation was that MDOE was encouraging this Committee to consider the CDS Report and engage in a process with the Department to develop a legislative proposal. Given that, we were surprised to see the proposal to complete a transfer of responsibilities from CDS included in the Governor's Recommended Fiscal Year 2024-2025 General Fund Budget, released yesterday.

#### Governor's Recommended Fiscal Year 2024-2025 General Fund Budget<sup>6</sup>

The proposal directs the Commissioner of MDOE to designate the responsibility to provide a FAPE beginning when a child turns three, to CDS or to the local school district where a child resides.<sup>7</sup> It provides that “the Child Development Services site in that region shall transition to serve as a regional service hub to make necessary services and supports available in accordance with a memorandum of understanding that shall be developed by the Department of Education and the SAU before the transition of responsibility occurs.”<sup>8</sup> But the proposal contemplates a deadline of July 1, 2028 for the designation of all school administration units as responsible for the provision of FAPE to children beginning at age 3.<sup>9</sup>

The proposal contemplates “Regional Service Hubs” to be aligned with the 9 Superintendent Regions, which shall serve as regional service hubs, providing supports and resources to the local schools as determined by memoranda of understanding between department of education and the school administrative unit.<sup>10</sup> The establishment of a preschool education fund, designated as a one-time fund of \$10,000,000, is contemplated in the proposal, to be used by school administrative units that voluntarily assume the responsibility to provide a FAPE, with funding to be used for the provision of special education and related services.<sup>11</sup>

#### DRM Initial Response to the Proposal

We have provided testimony on this issue on several occasions, including most recently in March 2022, when we wrote: “DRM supports to goal of shifting the responsibility to provide a free and appropriate public education to 3-5 year old students with disabilities from CDS to local school districts. But MDOE must manage this transition in a way that ensures access to inclusive early childhood programs and does not incentivize the creation of segregated regional settings. MDOE must also ensure that local districts have the human and financial resources to provide a

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<sup>6</sup> See Part W, pp. 42-51, available at: <https://www.maine.gov/budget/sites/maine.gov.budget/files/inline-files/GF%20Supplemental%20Language.pdf>.

<sup>7</sup> Id., at 46.

<sup>8</sup> Id.

<sup>9</sup> Id., at 48.

<sup>10</sup> Id., at 42-43.

<sup>11</sup> Id., at 50. Note: There are also per pupil funding provisions, but given the short timeline between the release of this proposal and the discussion this afternoon, we are not commenting on those at this time. But the key consideration in analyzing the impact of the funding aspect of this from our perspective is a determination of whether the funding aspects of the proposal incentivize and support the development of and delivery of services in inclusive, high-quality early education settings.

free and appropriate public education to all preschool students with disabilities.”<sup>12</sup> And we said something similar when testifying neither for nor against LD 1715, “*An Act to Reorganize the Provision of Services for Children with Disabilities from Birth to 5 Years of Age*” during the 129<sup>th</sup> Maine Legislature.<sup>13</sup>

After reviewing the new proposal, our position has not changed in any significant way. CDS is not working. And the transition away from CDS needs to take place. But if Maine starts down this path without a clear vision and commitment to: a) ensuring that inclusive high-quality early care and learning experiences are available to all children; and b) identifying and removing any and all barriers to equal access and full participation of children with disabilities in those settings, then we are likely to fail another generation of children.

After reviewing the proposal released yesterday, we submit the following thoughts and questions for your consideration:

***What is the plan to fulfill current obligations to children who are not receiving a free and appropriate public education in the least restrictive environment?***

There is nothing in the recent MDOE Report or the proposed statutory language that indicates any planning to address the *current* failures to provide children with a free and appropriate public education in the most integrated setting appropriate to their needs. But Maine cannot afford to write off early special education and related services for a generation of children. And in any event, the IDEA requires it.<sup>14</sup> MDOE must be required to create a plan to fulfill IEPs *now* and going forward. And MDOE must be required, as part of any transition plan, to identify and address the past and ongoing failure to provide legally required services to children through the provision of robust compensatory services. In addition, to ensure that the impacts of the failure to provide legally required early intervention services do not translate to unnecessary segregated placements in kindergarten, MDOE must be required to provide consultation and other support to

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<sup>12</sup> DRM Testimony “*Re: Draft and Amended Draft Legislation for CDS Public Hearing*” (March 23, 2022).

<sup>13</sup> See DRM Testimony regarding LD 1715

<https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=127055> (“DRM supports the transfer of responsibility to provide a free and appropriate public education to toddlers with disabilities from CDS to local school districts. As schools are increasingly expanding preschool options for all children, and in light of the research supporting inclusive preschool settings, it makes sense for Maine to join the majority of states that assign the primary responsibility for meeting the needs of all students with disabilities, from age 3 through graduation, to local school districts. That said, it will be important to ensure that: a) Maine does not incentivize the creation of segregated programs for young children with disabilities; and b) local districts receive the resources and support necessary to provide all students with a free and appropriate public education in the least restrictive environment. In these areas, LD 1715 appears to fall short.”).

<sup>14</sup> As a condition of receiving IDEA funds, the Department must have a “general supervision system” to, among other things, ensure that local schools and providers of Part B services meet the requirements under the IDEA. 20 U.S.C. §§ 1412(a)(11), 1416(a), 1435(a)(10), 1442; 34 CFR §§ 300.149, 300.600-604, 300.608; 34 CFR §§ 303.120, 303.700-70; *see also* U.S. Dep’t. of Ed., State General Supervision Responsibilities under Parts B and C of the IDEA: Monitoring, Technical Assistance, and Enforcement 1 (OSEP QA 23-01) (July 24, 2023).

local school districts to support inclusive educational placements in Kindergarten and beyond for children who have been denied access to the early special education services and the integrated settings to which they were entitled.

*Why is the commitment to inclusive educational practices that was so prevalent in the recent MDOE Report absent from the statutory proposal?*

The MDOE Report highlights that recent federal guidance “reiterates and clarifies the expectation that all children with IEPs” will be educated in inclusive, high-quality early childhood programs.<sup>15</sup> This mandate is reflected in the Policy Statement on Inclusion of Children with Disabilities in Early Childhood Programs, issued in November 2023, by the U.S. Department of Education and U.S. Department of Health and Human Services: The research supports, and the legal expectation for children 3-5 is, inclusion in high-quality early childhood programs.<sup>16</sup> We were thrilled to see the emphasis on this document in the MDOE report and in its language in presenting the report to this Committee. But the commitment to inclusive

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<sup>15</sup> MDOE Report at p. 6. The U.S. Department and Education and U.S. Department of Health define “high-quality inclusive early childhood programs” as ones that, among other things:

- Include children with disabilities in early childhood programs they would participate in if they did not have a disability, so they can learn together with their peers without disabilities;
- Provide high-quality teaching and learning environments that support children’s development and allow all children to meet high expectations;
- Intentionally promote children’s participation in all learning and social activities, facilitated by individualized accommodations and differentiated interventions and instruction;
- Use high-quality, evidence-based services and supports that are developmentally appropriate, culturally and linguistically responsive, and that foster children’s—
  - Acquisition and use of knowledge and skills,
  - Use of appropriate behaviors to meet their needs,
  - Positive social emotional skills, including friendships with peers, and
  - Sense of belonging;
- Provide services and supports to children with disabilities in early childhood programs with peers without disabilities, and within daily routines and learning and social activities;
- Recognize families as collaborative partners, experts, and engaged decision-makers in their children’s lives and value and treat children with disabilities and their families with respect; and
- Ensure supports, such as screening and identification processes, early childhood program and school partnerships, access to and use of data, and PD are in place to enable early childhood programs and providers to successfully include children with disabilities and their families.

U.S. Dep’t of Ed. & U.S. Dep’t of Health and Human Servs., Pol’y Statement on Inclusion of Child. with Disabilities Early Childhood Programs 6-7 (Nov. 2023), available here <https://www.acf.hhs.gov/sites/default/files/documents/ecd/policy-statement-on-inclusion.pdf> (hereinafter “Federal Policy Statement on Inclusion”).

<sup>16</sup> See Federal Policy Statement on Inclusion at pp. 6-7.

educational practices is absent from the statutory proposal. This is troubling and should be addressed. Moving away from Maine's inappropriate reliance on segregated placements will be hard work and calls for a clear vision and framework as well as a commitment of the significant resources that will be required.

***How will the proposal increase the number of high-quality inclusive pre-K settings and eliminate any barriers to the enrollment of children with disabilities in existing settings?***

The MDOE report states: "The plan does not require the establishment or expansion of pre-K programs in SAUs, but it does encourage partnerships with community providers to augment local capacity to meet students' individual education needs."<sup>17</sup> It is difficult to understand how, when a significant part of the problem with delivering legally required early childhood special education services, a proposal that does not seem designed to sufficiently increase the number of those settings will meet the state goals. Expansion of the pre-K expansion grant program should be considered as one potential strategy.<sup>18</sup> And there should be others, again, with a commitment of resources included in the proposal. The idea that this problem will be fixed by simply transferring the responsibility to hundreds of different entities seems more like magical thinking than sound planning and policy.<sup>19</sup>

***How will MDOE ensure that local school districts succeed when CDS has failed?***

In our 2019 testimony regarding LD 1715, we wrote: "If CDS is not able to find qualified staff and programs, and if current funding does not cover the services to which children are entitled, how will districts across the state fare any better when responsibility is transferred to them? How will local districts be supported to succeed where CDS has failed? This question needs an answer."<sup>20</sup> This question still needs an answer. The good news is that we have advanced the ball, if only a little, with the proposal to include regional support entities, aligned with the Superintendent regions in Maine, to support local schools in the transition. This is the right model and an emerging best practice.<sup>21</sup> But this is a massive undertaking and we are concerned that MDOE is trying to do it on the cheap and without requisite strategic planning. By now, one would imagine MDOE would have an idea of: a) the amount and type of services and supports

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<sup>17</sup> MDOE Report at p.5.

<sup>18</sup> For more information see: <https://www.maine.gov/doe/learning/earlychildhood/pkexpansiongrant/2021>.

<sup>19</sup> In addition, as the individual stories at the beginning of this letter demonstrate, children with disabilities continue to be excluded from existing early childhood settings, which is also not clearly addressed in the proposal.

<sup>20</sup> See DRM Testimony "Re: LD 1715 – "An Act to Reorganize the Provision of services for children with disabilities from Birth to 5 Years of Age" (May 21, 2019), available here:

<https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=127055>. Note: In order to receive funding through the Individuals with Disabilities Education Act (IDEA), MDOE must submit a plan annually that provides assurances "the State has in effect policies and procedures to ensure that...a free appropriate public education is available to all children with disabilities...between the ages of 3 and 21." 20 U.S.C. §1412(a)(1)

<sup>21</sup> And it is a model that should likely be expanded to include support for inclusive practices and the provision of supportive aids and services from early childhood through high school.

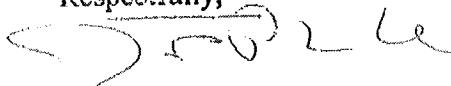
needed in each of the proposed support regions; b) the amount and types of services and supports available in those regions; and c) a plan to bridge the gap. Unfortunately, we do not see evidence of that in this proposal. How can you adequately resource and support a regional support structure without an understanding of the resources and supports needed in each region?

*In places where the transition of responsibility from CDS does not go well, will families have access to advocacy services to enable them to enforce federally protected rights to a free and appropriate public education in the least restrictive environment?*

The proposed transition may go very smoothly in some school districts. And some children may be immediately better served by their local school. But some local school districts will be unwilling or unable to provide all eligible students with the special education and related services to which they are entitled. And some local school districts will inappropriately perpetuate the use of segregated placements for many students with disabilities. In these cases, advocacy services will be required. Consideration should be given to requiring MDOE to contract for advocacy services for 3-5 year old students with disabilities and their families.<sup>22</sup>

Thank you for considering these initial thoughts as you work through this vitally important issue. We agree we have to do this. But we also have to get it right.

Respectfully,



Jeanette Plourde  
Staff Attorney



Atlee Keilly  
Legal Director  
Disability Rights Maine

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<sup>22</sup> Such a statute could be modeled after 34-B MRS 5005, available at:  
<https://legislature.maine.gov/legis/statutes/34-B/title34-Bsec5005-A.html>.