

State of Maine
DEPARTMENT OF EDUCATION

Testimony of Erin Frazier, Director of Special Services Birth to 20

Neither For Nor Against: L.D. 552

An Act To Strengthen the Individualized Education Program Process

Before the Joint Standing Committee on Education and Cultural Affairs

Sponsored by: Representative Rebecca Millett

Co-sponsored by: Representatives Craven, Crockett, Dodge, McCrea and Williams and Senator Rafferty

Date: March 22, 2021

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

My name is Erin Frazier, State Director of Special Services Birth to 20, and I am here today representing the Department speaking neither for nor against L.D. 552, An Act To Strengthen the Individualized Education Program Process.

There are four key elements of the proposed legislation LD 522. Two of these elements highlight small grammatical errors that have no implication on any aspect of either federal or state special education regulations. Two of the elements exceed the requirements of the Individuals with Disabilities Education Act (IDEA) and Maine Unified Special Education Regulations (MUSER). These two points will be reviewed below.

Sec. 3. 20-A MRSA §7202, sub-§13 is enacted to read:

13. Changes to individualized education program. A school administrative unit shall obtain informed written consent from the parent of a child with a disability prior to changing the nature or extent of the special education placement or special education and related services. If a parent refuses consent for a proposed individualized education program or placement, the child's most recent agreed upon individualized education program or placement must remain in effect unless and until:

A. The school administrative unit and parent agree otherwise;

B. The matters are resolved; or

C. A party files for due process, in which case the individualized education program or placement must be governed by 34 CFR 300.518.

MUSER VI.2.I. indicates that changes to the IEP be made by consensus and clearly states that if consensus cannot be reached there must be prior written notice to the parents of proposals or refusals, and that parents have the right to access dispute resolution options that are available to them in their procedural safeguards.

MUSER VI.2.I. states “The IEP Team should work toward consensus, but the SAU has ultimate responsibility to ensure that a child is appropriately evaluated; that the IEP includes the services that the child needs in order to receive FAPE; and that the child’s placement is in the least restrictive educational placement. It is not appropriate to make evaluation, eligibility, IEP or placement decisions based upon a majority “vote.” If the team cannot reach consensus, the SAU must provide the parents with prior written notice of the school’s proposals or refusals, or both, regarding their child’s educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing or a State complaint investigation”.

A public agency has responsibilities to families when consensus cannot be reached. The IEP meeting serves as a communication vehicle between parents and school personnel and enables them, as equal participants to make joint informed decisions around their child’s special education program. Parents are considered equal partners with school personnel in making these decisions, and the IEP team must consider the parents’ concerns and the information that they provide regarding their child in developing, reviewing, and revising IEPs (Secs. 300.343(c)(iii) and 300.346(a)(1) and (b)).

MUSER XVI.1.A. and B. already allows for any parent, adult student or interested party to submit a request for a complaint investigation for a dispute regarding the provision of appropriate services to a child. Parents can also file for mediation and/or a due process hearing.

Furthermore, when someone files for a mediation, complaint investigation or due process hearing “stay put” is in play^[1]. (Procedural Safeguards 34 CFR 300.518)

This bill does not change or strengthen the IEP process that already exists^[2]. It does shift the onus of due process proceedings from families to SAUs. This will have a fiscal impact on communities and likely would result in increased due process activity within the state. More importantly, it has the potential to delay the provision of special education services to children. Both IDEA and MUSER build in safeguards for families when consensus cannot be reached. It is important to acknowledge that it is the SAU that has the ultimate responsibility in the provision of FAPE.

^[1] “Stay put” in federal rules only applies to the filing of a due process hearing, not a mediation or state complaint investigation as defined in MUSER.

^[2] **MUSER XVI.1.A. and B.**

1. Right to Dispute Resolution, Generally

A. For children B-2

(1) Any parent or interested party, including early intervention providers, and including an organization or individual from another state, may submit a written request for a state complaint to the Department alleging that a regional site has failed to comply with State or federal special education law or regulation, or when there is a dispute regarding the identification, evaluation, placement or provision of appropriate services to a child.

(2) A parent or SAU may submit a request for mediation to the Department to resolve a dispute regarding a regional site's compliance with this rule or provision of services in the natural environment to a child with a disability.

(3) A parent or SAU may submit a written request for a due process hearing to the Department when there is a dispute regarding the identification, evaluation, placement or the provision of appropriate services to the child.

B. For Children 3-20

(1) Any parent, adult student or interested party may submit a written complaint to the Department alleging that a public agency has failed to comply with this rule, or when there is a dispute regarding the identification, evaluation, placement or the provision of appropriate services to a child.

(2) A parent, adult student, or SAU may submit a written request to the Department for mediation to resolve a dispute regarding a unit's compliance with this rule or the provision of a free appropriate public education in the least restrictive educational alternative to a child with a disability.

(3) A parent, adult student or SAU may submit a written request for a due process hearing to the Department, after having submitted the written request first to the responding party, when there is a disagreement regarding the identification, evaluation, placement or the provision of a free appropriate public education to a child.

The Maine DOE supports families and SAUs in multiple ways around supporting effective communication. Parents are supported through email and phone calls and dispute resolution staff provide them information and assistance informing them of their rights. They are connected to advocates to support them in understanding their rights. Parents are connected to supporting agencies when disagreements occur. Maine DOE also offers to speak to SAUs in an effort to resolve conflicts and increase collaboration. Additionally, Maine DOE is supporting technical assistance to the field in two important ways. First, we are providing statewide training for all special education administrators and IEP coordinators around effective tools in IEP team facilitation in order to support consensus building in the IEP team process. Second, the department is supporting the development and training of IEP meeting facilitators to support SAUs and families when communication has become challenging.

Sec. 4. 20-A MRS §7202, sub-§14 is enacted to read:

14. Special education services providers; presence at team meeting. Require an individualized education program team to allow an individual who provides special education services to a child with a disability and has regular, direct contact with that child to attend and participate in an

individualized education program team meeting concerning the child upon the request of that individual or a member of the individualized education program team so long as the request is made within 2 school days from the issuance of the individualized education program meeting notice or as soon as practicable upon notice of an emergency meeting.

Under the current rule, parents can invite individuals who have direct contact with their child to IEP meetings. IDEA meeting participation, delineated below:

MUSER VI.2.B., 1414(d)(1)(B) and 34 CFR 300.321(a)

B. IEP Team Membership. [20 USC 1414(d)(1)(B) and 34 CFR 300.321(a)] Each IEP Team shall include the following members:

- (1) The child's parents;
- (2) No less than one regular education teacher for the child *which should include career and technical or adult education teachers, if appropriate* (if the child is, or may be, participating in the regular education environment);
- (3) No less than one special education teacher or, where appropriate, not less than one special education provider (licensed or certified special education provider);
- (4) A representative of the school administrative unit who
 - (a) Is qualified to provide or supervise the provision specially designed instruction to meet the unique needs of students with disabilities;
 - (b) Is knowledgeable about the general education curriculum;
 - (c) Is knowledgeable about the availability of resources of the local educational agency *and has written authorization to obligate the unit (or written delegation of that authorization by the responsible SAU to the SAU in which the child is placed)* ; and
- (5) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate;
- (6) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (2) through (5);
- (7) Whenever applicable, the child; *and*
- (8) For a child who is a state ward or state agency client, the child's caseworker representing a youth serving state agency. The surrogate parent retains the sole authority to represent the child by exercising the procedural safeguards available under this rule.*

The determination of knowledge or special expertise of an individual described in (B)(5) above shall be made by the party (parent or public agency) who invited the individual to be a member of the IEP Team. (MUSER VI.2.B., 1414(d)(1)(B) and 34 CFR 300.321(a))

With respect to the this provision, while the law requires that either the parent or the public school has the right to invite additional individuals to an IEP Team meeting, it is possible that a parent would have to have someone at the IEP Team meeting that neither they, nor their public school, wanted to be there because that individual wanted to attend an IEP meeting.

For these reasons, the Department of Education is neither for nor against L.D. 552 An Act To Strengthen the Individualized Education Program Process. I would be happy to answer any questions the Committee may have, and I will be available for work sessions on this bill.

