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Testimony of Rep. Rebecca Millett presenting LD 552, An Act to Strengthen the Individualized Education Program Process Before the Joint Standing Committee on Education and Cultural Affairs

Senator Rafferty, Representative Brennan and other fellow members of the Education and Cultural Affairs Committee, I am Representative Rebecca Millett, and I represent a portion of Cape Elizabeth. I am pleased to present to you **LD 552, An Act to Strengthen the Individualized Education Program Process.**

The bill before you has 5 sections and represents two changes in law but really has one purpose. The main purpose of this bill is to codify best practices for the development and implementation of Individualized Education Programs (IEPs) for students.

I believe many districts currently make a concerted effort to reach an understanding with parents when making changes to an existing IEP as is called for in Sec 3 of the bill. We know that taking the time and finding ways to ensure families are sufficiently informed and comfortable with educational programming proposed for their children is best practice when developing IEPs for students, and we will be the most successful when parents, educators and administrators are all in alignment and working together to help a student.

However, under current law, the district notifies the parents of changes to their child's IEP, and unless the parents utilize the costly dispute resolution process, the services can be changed or altered without their approval. Placing the burden on families can act as a disincentive to finding consensus with the parents. Burdening families does not seem fair or right – nor does it seem to be in the best interest of a child. Others here today can talk more about the current process, its failures, and ways to make it better.

The other significant change called for in LD 552 can be found in Sec 4 of the current bill and is intended to make sure ed techs, and other school employees who work most closely with students, are able to attend an IEP meeting so their voices are heard in this process as well. Many ed techs have the most regular, direct contact with students and yet their participation in the IEP process is minimized or actively discouraged in some areas. Again, in many districts, ed techs are consulted and are meaningfully engaged in the IEP team. LD 552 will enshrine this best practice into Maine statute.

The changes proposed in LD 552 are not without precedent. In fact, 12 other states currently require parental consent for some or all changes to an initial IEP and/or placement. And at least 7 states, including our neighbors in Massachusetts and New Hampshire, can be described as “full consent states.”

I have heard of concerns about federal IDEA law and how the original language in LD 552 may be contrary to IDEA. I have an amendment to propose today to clarify. The amendment would mirror similar language in New Hampshire regarding the consent of parents and IEP team members before a change can be made to an existing IEP or placement of a student. If New Hampshire can create a legal framework that protects the rights of parents yet does not run afoul of the federal IDEA laws, Maine can and should do the same. Also, as we all know, Maine’s educators and families move back and forth between Maine and our only bordering US State, New Hampshire. Synchronicity with New Hampshire on this topic can only benefit the families and educators who cross the border to live and/or work.

I am not an expert on IEPs, IDEA, or the roles and duties of ed techs, but LD 552 is an attempt to address a longstanding concern regarding the balance of power between parents, administrators, and educators. More so, LD 552 is an attempt to make sure best practices regarding IEPs are being implemented across the state, in every community, for every family, for every student. My goal here is to find a more workable solution so the needs of all parties involved in IEPs are heard, listened to, and consensus is reached to do what is best for students. Because in the end, we are talking about students – students with challenges, students with disabilities, students with needs. It would behoove us all to find ways to encourage and require consensus when educators and families convene to discuss the best path forward when helping students. And I hope our Committee can come to a consensus on this path to make sure best practices are happening consistently over the state by codifying these changes into law.

Thank you and I will do my best to answer any questions you may have.

LD 552, An Act To Strengthen the Individualized Education Program Process Representative Millett Proposed Amendment

Changes to the original bill highlighted and italicized

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 20-A MRSA §7202, sub-§11, as corrected by RR 2011, c. 1, §28, is amended to read:

11. Transitional services for students with disabilities. Plan, coordinate and implement services for students with disabilities who are in transition from school to community in accordance with rules adopted by the department. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A; ~~and~~

Sec. 2. 20-A MRSA §7202, sub-§12, as reallocated by RR 2011, c. 1, §29, is amended to read:

12. Attorney's presence at team meeting. Provide that the school administrative unit may not have an attorney present at an individualized education program team meeting unless the school administrative unit has provided the parents of a child with a disability at least 7 days' written notice prior to the individualized education program team meeting that the school administrative unit will have an attorney present at the individualized education program team meeting. If the parent of a child with a disability has an attorney present at the individualized education program team meeting, the school administrative unit may have an attorney present without providing prior written notice.;

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.

Sec. 4. 20-A MRSA §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.*

Sec. 5. Rulemaking. No later than January 1, 2022, the Commissioner of Education shall submit to the Legislature proposed changes to Department of Education rule Chapter 101, Maine Unified Special Education Regulation Birth to Age Twenty, a major substantive rule adopted pursuant to the Maine Revised Statutes, Title 20-A, section 7005, to bring the rule into conformance with this Act.

SUMMARY

This proposed amendment would replace section 3 of the bill and instead require that a school administrative unit 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 IEP or placement, the child's most recent agreed upon IEP placement remains in effect unless and until the school administrative unit and parent agree otherwise, the matters are resolved, or a party files for due process, in which case the IEP and placement is governed by 34 CFR 300.518.

This proposed amendment also adds that an IEP team is required 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.