



BANGOR SCHOOL DEPARTMENT

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To: Senator Matthea Daughtry of Cumberland- Chair and members of the Education and Cultural Affairs Committee
From: Patti Rapaport, Director of Pupil Services
Re: Testimony for LD552
Date: March 22, 2021

My name is Patti Rapaport and I am the Director of Pupil Services for the Bangor School Department. I am offering testimony regarding LD 552 An Act to Strengthen the Individualized Education Program Process

Sec. 3. 20-A MRSA §7202, sub-§13 is enacted to read: 20 13. Changes to individualized education program. Require that changes to the individualized education program be made by consensus of the individualized education program team. If a team is unable to reach consensus on proposed changes to an individualized education program, the individualized education program in effect at the time of the proposed change remains in effect. If a team member seeks to pursue a change that is not agreed to by consensus by the team, that team member is responsible for requesting mediation under 7206-C, as appropriate, or initiating other available dispute resolution procedures.

I have been a district special education leader for 25 years and strive to achieve consensus at IEP team meetings. My responsibility is to help the team members develop a special education program that meets the needs of the student in order to provide a free appropriate public education. The focus of the IEP team process is not intended to meet the needs of the adults.

The proposed bill requires consensus of members of the IEP team. The language requires that all members agree before a child's IEP can be implemented. This could leave a child in an IEP program that is not appropriate and may cause harm. This is of great concern, as districts would not be meeting their responsibility to provide an appropriate program.

I have been in meetings where parents have not agreed to a proposed change in program. Here is one scenario that I have experienced. The student was placed in a therapeutic day treatment program for several years, had in engaged in counseling services, had met social and emotional goals and was ready to move to a regular middle school program. The parent did not agree.

If this law goes into effect, and all participants except the parent agree to a less restrictive school setting, the student would have to remain in a restrictive placement where the student does not have the opportunity to be educated with typically developing peers. It is unlikely that a parent would pursue due process or mediation as the parent would be content having the student in the restrictive day treatment program. This decision ultimately harms the student and keeps the student in an inappropriate educational program, which is a violation of both Maine Unified Special Education Regulations (MUSER) and IDEA.

Additionally there are times when students are not able to progress in their school programs and need to move to a more intensive and restrictive special education setting. I have had instances where the school is unable to provide a safe environment for a child. The child wants to run from the classroom, physically assault students and adults, throw furniture, books, pencils, etc. The child is overstimulated in the setting, doesn't have the necessary skills to self-calm in that setting and needs to be placed in a program where there are staff who are specially trained to work with emotionally dysregulated children. The recommended placement would have smaller staff to student ratio, access to staff members better trained to help deescalate a student and would provide special instruction to help the student learn self-regulation skills. The behavioral data discussed at the meeting supported that a more restrictive setting is needed however the parent disagreed with the placement change. Because the parent does not agree with the recommended placement, the school is required to keep the student in the inappropriate placement. This not only harms the child with special education needs but the behaviors of the child impacts peers in the child's classroom. It is scary to other children when they must evacuate a classroom because a classmate cannot control behaviors and throws furniture and pencils. Keeping a child in an inappropriate educational setting harms the child. This bill will keep the child in an inappropriate setting while the school or parent pursue dispute resolution procedures.

One of the areas that is not clear in this bill and causes great concern is who is considered the IEP team. Is it only the members required to attend by law or is it anyone in attendance at the IEP meeting? We think the bill may mean the parents but it is not clear.

What if a teacher does not agree with the IEP team's decision to move a student from a special education classroom? What if the teacher does not want a student with an emotional disability in the classroom? Would the teacher be required to initiate a process such as Mediation or Due Process to keep the student out of the classroom?

The Maine Unified Special Education Rule (VI.2.I) already indicates that changes to the IEP be made by consensus. The regulation clearly states that if consensus cannot be reached there must be prior written notice to the parents of the proposals or refusals and that the parents have the right to access dispute resolution options (mediation, complaint, due process) that are available to them in their procedural safeguards. Other IEP team members (interested parties) due to confidentiality issues (FERPA) can only challenge an IEP decision through the systemic complaint investigation process, not through mediation or due process.

The bill says, "If a team member seeks to pursue a change that is not agreed to by consensus of the team, that team member is responsible for requesting mediation under 7206-C, as appropriate, or

initiating other available dispute resolution procedures. There is no 7206-C in the Maine Education Statutes. The statute reference is suspected to be incorrect and should be 7207-C, which is mediation.

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, FAPE, to a child. Parents can also file for mediation and/or a due process hearing.

When someone files for a mediation, complaint investigation or due process hearing the child would already continue to receive services based on the IEP that was in place before the proposed changes. This is called “stay put”.

Maine already goes beyond the federal requirement for “stay put”. The federal requirement for “stay put” only comes into effect for a due process hearing. Maine requires “stay put” for mediations, complaints and due process hearings.

The procedural changes proposed by LD 552 are not in the best interest of children with disabilities. The proposed changes exceed the requirements of the federal Individuals with Disabilities Education Act (IDEA). Both of the proposed changes would cause an increased burden on school districts and create additional costs. There will be the potential for increased litigation, which is a financial burden and emotional cost for employees and families.

Sec. 4. 20-A MRSA §7202, sub-§14 is enacted to read: 29 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.

Based on the current rule a parent(s) can invite anyone to the IEP team meeting that the parent has determined has knowledge or expertise regarding the child and the school can do the same.

The proposed language of the bill is not clear if this would allow any school employee to make their own decisions to leave other students they are scheduled to work with for the purpose of attending the IEP meeting of a student at the request of the parent.

Maine Unified Special Education Regulations and the federal IDEA identify the needed team members who must be present when conducting an IEP team meeting. Educational Technicians are not members of the IEP team meeting. If this language is approved and a parent requests that an Educational Technician attend the IEP meeting, this would be an unfunded requirement and will create additional unbudgeted costs for the district if meetings are held after the educational technician’s working hours.

If the meeting were held during the school day, the educational technician or even some of the students’ other teachers would have to leave their instructional duties to attend the IEP meeting. This would take services away from other students. Most likely causing challenges with providing classroom coverage.

An IEP clearly delineates the position that is responsible for the student's services. In the case of specialized instruction, it is the special education teacher. If an educational technician delivers some of the services on the IEP, the special education teacher is still the responsible party. An Educational Technician is supervised by the special education teacher according to the requirements of MUSER.

Related service providers are sometimes contracted employees and the contracting district does not have control over the providers' schedule. Often times a therapy note will be provided to the IEP team meeting for discussion. If the parent request that the provider be there it could delay the scheduling of the meeting causing the IEP to expire or causing needed IEP changes to go on unchanged for an extended period of time because the team cannot meet.

This change will create difficulty for schools in providing staff changes, students' IEPs will be out of compliance and could lead to increased filings of complaints, due process hearings or mediation.

I do not support the recommended changes proposed in LD 552. They will increase special education costs, have the potential of interfering with a special education students' access to a free and appropriate public education, are not in the best interest of students and will cause districts to be out of compliance with Maine special education regulations.