



March 22, 2021

**Electronically Submitted**

Senator Matthea Daughtry, 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 552 – An Act to Strengthen the Individualized Education Program Process*

Dear Senator Daughtry, Representative Brennan, and Members of the Committee on Education and Cultural Affairs:

My name is Atlee Reilly and I am a Managing Attorney at Disability Rights Maine (DRM), Maine's federally funded protection and advocacy agency for individuals with disabilities. Thank you for the opportunity to appear before you today to testify in support of LD 552 - *An Act to Strengthen the Individualized Education Program Process*. With LD 552, Maine will join a growing number of states that require parental consent to change a previously agreed upon Individualized Education Program (IEP) for a student with a disability. In addition, LD 552 will help to ensure that the educators who work most closely with a student are able to attend meetings to discuss the student's program and placement. These changes would significantly improve the process of developing individualized education programs for students with disabilities.

The Individuals with Disabilities Education Act (IDEA), a federal law designed to ensure that students with disabilities have access to a free and appropriate public education in the least restrictive environment, requires informed parental consent in several areas, including: prior to conducting evaluations; prior to the initial provision of special education services; before accessing insurance or benefits; and before inviting representatives of other agencies to engage in the transition planning process. For all other areas, the IDEA leaves decisions about parental consent to the individual states.

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MAINE'S PROTECTION AND ADVOCACY AGENCY FOR PEOPLE WITH DISABILITIES

Currently in Maine, parental consent is not required before making material changes to a student's Individualized Education Program (IEP). Instead, special education regulations provide that: "[i]f the team cannot reach consensus, the SAU must provide the parent 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 complaint investigation."<sup>1</sup> As a result, any school district that seeks to change the placement of a student with a disability may do so, even over the objection of the parent, by providing written notice 7 days in advance of the change.<sup>2</sup> If a family wants to stop the change from going into effect over their objections, they must, within that 7 day period, initiate a due process hearing, file a complaint, or get the school to agree to mediation.<sup>3</sup> This is unjust, given the often significant imbalances in knowledge and power between parents and school administrators.

LD 552 addresses this by treating school administrators and parents equally. Under LD 552, on the rare occasions where an IEP team does not reach consensus regarding changes needed to an existing IEP, the party seeking to change the existing IEP (either the school district or the parent) would be responsible for initiating dispute resolution mechanisms to change the status quo. In the meantime, the previously agreed upon IEP would remain in effect.<sup>4</sup> Parents already bear the burden when they seek to change an existing IEP. LD 552 would not change that. But it would appropriately shift the burden to school districts when they seek to change the special education program or placement of a student with disability over the objection of a parent.

In addition to protecting parental rights, requiring consent for a change in educational placement would have positive effects on the IEP Team process because IEP Teams would necessarily focus more on compromise and consensus. Under current law, some school administrators present parents with proposals to significantly change a student's program or placement, engage in little discussion, and tell the parents to file a hearing if they disagree. LD 552 would require school administrators to engage parents and address parent concerns about significant changes in program or placement in order to obtain agreement to proceed. And when parents still cannot consent, it is likely that many school districts will do more to try to make the current placement work rather than spend the resources, (in time, money and relationships), to force a change through the IDEA dispute resolution mechanisms. This would likely result in fewer due process proceedings. Finally, although there will still be disputes,

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<sup>1</sup> " 05-071, Chapter 101, Maine Unified Special Education Regulation ("MUSER") VI.2.I.

<sup>2</sup> MUSER Appendix , p.220 "Written Notice".

<sup>3</sup> For information about these options in Maine, see: <https://www.maine.gov/doe/learning/specialed/dueprocess>

<sup>4</sup> This concept of an automatic "stay put" or status quo placement is already contained within the IDEA, which requires that during any due process proceedings "the child shall remain in the then-current educational placement of the child". See: 20 U.S.C. §1415(j).

it is reasonable to place the responsibility to initiate due process proceedings on the party seeking to change the status quo.

In preparation for the public hearing on this proposal, we took a quick look at similar provisions in other states. In short, at least 12 states require parental consent for some or all changes to a previously agreed upon IEP and/or placement. And of these, at least 7 states (Kansas, Massachusetts, Minnesota, Montana, New Hampshire, Ohio and Virginia) can be described as “full consent states”, as outlined in the table below.<sup>5</sup>

“Full Consent” States

| <i>State</i>  | <i>Summary</i>  | <i>Citation and Link</i>   |
|---------------|---|--|
| Kansas        | In Kansas, special education regulations state that each school “shall obtain parental consent before”, among other things, “making a material change in services to, or a substantial change in the placement of, an exceptional child”.   | Kan. Admin. Regs. § 91-40-27(a)(3)<br><br><a href="https://sos.ks.gov/publications/pubs_kar_Regs.aspx?KAR=91-40-27">https://sos.ks.gov/publications/pubs_kar_Regs.aspx?KAR=91-40-27</a>  |
| Massachusetts | Massachusetts requires that schools obtain written parental consent “before placing a student in a special education placement subsequent to the initial placement in special education.”   | Mass. Rules 603 28.07(1)(a)<br><br><a href="https://www.doe.mass.edu/lawsregs/603cmr28.html?section=07">https://www.doe.mass.edu/lawsregs/603cmr28.html?section=07</a>   |
| Minnesota     | Minnesota presumes consent if parents do not object within 14 days after receiving notice of a proposed change in special education placement. Specifically, Minnesota rules require schools “inform the parents that except for the initial placement and provision of services, the district will proceed with the proposed placement and | Minn. R. 3525.3600(B)<br><br><a href="https://www.revisor.mn.gov/rules/3525.3600/#:~:text=Minnesota%20Administrative%20Rules%203525.3600%20P">https://www.revisor.mn.gov/rules/3525.3600/#:~:text=Minnesota%20Administrative%20Rules%203525.3600%20P</a> |

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<sup>5</sup> The “partial consent” states include: Alaska (which requires parental consent before transferring a student to a school outside of the district); Connecticut (which requires consent before placement in a non-public program); Florida (which requires consent before placement in an exceptional student education center); and Maryland (which requires consent for placement in an alternative education program, use of an alternate assessment, or including restraint and seclusion in the IEP). In addition, California appears to require parental consent, with the State Department of Education indicating that “Parental consent must also be provided before any change in special education services may occur.” See: CDOE “Parents' Rights: A brief summary of Procedural Safeguards for students with disabilities receiving special education services”, available at: <https://www.cde.ca.gov/sp/se/qa/psssummary.asp>

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|               | provision of services unless the parents object in writing on the enclosed response form or otherwise in writing within 14 calendar days of when the district sends the prior written notice to the parent".   | <a href="#">RIOR%20WRITTEN%20NOTICE.%20When, must%20serve%20prior%20written%20notice%20on%20the%20parent.</a>  |
| Montana       | Montana requires schools to obtain "written parental consent for initial and annual placement of a student with disabilities in special education and related services shall be obtained by the local educational or public agency prior to the placement." And if there is only partial agreement to any proposed changes Montana rules provide that "the student's new IEP would be implemented in the areas of agreement and the student's last agreed-upon IEP would remain in effect in the areas of disagreement until the disagreement is resolved." In addition, Montana presumes consent if it cannot be obtained within 15 days following a notice sent seeking consent. | Mont. Admin. R. 10.16.3505<br><br><a href="http://www.mtrules.org/gateway/RuleNo.asp?RN=10%2E16%2E3505">http://www.mtrules.org/gateway/RuleNo.asp?RN=10%2E16%2E3505</a>  |
| New Hampshire | New Hampshire requires schools to obtain informed written consent prior to, among other things: "(3) Annual renewal of the IEP and placement of a child with a disability; (4) Determining or changing the disability classification; (5) Changing the nature or extent of the special education or special education and related services". In addition, New Hampshire allows schools to proceed with the proposed changes if parents do not respond within 14 days and reasonable measures to obtain consent have been taken.  | NH Rules, Ed 1120.04 and 1120.06<br><br><a href="http://www.gencourt.state.nh.us/rules/state_agencies/ed1100.html">http://www.gencourt.state.nh.us/rules/state_agencies/ed1100.html</a>  |
| Ohio          | Ohio requires schools to obtain informed parental consent before any change in special education placement, defined as "a change from one option on the continuum of alternative placements to another."   | Ohio Administrative Code 3301-51-05(c)(5)(a) to (c)(ii)<br><br><a href="http://codes.ohio.gov/oc/3301-51-05">http://codes.ohio.gov/oc/3301-51-05</a>   |
| Virginia      | Virginia requires informed parental consent before "Any revision to the child's IEP services"  | VA Administrative Code - 8VAC20-81-170(E)(1)(d)<br><br><a href="https://law.lis.virginia.gov/admincode/title8/agency20/chapter81/section170/">https://law.lis.virginia.gov/admincode/title8/agency20/chapter81/section170/</a> |
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When Maine takes this step toward requiring consent and consensus to change an existing IEP, we will be in good company. DRM strongly supports this change. DRM also supports the provision in LD 552 that would ensure that the educators who work most closely with students with disabilities, even if they happen to be educational technicians rather than certified teachers, are invited to meetings when the programming and placement of their students is being discussed and determined. Too often, the educators with the most knowledge are absent from these meetings. LD 552 would give them a place at the table.

Thank you again for your time. I look forward to answering your questions now and at the work session.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Atlee Reilly", written over a horizontal line.

Atlee Reilly  
Managing Attorney  
Disability Rights Maine