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Testimony of Rep. Michele Meyer presenting

LD 854, An Act To Ensure Continued School-based Services for Children with Disabilities

Before the Joint Standing Committee on Health and Human Services

Senator Claxton and esteemed committee colleagues, I am Representative Michele Meyer, and I am pleased to present **LD 854, An Act To Ensure Continued School-based Services for Children with Disabilities**.

The purpose of LD 854 is to protect and preserve medically necessary and educational services for young children with disabilities attending developmental preschool programs throughout the state. It is similar in scope to LD 2141, which I introduced last session. This bill had widespread bipartisan support and passed unanimously out of this committee last summer.

It followed a proposed January 2020 MaineCare rule for a new section, Section 106, which proposed consolidating school-based services into one MaineCare section. After thousands of parents, advocates and providers raised significant concerns about the rule's impact on preschool-aged children with disabilities including a reduction in access to full-time, year-round early intervention services, as well as a reduction in rates to these services that are critical to children's long-term development and independence, the Department recalled the rule.

The previously proposed rule was considered routine technical and would have gone into effect with major flaws had families across the state not advocated for their children and the services they need to ensure they reach their highest potential.

I thank the Department for its decision to withdraw the proposed Section 106 after the strong feedback it received from families and providers. I understand the need for the new section and that it will be reintroduced. I believe the Department is acting in good faith, and so are the providers of early intervention preschool services. We all want the same outcome — that young children receive the services they deserve, that our valued service providers can remain viable, and that the State of Maine authorizes school-based services in the most appropriate way. I do believe, however, that the issues

Section 106 sought to address are so complex and involve such critical services for a vulnerable population that, moving forward, legislative oversight is required.

LD 854 does two important things. First, it requires that any MaineCare rule changes impacting children ages birth through five years of age for developmental preschools be major substantive and require legislative oversight. Secondly, it requires DHHS to convene a stakeholder group to actively participate in any rulemaking process relevant to school-based services and include advocates, parents of children receiving services, Child Development Services (CDS), and the Department of Education (DOE), and consider the findings from the independent review of the State's early childhood special education services being carried out at the Legislature's direction.

As you know, developmental preschools treat young children with autism, developmental disabilities, intellectual disabilities, and mental health diagnoses. The importance of early intervention services for this population is well documented. Young children with autism and other disabilities need, on average, 30 hours or more of clinical intervention services a week on a year-round basis to make critical gains, according to widely accepted evidenced-based research and best practices. Despite the research, children in Maine's developmental preschools often do not receive 30 hours of early-intervention services through CDS authorization. Providers report CDS typically authorizes children for 6-15 hours a week, sometimes more, but very rarely full-time early intervention services.

To provide children with full-time services, providers supplement CDS hours with MaineCare Section 28 or 65 services and transition the CDS hours to MaineCare hours or just rely on MaineCare services. Providers have adopted this method of supplementing CDS hours with MaineCare hours out of necessity because the treatment authorized by IEPs does not fully meet children's needs. In fact, CDS has a formal expectation with some providers that they have 30 days to transition a MaineCare eligible child from CDS to MaineCare services. Section 106, as it was originally proposed, limited developmental preschool hours to only those authorized on the IEP, thus limiting the access to additional and appropriate services needed.

Clearly, this issue is complex. It involves DOE and CDS and DHHS. These challenges, between the Department's efforts to limit medically necessary services to only those that are in IEPs and determinations about who is going to pay for them, have been an issue for well over a decade. It is critical that these departments work together to coordinate the authorization of early intervention services to fully meet young children's needs and design a system that works for all. The Department's work to create and implement Section 106 comes at a time when the Legislature is considering the recommendations from the Public Consulting Group report and the best way to deliver preschool services to children throughout the state. Because these issues are so complicated, involve multiple departments, and have such high stakes, it is imperative that we keep the Legislature involved.

Families of children with disabilities — in every county and in every one of our districts — are looking to us to ensure that they continue to have access to early intervention services. We owe it to them to work with DHHS, DOE, CDS, and providers to get it right. Thank you.

LD 854

An Act To Ensure Continued School-based Services for Children with Disabilities

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, medically necessary school-based services provided to children are critical to child development and must be available to the maximum extent possible under federal law; and

Whereas, the Legislature has an important role in ensuring that rules adopted by the Department of Health and Human Services result in medically necessary school-based services being provided to children by providing additional review, and the review must be in place as soon as possible; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 34-B MRSA §1227 is enacted to read:

§1227. School-based services in developmental preschools for children from birth to 5 years of age

The department shall provide support medically necessary school-based services in developmental preschools to children from birth to 5 years of age, including rehabilitative and community support services for children with cognitive impairments and functional limitations and behavioral health services. The department may adopt rules to implement this section. Rules adopted pursuant to this section are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

As used in this section, "developmental preschool" means a program that has been approved by the Department of Education as either a special purpose private school or a regular education public school program or a program operated or funded by the Child Development Services System in Title 20-A, section 7209.

Sec. 2. Stakeholder group; review of early childhood special education services. The Department of Health and Human Services shall convene a stakeholder group to participate in any rulemaking pursuant to the Maine Revised Statutes, Title 34-B, section 1227, including the drafting of rules and any proposed changes to those rules after the public hearing process to the extent permitted by Title 5, chapter 375. Stakeholders include representatives of providers, advocates, parents of children receiving services, the Child Development Services System, school

administrative units and the Department of Education. The Department of Health and Human Services also shall take into account the findings from the independent review of the State's early childhood special education services being carried out pursuant to Public Law 2019, chapter 343, Part VVVV.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This bill directs the Department of Health and Human Services to **provide support medically necessary** school-based services in developmental preschools for children from birth to 5 years of age. It designates any rules adopted as major substantive rules under the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A. It requires the department to convene a stakeholder group when drafting those rules and take into account the findings from the independent review of the State's early childhood special education services being carried out pursuant to Public Law 2019, chapter 343, Part VVVV.