

Please provide your general comments, including your questions and suggestions, on the master contractual agreements for private schools offering special education programs. This text box is not character limited.

MaineHealth Behavioral Health thanks the Department for this opportunity to submit comments on the proposed Master Contractual Agreement for Private Schools Offering Special Education Programs.

1. Services provided (MUSER X.2.A, XI).

The draft agreement form asks for programs to check off services provided. We note that a school or program may routinely provide certain services, such as occupational therapy, speech and language pathology services, health and nurse services and physical therapy services, but that workforce challenges often prevent programs from being fully staffed at all times. When we have vacant positions, we would in essence be breaching the agreement. We recommend adding language that reflects workforce challenges, such as “The School provides the following special education services and related services when they have the appropriate providers on staff.”

6. Removal or discharge (20 U.S.C. §1412(a)(10)(B); 34 C.F.R. §300.146(c)).

We are deeply concerned with this section as a whole. We understand that the Master Agreement will provide clarity on the process for discharge, however, our school serves some of the most complex students in the state whose disabilities often result in high intensity, dangerous behaviors including choking, biting, hitting, kicking, scratching and head butting. Staff are trained in crisis intervention; however, we have had significant staff injuries including broken bones, concussions, nerve damage, ligament damage and scars while managing student crisis. The Master Agreement significantly restricts our school’s ability to exercise discretion in making decisions regarding student and staff safety. In a circumstance where our school determines that we are unable to implement a student’s IEP in a manner that ensures both the safety of the student and the school community, the school should retain the authority to discharge the student, subject to the provision of a reasonable transition period (e.g., two weeks to thirty days). The student deserves to be in a placement that can meet their needs and we should not be expected to compromise physical safety or violate occupational health standards. We urge the Department of Education to make changes in line with other states, such as Massachusetts, New Jersey, Illinois, and the District of Columbia, that have protection for students without sacrificing the safety of other students and school staff; we have included an example from Massachusetts below.

Massachusetts

The Massachusetts Education Laws and Regulations, at [603 Mass. Code Regs. 18.05](#), provides two types of termination procedures: (1) emergency termination procedures, and (2) termination in the ordinary course (so-called planned terminations).

First, with regard to emergency terminations, an “emergency” is defined as “circumstances in which the student presents a clear and present threat to the health and safety of him/herself or others,” The school must follow the procedures in [603 CMR 28.09\(12\)](#), which provides that the Special Purpose Private Schools (SPPS) first inform “the enrolling public school district [which] assumes responsibility for the student.” If the sending district cannot assume responsibility for the student immediately, it can request a delay of up to two calendar weeks in order to convene emergency meetings or “conduct other appropriate planning discussions” before the student is terminated from the SPPS. Termination cannot be delayed past two calendar weeks unless both the sending district and nonpublic placement provider reach an agreement to do so.

Second, with “planned terminations,” (anything that is not emergency), the SPPS must request an IEP team meeting, with at least 10 days’ notice, in order to plan and develop a written termination plan for the student. The plan must describe (i) the student’s specific programmatic needs, (ii) short and long term goals of this program; and (iii) recommendations for follow-up and/or transitional services. The nonpublic placement provider must clearly explain the termination process to relevant stakeholders, including parents and the Administrator of Special Education. Finally, the written termination plan must be implemented in no less than 30 calendar days, unless the parties agree to an earlier termination date.

While it does not appear Massachusetts has a set or state-mandated master contract to govern such placements, the Massachusetts Association of Approved Special Education Schools (“MAAPS”) provides sample contracts for both residential and day treatment placements. Both contracts include language regarding the discharge or termination of a student from a nonpublic placement provider. The contract language mirrors the regulatory requirements for a student discharge:

5. Discharge and Termination

(a) The School agrees to use its best efforts to maintain the Student's placement. Notwithstanding the above Section 4, the School may discharge the Student under any of the following conditions:

(1) By mutual agreement of the School, LEA [Local Education Agency] and the Student's parents/guardians, or person with legal responsibility for the Student.

(2) If: (i) the Student has reached 22 years of age; (ii) the School has not entered into an agreement satisfactory to the School with a financially responsible person or agency regarding funding for the Student at the School after the Student has reached 22 years of age; and (iii) the School has given 30 days’ notice to the LEA and the Student's parents/guardians or person with legal responsibility for the Student at the School, the School will terminate the Student's placement if such an agreement regarding funding has not been entered into.

(3) Any invoice of the School for services provided to the Student remains unpaid for 30 days after the date of rendering of invoice provided that 10 days have elapsed after the School has sent notice to the LEA of non-payment.

(4) The IEP does not accurately describe the Student, in that the Student requires a level of staff, services or support services beyond that regularly provided in the School's program unless

accommodated under an individual price agreement; the Student presents a clear and present threat to the health and safety of the Student or others; or some other situation exists which makes it inappropriate for the Student to remain in the program.

(5) The Student's parents/guardians or person with legal responsibility for the Student have failed to comply with the provisions of the agreement referred to in Section 3(a) above.

(6) The LEA has failed to comply with the provisions of this Agreement.

(b) In the case of an emergency termination, the Student may be discharged immediately provided that the provisions of 603 CMR 28.09(12) and the School's termination policies are followed.

Additional Comments on #6

6.b.i: We are supportive of the language regarding provision of a written notice of change of placement.

6.b.ii: We are concerned that, under the current language, the School may be unable to adequately protect its students and staff in situations where a student poses a danger but does not meet the criteria for "special circumstances." Such circumstances could result in staff burnout and attrition if employees do not feel safe, which would, in turn, compromise the quality and consistency of services provided to students and leave the School without adequate staffing and resources. Accordingly, we respectfully request that the provision be revised as follows: *"While the Placing SAU searches for a successor placement, the student shall continue to attend the School, and the School and the Placing SAU shall collaborate to implement a functional behavior assessment, initiate or revise behavior intervention plans, employ applicable 'special circumstances' removals by the SAU as defined in IDEA/MUSER, or utilize other appropriate interventions, **unless the health or safety of any student or staff member is endangered.**"*

6.b.iii: We request that a definition of imminent risk be included.

6.b.vi: This requires additional clarification whether it would apply only if there is imminent risk, and whether it would apply even if the school believes it cannot carry out a student's IEP safely and successfully.

6.c: We request clarification whether this would allow us to create our own process for discharge, under the framework of an alternative process as proposed here.