MorrisonCenter

November 14, 2025

To the Maine Department of Education:

Thank you for sharing the initial draft of the Master Contractual Agreement with the field. We appreciate the effort to clarify the responsibilities and procedures associated with private schools receiving public funding. We also value your commitment to gathering input from SAUs and SPPSs to inform the development of a final, comprehensive version of the contract.

As a general recommendation, I suggest distinguishing between Special Purpose Private Schools (SPPSs) and “60/40 Schools” through separate contractual agreements, as the challenges associated with each are notably different. Having worked in public schools, SPPSs, and in close collaboration with 60/40 schools, I’ve observed that 60/40 schools sometimes restrict enrollment for certain special education students, raising concerns about equitable access.

In contrast, SPPSs typically enroll students who initially appear to be a good fit, but whose evolving safety or medical needs may eventually exceed the school’s capacity to provide appropriate programming. Disputes often arise when an SPPS seeks to discharge a student, but the sending SAU or the parent does not support that decision.

Please see the following detailed feedback referencing different sections of the Agreement: (Please note, these comments are from the perspective of an administrator at a Special Purpose Private School, not a 60/40 school.)

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

Comment on Section 1:

This section may be unnecessary and could be more effectively replaced with a concise statement such as: “The school will provide special education and related services based on each individual student’s IEP.” Listing specific services (e.g., “The School provides the following special education and related services…”) is not required, as service provision is determined by each student’s unique IEP. This approach preserves flexibility within the document, eliminating the need for revisions or re-signing if services are added, removed, or impacted by staffing changes.
Additionally, it is important to recognize that Special Purpose Private Schools (SPPSs) are not ultimately responsible for implementing the IEP; that responsibility lies with the sending School Administrative Unit (SAU). In practice, when an SPPS has experienced temporary service gaps due to provider vacancies, sometimes partner SAUs have stepped in to ensure continuity of services.

An alternative approach would be to consolidate Sections 1 and 2 (Educational Settings) by replacing them with the language from MUSER Section XVIII.4.B: “Implementing a child’s Individual Education Program, which shall not be amended without an IEP Team meeting or the consent of the sending SAU and the parent (where applicable).” This substitution would more clearly define the responsibilities of Special Purpose Private Schools (SPPSs) in implementing each student’s IEP, including all individualized special education and related services.

Section 6:
Removal or Discharge: (20 U.S.C. §1412(a)(10)(B); 34 C.F.R. §300.146(c)). The School shall have a policy for removal or discharge of students with disabilities that includes the following:

Comments on Section 6:
While many components of Section 6 are consistent with MUSER, I believe additional consideration should be given to the safety and well-being of both students and staff in cases where the IEP Team does not reach consensus regarding a proposed discharge. Of particular concern is the provision requiring a student to remain enrolled at the current Special Purpose Private School (SPPS) until the sending School Administrative Unit (SAU) secures an appropriate successor placement.

Although this provision is well-intentioned and aims to prevent educational disruption, the Maine Department of Education (MDOE) is well aware of the significant waitlists—often spanning years—for both in-state and out-of-state placements. In practice, this could result in a student remaining in an SPPS setting that is no longer equipped to safely meet their behavioral or medical needs, thereby posing serious risks to all stakeholders.

I recommend that this provision be removed from the Master Agreement and that MDOE explore alternative procedures for cases involving imminent safety concerns due to behavioral or medical presentations.

Section 6, paragraph c, is unclear to me.

As a general recommendation, I encourage the Maine Department of Education (MDOE) to examine existing state agreements that address safety concerns arising from a lack of consensus or the application of a stay-put order. In reviewing several state contracts, I found the guidelines outlined in the Massachusetts Education Laws and Regulations—specifically 603 CMR 18.05—to be particularly instructive. This regulation distinguishes between two types of termination procedures: (1) emergency termination and (2) termination in the ordinary course (i.e., planned terminations).

I recommend that Maine consider incorporating a similar framework into its Master Agreement, including a clear delineation of the various circumstances under which a student may be discharged.

Section 8:
Monitoring and Enforcement

Comments on Section 8:
Subsection (b) references policy development and submission, stating: "The School shall submit the policies referenced in this Agreement on or before July 1, 2026." Immediate clarification is needed regarding schools currently participating in the program approval monitoring cohort. Our team has been directed to submit this policy by January 2, 2026; however, I have advised that meeting this deadline may not be feasible if the final draft of the Master Agreement has not yet been released. I respectfully request that MDOE leadership provide clear guidance on the required submission timeline, particularly as it relates to desk audit expectations for the current monitoring cohort.

Additionally, I am seeking further clarification regarding Section 8, Subsection (c), "Termination." Specifically:

- What are the implications for a Special Purpose Private School (SPPS) that does not comply with the Agreement?

- What are the consequences if an SPPS chooses not to sign the Agreement?
- Will noncompliance or refusal to sign have financial repercussions?
- Will adherence to the Agreement be incorporated into the school approval process?

Clear guidance on these points would be greatly appreciated to ensure alignment and informed decision-making.

Final Thoughts:

Please provide clarity about the intention of the legally required 30-Day Review of Placement IEP meeting and any relevance it may have to the Master Agreement.

As a long-serving special education director in Maine with nearly 22 years of experience, I want to express a significant concern regarding the potential unintended consequences of the proposed Master Agreement. If the final contract does not provide equitable protections and procedural safeguards for Special Purpose Private Schools (SPPSs), there is a real risk that these schools may become more hesitant to enroll students whose needs could exceed the school's capacity to maintain a safe and effective learning environment. Historically, my team and I have been willing to accept students even when we had some uncertainty about our ability to fully meet their needs—often because the alternative was for the student to remain at home, awaiting placement. We were guided by a commitment to do what was best for the child and a belief that, with collaboration and creativity, we could find a way to support them.

However, in a climate where parents and School Administrative Units (SAUs) are afforded increasing recourse, and where SPPSs may be contractually limited in their ability to discharge students whose needs exceed what can safely and appropriately be provided, I fear that schools will become more risk-averse. Rather than "taking a chance" on students with complex behavioral or medical profiles, SPPSs may feel compelled to prioritize students with fewer intensive needs.

This shift could result in more students with significant challenges remaining out of school for extended periods, awaiting placement. It may also compromise the safety and stability of existing programs, as staff are stretched beyond capacity to meet the needs of a single student—leading to burnout, resignations, and reduced availability for other students.
I urge the Maine Department of Education to consider these practical realities and ensure that the final Agreement includes balanced provisions that support both student access

and school sustainability. Without such balance, we risk creating a system that inadvertently limits opportunities for the very students we aim to serve.

Sincerely,

Erin Chase
Director of Educational Services
Morrison Center

[DOE letterhead]

MASTER AGREEMENT

Between an Approved Private School Seeking to Offer
a Special Education Program and the Commissioner of Education

STATUTORY AUTHORITY:

20-A M.R.S.A. §7252-A. Early intervention; special education programs; approval

> . . . A special education program may be offered by a school administrative unit, an approved private school or a state licensed agency. All . . . special education programs offered by approved private schools or state licensed agencies must:
>
> **1. Supervision.** Be provided under the supervision of the school administrative unit responsible for the education of the child with a disability enrolled in the program;
> **2. Description.** Be described in a master contractual agreement between the agency or private school and the commissioner; and
> **3. Approval.** Be approved in advance of the enrollment of any child with a disability.

In accordance with 20-A M.R.S.A. §7252-A(2), to ensure compliance with State and Federal laws and regulations and to establish a common framework that defines the roles of the participants in order to provide education programming to students with disabilities served in private programs, **[Name of Private School]** (the "School") and the Commissioner of Education hereby enter into the following Master Agreement governing the operation of a special education program. Nothing in this Agreement removes any obligation of the School to obtain the applicable school and/or program approval, or to comply with any applicable State or Federal law or regulation.

Nothing in this Agreement prevents the School from entering into contractual agreements with one or more school administrative units that place students at the School (Placing SAUs), so long as those agreements do not conflict with this Master Agreement.

1. <u>Services provided (MUSER X.2.A, XI)</u>. The School provides the following special education and related services:

☐Assistive technology services

☐Audiology services

☐Counseling services

☐Interpreting services (cut hearing aids)

☐Medical service

☐Orientation and mobility services

☐Occupational therapy

☐Physical therapy

☐Psychological services

☐Recreation services

☐Rehabilitation services (cut leisure services)

☐School health and nurse services

☐Social work services

☐Speech-language pathology services

☐Transportation

Based upon the needs of the enrolled students, the School may be able to expand the services offered, and to provide additional services in addition to those checked above.

2. Educational settings (MUSER X.2.C.2). All students with disabilities are entitled to receive special education and related services in the least restrictive environment (LRE). The School offers the following educational settings:

☐Special Education outside the regular classroom less than 21 percent of the day (MUSER X.2.C.2.a).

☐Special education inside the regular class no more than 79 percent of the day and no less than 40 percent of the day (MUSER X.2.C.2.b).

☐Special education inside the regular class for less than 40 percent of the day (MUSER X.2.C.2.c).

☐Separate School-Special Education outside public or private school for greater than 50 percent of the school day (MUSER X.2.C.2.d).

The School shall have policies and procedures in place to transition students with disabilities to less restrictive placements in accordance with the determinations of a student's IEP Team.

3. Admissions. The School must have a publicly available admissions policy that provides the criteria for admission as well as the process for determining how all students, including students with disabilities, are evaluated for admission. The admissions policy must ensure, at a minimum, that students with disabilities with an LRE that corresponds to educational settings available at the School (as identified in Section 2 above) are admitted in a non-discriminatory manner.

4. Provision of services. For each student with a disability enrolled at the School, the School shall provide regular education, special education and related services in accordance with each student's IEP. The School may not make any changes to a student's IEP without following the procedure in Section 6 below.

5. Attendance. The School shall maintain a record of the student's attendance, including any removal of the student by the School from their educational program, regardless of whether it is specifically identified as "disciplinary." The record of the removal shall identify the reason it occurred. . The School shall inform the Placing SAU when a student is absent or out of program for 10 cumulative school days in the school year, and any subsequent 10 cumulative days out of program in that school year so that the SAU can make a determination whether an IEP Team meeting is required.

6. Removal or discharge (20 U.S.C. §1412(a)(10)(B); 34 C.F.R. §300.146(c)). The School shall have a policy for removal or discharge of students with disabilities that includes the following:

    a. Before ordering removal or discharge of the Student from the School, the School shall provide written notification to the Placing SAU and to the student's parents, informing them of the intention to remove or discharge and the reasons for that intention. The Placing SAU shall then schedule and hold an IEP Team meetingas soon as possible, taking into consideration the parent's right to attend, and no later than 10 school days after receiving the School's notice of intent.

    b. If the IEP Team does not reach consensus on a proposed removal or discharge of the student, the following steps shall occur:
        i. The Placing SAU and the IEP team shall develop an interim placement proposal for the Student and begin a search for an appropriate successor placement for the child. The School shall provide assistance to the Placing SAU regarding effective implementation of the interim placement. The Placing SAU shall issue a Written Notice documenting the decisions made, including the School's decision to remove or discharge the student from its program.
        ii. While the Placing SAU searches for a successor placement, the student shall continue to attend the School in accordance with the Student's last

agreed upon IEP and placement, and the School and the Placing SAU shall work together in utilizing functional behavioral analysis, introduction or modification of behavior plans, use of applicable “special circumstances” removals by the SAU as set forth in IDEA/MUSER, or other interventions considered appropriate to ensure the student’s, other students’ and staff’s safety.

iii. If the parent challenges the removal or dismissal decision by exercising their due process rights, the School shall serve as the “stay put” placement. unless either the IEP team identifies a different and available placement that meets IDEA “maintenance of placement” requirements, or the School informsthe Placing SAU that they are unable to maintain the child’s current placement without a substantial risk of harm to the student, other students, and/or school staff.

iv. Should the School conclude that maintenance of the student’s placement will present a substantial risk of harm to the student, other students, and/or staff, the School shall inform the Placing SAU and Parents in writing that they cannot continue to serve the student without the risk described above, and the Placing SAU shall seek relief from any “stay put” order through an expedited due process hearing. The child’s stay put placement during that expedited hearing shall be in accordance with applicable standards in the IDEA..

v. During the due process hearing, the Placing SAU shall ensure that the School has the opportunity to present testimony and documentary evidence and offer legal arguments regarding the placement of the student at the School. The Placing SAU may, however, provide evidence contrary to the position taken by the School.

vi. If a due process hearing officer or court determines that the student’s placement at the School is appropriate, or that there is not a substantial likelihood of injury if the student were to remain in the placement while alternatives are sought, then the Student shall remain at the School pending any appeal or any further judicial action.

c. The process set forth in Section 6(b) above shall also apply to circumstances when the IEP team concludes that a student’s misbehavior is a manifestation of the child’s disability, and the IEP team is unable to reach agreement on an alternative placement for the child.

d. Nothing in Section 6 above shall in any manner limit the School or the Placing SAU from seeking judicial relief from any of the requirements set forth in that Paragraph.

c. If the School and one or more Placing SAUs agree on an alternative process to that described above in paragraph 6 that ensures the same outcome: that a student placed at the School has the same rights as a student served at a public school as required by federal law, the School may submit it to the Department for approval to replace paragraph 6 prior to implementation.

7. Relationship to the Placing SAUs (20-A M.R.S.A. §7252-A(2)). The School will designate an individual to be the single point-of-contact for all communications regarding programming for students with disabilities and will obtain a single point of contact from each Placing SAU. The School shall permit the Placing SAUs' designees to enter the private school to visit classrooms, meet with the School's designee, and talk to the staff about the progress of individual students.

8. Monitoring and enforcement.

   a. Access to records. The School will allow the Department to access the records necessary to determine whether the School is in compliance with this Agreement.
   b. To the extent that the School requires parent consent for release of education records to either the Department or the Placing SAU pursuant to MaineCare requirements, the School shall obtain such consents and keep them current over time.
   c. The School shall provide copies of all Chapter 33 reports to the Sending SAU's superintendent and Director of Special Education in a timely manner. The School shall also notify the Sending SAU's superintendent of schools and director of special education of any incidents of drug violations, weapon violations, or the infliction of serious bodily injury.
   d. Submission of policies/documentation. The School shall submit the policies referenced in this Agreement on or before July 1, 2026. Documentation of alternative removal/discharge arrangements between the School and one or more Placing SAUs pursuant to Section 6(c) must be submitted to the Department prior to their adoption.
   e. Monitoring. The Department will establish a routine monitoring cycle for private schools that operate special education programs that is separate from the monitoring of the Placing SAUs.
   f. Enforcement. As a result of the monitoring process above, in response to a complaint by a parent/guardian or a Placing SAU, or on its own initiative, the Department shall take the following steps to enforce this agreement: giving the School the opportunity to respond, conducting an investigation as necessary, issuing findings of fact and conclusions of law, and providing a corrective action plan (CAP) for any violation of the Agreement that must be completed within a time specified. If the School disagrees with the findings, conclusions or CAP, the Department will offer an administrative hearing in accordance with the Maine Administrative Procedure Act, 5 M.R.S. §9051 *et seq*. The determination reached at the end of the administrative hearing shall constitute the Department's final agency action.
   g. Termination. Failure by the School to timely correct a violation of this Agreement or comply with the terms of a CAP shall result in termination of this Agreement at the end of the then-current school year.

[DOE letterhead]

MASTER AGREEMENT

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STATUTORY AUTHORITY:

20-A M.R.S.A. §7252-A. Early intervention; special education programs; approval

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2. Description. Be described in a master contractual agreement between the agency or private school and the commissioner; and
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In accordance with 20-A M.R.S.A. §7252-A(2), to ensure compliance with State and Federal laws and regulations and to establish a common framework that defines the roles of the participants in order to provide education programming to students with disabilities served in private programs, **[Name of Private School]** (the "School") and the Commissioner of Education hereby enter into the following Master Agreement governing the operation of a special education program. Nothing in this Agreement removes any obligation of the School to obtain the applicable school and/or program approval, or to comply with any applicable State or Federal law or regulation.

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☐Special education inside the regular class for less than 40 percent of the day (MUSER X.2.C.2.c).

☐Separate School-Special Education outside public or private school for greater than 50 percent of the school day (MUSER X.2.C.2.d).

The School shall have policies and procedures in place to transition students with disabilities to less restrictive placements in accordance with the determinations of a student's IEP Team.

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4. Provision of services. For each student with a disability enrolled at the School, the School shall provide regular education, special education and related services in accordance with each student's IEP. The School may not make any changes to a student's IEP without following the procedure in Section 6 below.

5. Attendance. The School shall maintain a record of the student's attendance, including any removal of the student by the School from their educational program, regardless of whether it is specifically identified as "disciplinary." The record of the removal shall identify the reason it occurred. ~~Early release from educational programming constitutes a removal~~. The School shall inform the Placing SAU when a student is absent or out of program for 10 cumulative school days ~~days~~ in the school year, and any subsequent 10 cumulative days out of program in that school year so that the SAU can make a determination whether an IEP Team meeting is required.

6. Removal or discharge (20 U.S.C. §1412(a)(10)(B); 34 C.F.R. §300.146(c)). The School shall have a policy for removal or discharge of students with disabilities that includes the following:

   a. Before ~~making **any** changes to a student's IEP or educational program (including the~~ ordering removal or discharge of the Student from the School~~)~~, the School shall provide written notification to the Placing SAU and to the student's parents, informing them of the intention to remove or discharge and the reasons for that intention. The Placing SAU shall then ~~ask the Placing SAU to ses~~schedule and hold an IEP Team meeting~~, even if the student's parent agrees with the proposed change. The IEP Team meeting shall be held~~ as soon as possible, taking into consideration the parent's right to attend, and no later than 10 ~~business~~ school days after receiving the School's ~~request~~notice of intent.
   b. If the IEP Team does not reach consensus on a proposed ~~change to a student's IEP or educational placement~~removal or discharge of the student, the following steps shall occur:~~, and the Placing SAU and the School are in disagreement:~~
      i. The Placing SAU and the IEP team shall develop an interim placement proposal for the Student and begin a search for an appropriate successor placement for the child. The School shall provide assistance to the Placing SAU regarding effective implementation of the interim placement. The Placing SAU shall issue a Written Notice documenting the decisions

made, including the School's decision to remove or discharge the student from its program. ~~If the School does not believe that it has the capacity to carry out a student's IEP safely and successfully, and/or believes that it is no longer an appropriate placement for a student – even after the consideration of changes to the IEP including additional supports – the Placing SAU shall provide Written Notice to the parent of a change of placement and begin the search for a successor placement.~~

ii. While the Placing SAU searches for a successor placement, the student shall continue to attend the School in accordance with the Student's last agreed upon IEP and placement, and the School and the Placing SAU shall work together in utilizing functional behavioral analysis, introduction or modification of behavior plans, use of applicable "special circumstances" removals by the SAU as set forth in IDEA/MUSER, or other interventions considered appropriate to ensure the student's, other students' and staff's safety.

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iv. Should the School conclude that maintenance of the student's placement will present a substantial risk of harm to the student, other students, and/or staff, the ~~If the~~ School shall inform~~informs~~ the Placing SAU and Parents in writing that they cannot continue to serve the student without the ~~imminent~~ risk described above, and the ~~District shall~~Placing SAU ~~develop an alternative educational plan and~~ shall seek relief ~~judicial relief~~ from any "stay put" order through an expedited due process hearing. The child's stay put placement during that expedited hearing shall be in accordance with applicable standards in the IDEA..

v. During the due process hearing, the Placing SAU shall ensure that the School has the opportunity to present testimony and documentary evidence and offer legal arguments regarding the placement of the student at the School. The Placing SAU may, however, provide evidence contrary to the position taken by the School.

vi. If a due process hearing officer or ~~a federal~~ court determines that the student's placement at the School is appropriate, or that there is not a substantial likelihood of injury if the student were to remain in the placement while alternatives are sought, then the Student shall remain at the School pending any appeal or any further judicial action.~~.~~

c. The process set forth in Section 6(b) above shall also apply to circumstances when the IEP team concludes that a student's misbehavior is a manifestation of the child's disability, and the IEP team is unable to reach agreement on an alternative placement for the child.

d.. Nothing in Section 6 above shall in any manner limit the School or the Placing SAU from seeking judicial relief from any of the requirements set forth in that Paragraph.

c. If the School and one or more Placing SAUs agree on an alternative process to that described above in ~~sub~~paragraph 6~~b~~ that ensures the same outcome: that a student placed at the School has the same rights as a student served at a public school as required by federal law, the School may submit it to the Department for approval to replace ~~sub~~paragraph 6~~b~~ prior to implementation.

7. Relationship to the Placing SAUs (20-A M.R.S.A. §7252-A(2)). The School will designate an individual to be the single point-of-contact for all communications regarding programming for students with disabilities and will obtain a single point of contact from each Placing SAU. The School shall permit the Placing SAUs' designees to enter the private school to visit classrooms, meet with the School's designee, and talk to the staff about the progress of individual students.

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~~b.~~d. Submission of policies/documentation. The School shall submit the policies referenced in this Agreement on or before July 1, 2026. Documentation of alternative removal/discharge arrangements between the School and one or more Placing SAUs pursuant to Section 6(c) must be submitted to the Department prior to their adoption.
~~c.~~e. Monitoring. The Department will establish a routine monitoring cycle for private schools that operate special education programs that is separate from the monitoring of the Placing SAUs.
~~d.~~f. Enforcement. As a result of the monitoring process above, in response to a complaint by a parent/guardian or a Placing SAU, or on its own initiative, the Department shall take the following steps to enforce this agreement: giving the School the opportunity to respond, conducting an investigation as necessary, issuing findings of fact and conclusions of law, and providing a corrective action

plan (CAP) for any violation of the Agreement that must be completed within a time specified. If the School disagrees with the findings, conclusions or CAP, the Department will offer an administrative hearing in accordance with the Maine Administrative Procedure Act, 5 M.R.S. §9051 *et seq*. The determination reached at the end of the administrative hearing shall constitute the Department's final agency action.

~~e.~~g. Termination. Failure by the School to timely correct a violation of this Agreement or comply with the terms of a CAP shall result in termination of this Agreement at the end of the then-current school year.

November 14, 2025

Sarah Forster, Esq.
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Re: Response and Comments to Draft Master Services Agreement

Dear Assistant Attorney General Forster & Director Frazier,

Regarding the Master Contract draft, please provide answers to the following questions:

1) Please explain the statutory authority and how it allows the DOE to create this contract.

2) **Section 2:** We would need clarification surrounding this section as an SPPPre-K. How does this apply to us? This seems as if it is directed more toward secondary education. What is the expectation for "policies and procedures" for transitioning a student back to LRE after they have been referred to us?

3) **Section 3:** The meaning of this section is unclear. What is the department looking for? We evaluate children based on our ability to provide for their needs and develop SDI appropriate for the child. We do not practice restraints and therefore would not accept a child who needs more than one adult to assist them in having a safe body around peers or is aggressive to the point of necessary restraints for safety. Will using this professional judgment be designated as "discriminatory"?

4) **Section 4:** This section reads "for each student with a disability enrolled at the School, the School shall provide regular education, special education and related services". We are concerned that this will require a change in the services we provide, as we do not provide "regular education" nor do we have or want to hire service providers (such as SLPs or OTs) for anything other than SDI, as we are a Special Purpose Private Preschool program.

5) **<u>Section 6</u>:** This entire passage appears to be locking SPP programs into functioning as a public school in terms of "stay put" rules and due process concerns, without actually allowing any autonomy in deciding that a placement isn't appropriate or sustainable. This does not allow for discharges related to health or safety issues, and could quite possibly end in a due process progression that forces the SPPS to keep a student because the SAU cannot or will not place the student elsewhere (or because parents have an interest in keeping the child with the SPPS). Additionally, why would the placing SAU be motivated to defend the SPPS in a due process hearing if the SAU disagrees with the SPPS in terms of proper placement?

   Section 6.b.ii enforces "stay put" conditions while the SAU searches for alternative placement. As we would discharge a student based on safety concerns, why would we continue to provide services under unsafe conditions (student/staff safety risks)?

   Section 6.b.iii continues with ambiguous language that seems to indicate we may be expected to continue with an unsafe student if the situation does not meet "imminent risk" levels.

   Section 6.b.iv. This section still does not allow us as an SPPS any rights under due process proceedings.

   Section 6.b.v. This section does not guarantee that the SAU will represent us as WE see fit.

   Section 6.b.vi. This section appears to apply public school law to private programs, essentially putting SPPS programs under the public-school umbrella.

6) Does this Master Contract immediately come into play during the first 30 days of a child's attendance? This period is used to assess the child's needs and whether the placement is an appropriate fit. Does this contract negate the 30-day placement meeting?

7) Does the Master Contract hold us to providing ALL services on a child's IEP (speech therapies, occupational therapy, regular education services, etc.)?

8) Why would another SPPS be incentivized to take on a child with serious behaviors when another placement is trying to refer them on for increased support?

9) How will this contract allow us to protect our staff and other students in the program? We will absolutely lose staff if we have to keep an aggressive child, we risk having other children hurt, and we risk legal action from families whose children DO get hurt. We all have seen this type of aggression, and we must be able to protect our programs. Under this contract, the system will not protect SPPS programs or any other entity involved.

The primary concerns here involve the real probability that SPPS programs will be forced to keep students they are not adequately equipped for, will be misrepresented or badly represented by a disgruntled SAU, and will lose staff due to high levels of student aggression. This could also close programs that are desperately needed across the state.

We would be happy to host lawmakers, DOE officials, Assistant Attorney General Forster, Governor Mills, or anyone else who would like to see our program in action. We believe that this Master Contract is not written in the best interests of programs like ours and is designed to force our unique program into the mold of a public school. Please call or email info@thedragonflyacademy.org for an appointment to visit or to discuss our concerns.

Thank you for your time and concern in these matters.

With respect,

Kiersten Donahue & Elisha Wyman
Dragonfly Academy

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.

<u>Additional Comments on #6</u>

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.

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November 15, 2025

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Re: Response and Comments to Draft Master Services Agreement on behalf of Undersigned Special Purpose Private Schools

Dear Assistant Attorney General Forster & Director Frazier,

On behalf of the undersigned schools that provide services to students with disabilities in Maine, I am writing to provide comments and responses to the Department's draft Master Services Agreement (the "Master Agreement"), released on October 15, 2025. We address these concerns in the order they appear in the draft contract.

At the outset, we would like to request a clarification on the process. It was our understanding from discussions with the Department and Assistant Attorney General Forster, that by proposing these changes through a contract would allow a more iterative process by which the Department could consider feedback, issue a revised draft, and would take additional comments as appropriate. We would like to know, is that is still the Department's intention? We are providing feedback in this letter and many of the undersigned are also providing comments on behalf of our individual schools. We hope and look forward to continued dialogue with the Department on these very important issues.

1. **Sections 1-2 – Services Provided and Educational Settings Offered**

Our initial concern relates to Section 1, "Services Provided" and "Educational Settings" offered in the school. While there are a few schools that may be able to select boxes on the margins that it is totally ill-equipped to offer, most of these schools would not categorically determine whether it offers services on a school-wide basis given the potential legal and practical implications. It is our understanding that the Department intends to have private schools, including private agencies that operate facilities that exclusively service children with disabilities, or Special Purpose Private Schools ("SPPSs"), sign this Master Agreement one time, on behalf of every student that it educates. Thus, the SPPS would be required to "check" each selection in section one for services that it provides on a school-wide basis.

There is a concern that by limiting the special education and related services that the school provides (and does not provide), by checking boxes in Section 1 of the Agreement, there will be two inadvertent effects.

First, that this will likely further limit the available options for students with special needs in this state. One representative of an undersigned school noted that, based on the needs of their current school's population, there are not enough students to justify social work services and that therefore, they would leave that box "unchecked" in Section 1. However, the school recently admitted a student who needs social work services, and is making arrangements to contract with a provider to serve this individual student. If this situation occurred after the creation and implementation of the Master Agreement, for example, the same school expressed reservations about *either* "checking" the box for social work services (because it is not a service that the school is typically capable of or is regularly providing), and, if the box was not "checked," the school would be concerned about providing those services outside of the contract.

Other schools raised similar concerns that, while they might ordinarily "check" boxes next to physical therapy or occupational therapy, if a staff member departed, they would no longer be able to offer those services within their then-existing staff structure, and they would then be, in legal terms, "breaching" the Agreement. We do not have a clear understanding of the Department's purpose in eliciting this information.

Second, because the Master Agreement requests this programmatic information on a school-wide basis, the pre-selection of services risks a procedural violation of the Individuals with Disabilities Education Act ("IDEA") as a predetermination. For example, in *Deal v. Hamilton County Board of Ed.*, the U.S. Circuit Court of Appeals for the Sixth Circuit held that a school district's predetermination that it would not provide applied-behavioral-analysis services to a student with autism spectrum disorder violated the IDEA. 392 F.3d 840 (6th Cir. 2004). "The general rule is that placement should be based on the IEP." *Id.* at 859. Although the school in that case argued that it should have the ability to invest in a program and then seek to capitalize on the investment by using that program exclusively, "th[at] is precisely what it is *not* permitted to do, at least without fully considering the needs of each child." *Id.*

2. **Section 3 – Admissions**

While SPPSs (like most schools) have admissions policies, appropriately those policies do not provide *criteria* for admission such as the ability for the applicant to meet certain measurable metrics or a categorical exclusion for applicants with specified needs. Rather, these policies generally provide, consistent with the schools' nondiscrimination obligations, that the school will evaluate the needs of the student as identified in the student's IEP and determine whether it can provide services to appropriately meet those needs.

As above, we are not clear on the Department's purposes for requiring public admissions policies, and the schools do not generally pre-identify what educational settings or services it offers to *any* student. The undersigned schools are concerned that by pre-defining the services or any form of admissions criteria, they risk precisely the type of potential discriminatory implications under the Maine Human Rights Act the Department cites and seeks to avoid.

3. Section 5 – Attendance

Relatedly, there is one proposed requirement regarding early release of students over which the SPPSs may have no control. In "Attendance" section 5, the draft Agreement provides that the school shall maintain attendance records, including records of removal (even if non-disciplinary). While this may be feasible, the next sentence provides that "Early release from educational programming constitutes a removal." There is also no clarifying language regarding early release for inclement weather or an emergency-related closure.

Schools, including the undersigned SPPSs, commonly encounter IEP teams that seek to accommodate students in their current educational setting with an abbreviated day. Whether that abbreviated day constitutes a "removal," is a decision for the Department, but the undersigned schools do not want to be contractually liable for what is ultimately outside their control and within the full control of the IEP team.

4. Section 6 – Removal or Discharge.

The heart of this proposed Master Agreement is the process outlined for discharge or removal of students in Section 6. At the outset, we note a significant procedural concern with the legal framing of this agreement. While the undersigned schools understand and share the goals the draft Master Agreement provide clarity on the discontinuation process, ensure compliance with applicable law, and provide some procedural fairness to the parties involved, it also includes a substantial limitation on the discretion of private SPPSs to make determinations about student and staff safety with limited procedural protections.

A. The agreement lacks any mechanism to ensure compliance with requirements on Placing SAUs.

We understand the Department's premise in proffering this agreement is that, in exchange for the limitations on the SPPS's discretion and acceptance of additional risk, the placing school administrative units ("Placing SAUs") will be required to follow the processes and meet the goals outlined in the Master Agreements. However, there is no mechanism in the Master Agreement or anywhere else in the law to implement and ensure that the requirements on Placing SAUs are actually carried out. For example,

- In Section 6(a), the Placing SAU is required to ensure that an IEP meeting is held "as soon as possible" after notice of intent to terminate is given by a private school and no later than ten (10) business days after the School's request;
- In Section 6(b)(i), the Placing SAU must issue a notice of a proposed change in placement if there is no consensus on a change;
- In Section 6(b)(i), the Placing SAU must begin the search for a successor placement if no consensus is reached;
- In Section 6(b)(ii), the Placing SAU must work together with the SPPS to conduct a functional behavioral analysis, implement or amend a behavioral support plan, use applicable "special circumstances" removals, and to ensure student, staff, and other students' safety pending the change in placement;
- In Section 6(b)(iii), the placing SAU must file proceedings to seek relief from stay put requirements if the SPPS informs them of an imminent risk to health or safety;
- In Section 6(b)(iv), the Placing Sau must develop an interim alternative educational plan, if such relief is sought; and
- In Section 6(b)(v), the Placing SAU shall ensure that the school has the opportunity to present testimony and evidence and offer legal arguments in the due process proceeding.

There is no mechanism to ensure compliance with the obligations that exist within the draft Master Agreement for the obligations on the Placing SAU. Nor do these obligations exist nowhere else in the law or regulation, or do any . There is no legal requirement to hold an IEP meeting within ten (10) days, to notice a successor placement, or to begin the search for a successor placement in these situations in any other enforceable document. Without any enforcement mechanisms, the Placing SAU can disregard its obligations without consequence. The private school, parents, and the student have no practical recourse if the Placing SAU fails to act.

An agreement with obligations but no enforcement mechanisms is, essentially, aspirational. It may look good on paper, but it cannot ensure commitments are actually fulfilled, undermining the actual reliability and predictability that this sort of placement agreement is meant to provide.

B. The agreement creates an indefinite requirement that students continue to attend private special purpose schools, creating an untenable safety concern for students and staff.

In Section 6(b)(ii), although the draft Master Agreement requires Placing SAUs to hold an IEP meeting within ten (10) days of receiving notice of an intent to terminate services, it contains no other timelines. There is no timeline for the school district to provide written notice of the change in placement, no timeline to begin the search for a successor placement, and, most critically, no timeline for the Placing SAU to assume responsibility for the student. Many of these schools themselves have long waitlists, and if they have determined they are no longer an appropriate or safe placement for a student, the student could be forced to continue to attend the school (even if the parent consents to the change), for months, or even years, without any change in placement. The problem at the core of this dilemma is that the private schools are completely at the mercy of Placing SAUs to change the placement.

Every contractual provision does more than merely allocate responsibilities; it creates a system of incentives and disincentives that shape how the parties behave in practice. When drafting an agreement, it is critical to anticipate not just what the contract *requires* on paper, but how each party is likely to respond to those requirements, in addition to delays and risks once the agreement is in effect.

In this situation, the incentives for Placing SAUs are obvious. Especially where a parent may want the child to remain in the then-current placement, the incentives are: Delay a change in placement, keep the student in the last agreed-upon placement (however inappropriate), and dismiss or diminish the private school's safety concerns. Practically speaking, many of the undersigned schools can speak to the reality of safe concerns or inappropriateness of a placement, while Placing SAU personnel only *read* about the effects. The Placing SAU does not hear the fear in students', teachers', or educational technicians' voices; they do not see the scars or marks; and they do not see the effects their decisions have in real life—including on how the education of other students may suffer. In the context of education and placement agreements, poorly aligned incentives can have serious real-world consequences: Placing SAUs have little motivation to move a student promptly if a private school is required to continue serving them indefinitely.

In particular for special-purpose private schools serving students with significant behavioral or emotional disabilities, an indefinite obligation to continue educating a student after it is clear the placement is no longer appropriate is not just burdensome, but is unsafe and untenable. The undersigned schools and other SPPSs in Maine are designed to provide intensive, highly structured support to students whose needs cannot be met in public school settings. By definition, their populations are amongst the highest-need and most complex in the state, students whose disabilities manifest in ways that require individualized, multidisciplinary, and often crisis-level interventions.

For example, undersigned schools have reported extremely dangerous incidents, including a student taking an administrator outside and choking her to the point of unconsciousness with a belt, biting incidents severe enough to cause disfigurement, and students causing substantial injuries to their peers. Nobody wants to terminate services for students with the highest need. However, the SPPSs in these untenable situations must be able to act decisively to protect their staff and other students.

Of course, the undersigned SPPS do not place blame upon these students for their behaviors. These behaviors, while dangerous, often arise from the student's disability-related limitations, and by no means should our concerns about the Master Agreement be read to imply any level of malice or intent. The schools' concern is not punitive—it is about ensuring that both the student and the school community remain safe, and that the student can be transitioned, as quickly as possible, to a program equipped to meet their evolving needs.

We understand and share the Department's concern that it must ensure that students placed in the undersigned schools do not sacrifice the rights and services that they might receive in a public school by virtue of being placed in a private school. However, to our knowledge, no other state has read the IDEA obligation to mean that state educational agencies are *obligated* or required to mandate that students have a right to maintain their placement at a private school for an indeterminate and unlimited amount of time while a successor placement can be found. We are aware of several other states' approaches that follow the IDEA and ensure protection of student interests without sacrificing the private school's needs and duty to protect the safety of other students and staff. This includes many states that require the Placing SAU take responsibility for the students within a ten (10) day period of receiving notice from the private school that a change of placement is required.

Requiring the school to continue serving such a student indefinitely, without any clear timeline or authority to end the placement, forces educators into situations that compromise physical safety, violate occupational health standards, undermine the therapeutic environment the program is meant to sustain, and risks jeopardizing other students' access and education Unlike SAUs, SPPSs cannot simply transfer staff, adjust programming, or isolate risk within a larger system. Every classroom and clinical resource is directly impacted when resources must be reallocated in an effort to continue serving a student for whom the placement is no longer appropriate.

C. Requiring private schools to indefinitely retain students they can no longer effectively serve forces them to violate professional standards and educational ethics.

Even when a student's needs do not rise to the level of immediate safety concerns, an indefinite requirement that SPPSs continue serving students whose needs exceed the school's ability to provide services and expertise places these institutions in direct conflict with their professional codes of ethics and scope-of-competency obligations.

Service providers on staff with undersigned SPPSs are ethically obligated to provide educational programming that they can competently and responsibly deliver. When the student's needs require supports that fall outside that mission or capacity, they must take action. Here, an indefinite and indeterminate delay in identifying an appropriate successor placement, while the SPPS is compelled to continue enrollment places the SPPS in a position of providing services it is not qualified, staffed, or licensed to offer, undermining the integrity of its educational program and violating core professional standards. This is not merely a practical challenge; it is a deep ethical problem. These schools should not be forced to choose between following the Master Agreement and adhering to professional norms, accreditation standards, and their duty of care.

D. The agreement contemplates unworkable due process proceedings for private schools who cannot be party under current law.

Finally, under Section 6(b)(v), the Master Agreement contemplates that *only after* a parent has challenged the change in placement in a due process proceeding, may the SPPS remove a student that it has identified presents an "imminent risk to the health or safety of the student, other students or school staff," borrowing the standard applicable to public schools under *Honig v. Doe. See* 484 U.S. 303 (1988). However, the procedure contemplated by the Master Agreement to achieve an emergency removal process is confusing, legally inconsistent, and, operationally, nearly totally unworkable.

First, in order effectuate an emergency removal, the Master Agreement contemplates that the SPPS must notify the Placing SAU that it has identified an "imminent risk," at which point, the Placing SAU files a claim in federal court to seek relief from the automatic "stay put" injunction that ordinarily applies to public schools under the IDEA. The "stay put" provision under the IDEA, 20 U.S.C. § 1415(j), applies to public agencies, not private schools. SPPSs are not "public agencies" within the meaning of the statute. Rather they are private service providers operating under contract with public school districts. Imposing a public-law injunction framework onto a private school misconstrues IDEA's structure and creates uncertainty about whether any federal court would even have jurisdiction over such a claim.

Second, even assuming the federal court would accept jurisdiction and follow a "stay-put" injunction against a private school, the process proposed in the Master Agreement assumes an alignment of interests between the Placing SAU and the SPPS, and the prompt cooperation of the Placing SAU. However, such an alignment of interests and cooperative attitude may not exist. The Placing SAU may disagree with the SPPS's assessment of imminent risk, wish to avoid litigation costs, or be incentivized to delay action to avoid assuming responsibility for finding or funding an alternative placement. Not only would the SPPS then be left indefinitely housing and serving a student it deems unsafe, with no ability to protect its staff or other students, the *student* would remain in an inappropriate placement, compromising their own education and safety.

Third, the Department's suggestion that the SPPS be "allowed to present testimony, documentary evidence, and legal arguments" in the Placing SAU's federal court action only compounds the impracticality of this arrangement. As the SPPS is not a party to the due process dispute between the parent and the Placing SAU and it would not have standing to appear in front of a Department hearing officer or in federal court. This structure leaves the SPPS wholly dependent on counsel for the Placing SAU, who represents a different client and may be ethically conflicted in advocating for the SPPS's interests, particularly where the Placing SAU disputes the SPPS's risk determination or wishes to avoid costs associated with assuming responsibility for, or identifying a new placement for the student

Finally, the entire process fails to provide a clear, timely, or legally viable pathway for an SPPS to remove a student who poses a genuine safety threat. In a system already designed to respond slowly through its due process mechanisms, layering in a requirement that depends on a separate entity's initiative and cooperation is not only inefficient, but dangerous.

5. Conclusion

If the Department of Education mandates that SPPSs continue to educate students in these dangerous situations, that decision will send powerful shockwaves through the community service providers that work with these students. This sends exactly the wrong message.

Of course, SPPSs empathize for families and students in these impossible situations, and we fully support their right to seek successor placement services. But imposing continuing obligations on SPPS, rather than Placing SAUs, is not the solution. Rather, it shifts all risk and responsibility to SPPS at the expense of the safety of SPPS students and staff. . The safety and well-being of our students and staff is our paramount concern, and no less important than a Placing SAU's efforts to provide for the safety of their students and staff.

Maine is facing a serious shortage of special purpose private schools serving children with disabilities, like the undersigned schools in this letter. There are long waitlists of students entitled to these services and statewide staffing shortages and the loss of critical federal and state funding have exacerbated these issues, particularly for the most acutely high-needs students,. Additionally, there is significant and growing evidence that the number of students requiring the type of intensive services SPPS provide is growing substantially. If SPPS are told that—even when staff are being rendered unconscious or permanently disfigured—they cannot suspend or terminate services for a student without violating Department of Education mandates, it will create a cascading series of events:

- It will create dangerous conditions for the highest need students, their peers, and staff,
- It will exacerbate the staff recruitment and retention crisis that already plagues the field,
- It will likely place the school in an impossible situation of being unable to comply with the Occupational Safety and Health Administration (OSHA) Act's general duty to ensure workplace safety and DOE mandates, and;
- It may result in program instability or closure, resulting in even fewer services for this underserved population of students.

There is one, entirely foreseeable yet unintended outcome, and that is SPPSs like the undersigned schools do not wish to "chance" being required to continue educating the highest-risk hardest-to-serve populations, even when there is a significant safety concern, and instead choose to dial back the services for the students who are most at risk.

While the undersigned schools want to collaborate with the Department and share the goal of having clarity on processes for these unfortunate situations, we feel compelled to share that we have no choice, **we are not able to sign the draft Master Agreement**. Thank you for your time and consideration of these complex issues. Please contact us if you need further information with respect to our position on this Agreement.

Sincerely,

/s/ Tara A. Walker
Tara A. Walker, Esq.
Fisher Phillips

For *Clarvida*
Spurwink Services, Inc.
Maine School Solutions, LLC
Dragonfly Academy
Essential Learning Solutions

Essential Learning Solutions, Inc.

Dear Assistant Attorney General Forster and Director Frazier, 11-15-25

Thank you for the opportunity to review and respond to the draft Master Services Agreement (MSA) from the Maine Department of Education. Essential Learning Solutions (ELS) of Livermore—a specialized pre-K program for children ages 3–5 with autism—appreciates the Department's openness to feedback. We believe a true agreement should reflect the needs, responsibilities, and protections of all parties, fostering mutual understanding and shared commitment. We hope the final document embodies this spirit of balance and collaboration.

Section 2: Educational Settings

ELS is, by design, a restrictive setting. When our clinical team determines that a student is ready for a less restrictive environment, we often encounter significant delays due to limited openings or staffing shortages in those programs. Consequently, students who would benefit from peer models and inclusive opportunities remain in a restrictive setting longer than is clinically appropriate. ELS relies on CDS/DOE and SAUs to facilitate these transitions; the lack of available resources directly impedes our ability to support students in accordance with best practices and the principles of a least restrictive environment.

Section 3: Admissions

While ELS strives to serve as many students as possible, it is neither feasible nor legally required for any program to serve every student. Public schools themselves cannot meet every need, which is precisely why Special Purpose Private Schools (SPPSs) exist.

ELS accepts students within our scope of practice: children aged 3–5 diagnosed with autism, primarily those with moderate to profound needs (Autism Level 3) and, selectively, Level 2 when appropriate. We do not provide access to typically developing peers, and we are explicit in our admission criteria. These criteria are designed to ensure safety, quality services, appropriate staffing ratios, and program stability.

A significant concern raised by the current MSA draft is the risk that our responsible and necessary admission decisions could be misinterpreted as discriminatory. If an SPPS accepts a highly challenging student, thereby reaching the limits of its capacity, and subsequently declines another student with similar needs due to overstretched resources, would the SPPS be accused of discrimination? This is especially troubling given that the Department has already approved our program based on the very criteria we use in admissions.

Section 6: Removal or Discharge

A significant concern we must address is the process for transitioning students who require a different placement. Under the current draft, SAUs retain decision-making authority over alternative placements, while SPPSs are left bearing all the risk and responsibility during what could turn into an indefinite waiting period.

Essential Learning Solutions, Inc.

Many receiving programs are burdened by multi-year waitlists or lack available slots, compelling SPPSs to continue serving students whose needs exceed our capacity and resources.

This situation poses serious risks:

- Safety risks to the student, their peers, and staff

- Staffing instability, as injuries or burnout lead to resignations

- Deterioration of program quality due to already strained resources

- Heightened liability for all parties involved

To mitigate these risks, it is imperative that the MSA includes clear timelines for identifying and securing alternative placements. Timeliness is not merely a procedural matter—it is a critical factor for student safety, program integrity, and the sustainability of SPPS services across the state.

When SAUs fail to support SPPSs in safely transitioning students who can no longer be appropriately served, SPPSs will inevitably become more cautious in accepting high-needs students in the future. This unintended outcome harms students, families, SAUs, and providers alike.

As an applied behavior analytic program, our Board Certified Behavior Analysts (BCBAs) adhere to The Ethics Code for Behavior Analysts. A fundamental aspect of these guidelines is the requirement to "Practice within Scope of Competence." This means that BCBAs are only permitted to provide services in areas where they have demonstrated competence.

When a BCBA encounters new professional areas—such as working with unfamiliar populations or implementing new procedures—they are expected to seek and document appropriate study, training, supervised experience, consultation, or co-treatment with professionals who are already competent in that area. This process is essential to ensure that BCBAs are adequately prepared and supported before taking on new responsibilities. If a BCBA determines that they are not able to competently serve a student, ethical guidance requires them to refer or transition services to an appropriate professional.

Therefore, requiring Specialized Program Providers (SPPSs) like Essential Learning Solutions (ELS) to retain students in our program when we are no longer equipped to meet their needs directly contradicts this code of ethics. Upholding these professional standards is critical to ensuring the safety and effectiveness of services for all students.

ELS is fully committed to serving Maine's youngest and most vulnerable learners. We greatly value our partnerships with CDS/SAUs and the Department, and we firmly believe that collaboration and mutual trust are essential. A balanced MSA that protects all parties involved will not only strengthen this trust but also encourage transparency regarding challenging placements, ensuring that students receive services which are safe, appropriate, and effective. Without such a balance, SPPSs will inevitably feel unsupported

Essential Learning Solutions, Inc.

and may become hesitant to accept students with significant needs—an outcome that we all must avoid, as it will severely impact the children we are dedicated to serving.

We respectfully request continued dialogue and thoughtful revisions to the draft MSA, ensuring it supports the sustainability of SPPSs, clarifies the responsibilities of SAUs, and, most importantly, prioritizes the well-being of our students.

Thank you for your time, attention, and consideration.

Sincerely,

Essential Learning Solutions

From:	Forster, Sarah
To:	Tardif, Tabitha
Subject:	FW: DRM Comments - MDOE Draft Master Agreement
Date:	Monday, November 17, 2025 1:47:20 PM

From: Cyr, Laura <Laura.Cyr@maine.gov>
Sent: Sunday, November 16, 2025 1:52 PM
To: Welter, Megan <Megan.Welter@maine.gov>; Forster, Sarah <Sarah.Forster@maine.gov>
Subject: FW: DRM Comments - MDOE Draft Master Agreement

- LMC

From: Atlee Reilly <areilly@drme.org>
Sent: Sunday, November 16, 2025 8:32 AM
To: Cyr, Laura <Laura.Cyr@maine.gov>
Cc: Jeanette Plourde <jplourde@drme.org>; Christina Reese Blake <cblake@drme.org>
Subject: DRM Comments - MDOE Draft Master Agreement

Laura:

I have been unable to get my comments into the online form as it keeps getting cut off, so I am providing them here. I thought it was user error yesterday – but am now on my desktop and still unable to submit all the language at once. Thank you and please reach out with any questions.

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https://mainedoenews.net/2025/10/15/30-day-comment-period-for-master-contractual-agreement-for-private-schools-offering-special-education-programs/
DRM Comments on Draft “Master Agreement”

As MDOE is aware, DRM has expressed concerns for years regarding the ways in which Maine’s use of private schools to deliver public education impacts children with disabilities – who are often excluded on the front end through discriminatory admission practices and or removed from school or otherwise subjected to changes in educational placement when private schools take actions while refusing to provide students and their families the procedural protections afforded under the IDEA. This results in students being left without a school, sometimes for very long periods of time; and it undermines the core protections of the IDEA for many others. Unfortunately, this proposal will not fix these problems. And worse, it is likely to exacerbate them by creating a permission structure that will allow them to proliferate.

MDOE should abandon this draft agreement and instead work with the legislature to put forth legislation, this year, to address MDOE's longstanding failure to fix a structural problem it has been on notice of since OSEP made clear in Letter to Stockford over 20 years ago that the IDEA itself would not fix it. Maine needs to ensure that it has clear statutory authority to require that any schools receiving public education dollars fully comply with federal and state laws designed to ensure access to equal educational opportunity for children with disabilities. And MDOE should, as part of this, ensure that private schools who elect to receive public dollars must fully comply with the IDEA and also, as New Jersey has done, establish that private schools can be proper and even necessary parties in due process proceedings under the IDEA.

The type of voluntary compliance MDOE is seeking here will not address the problems – and it certainly won't if anything like this draft agreement is the only source of MDOE's leverage here. We were struck at the IDEA SAP meeting last week when concerns were raised by the Maine Parent Federation about schools likely refusing to sign this agreement and Director Frazier said - we don't expect anyone to sign this. We are not sure what to make of that but I guess we share the pessimism about this agreement. Please, start over and move to a statutory fix – if private schools in Maine receive state and federal dollars (passed through MDOE and a sending LEA), then they should be subject to the same rules and have the same responsibilities as public schools. We think many of these responsibilities are already clear, but we know MDOE has taken the position that it does not have statutory authority to compel a private school to comply with the IDEA – so we had hoped to see a proposal to address the actual problem.

We understand that MDOE reached out to attorneys who represent private schools and public schools in the development of this draft "master agreement" prior to this draft being released for comment. We would be happy to discuss our concerns with MDOE staff. Please reach out anytime. Until then, here are some brief thoughts:

Section 1. In this section, you list the related services under the IDEA in a check box format – allowing any private school that seeks to provide special education to, apparently, NOT check one of the boxes. If a private school, such as one of the academies that serve entire communities as the default public high school just decides not to check any boxes here, do they still get to contract with MDOE to deliver an approved special education program? What would be the legal basis for such an exemption for a private school to provide legally required related services, such as nursing services for a student who needed such services to access a FAPE? Or assistive technology necessary to ensure access to the general education curriculum? This will create a permission structure for these schools to say they do not provide the basic things that a child with a disability might need to have equal access to their educational programs and activities – and it would put MDOE in the position of approving a special education program that states at the outset it does not provide legally required services under the IDEA. Why?

Sections 2 and 3: We have the same concerns about Section 2 as Section 1 – it will provide a permission structure for schools to opt out of providing services to many students with disabilities. A school could, as we expect at least several will, check the first box and nothing more, or perhaps the first two boxes. While it would be wonderful if this was because we thought the private schools were doing a great job of using universal design principles and pushing supports in to the general education setting for students with support needs. Unfortunately, we are fairly certain that is not the case. When this section is read in conjunction with Section 3, which requires a non-discriminatory admissions policy (yea!) BUT only when the students have an "LRE that corresponds to educational settings available at the school (as identified in Section 2 above)", it simply provides a road map to exclude children. Based on your draft agreement, the easiest way for a private school to exclude many students with disabilities, apparently with the permission of MDOE, would be to check only the first box and then they can, consistent with the contract, exclude anyone with a need for specialized instruction delivered outside the classroom for more than 21% of the day. Is this what MDOE wants? Where will those children go who won't be served by that school but also who have no other high school because all or nearly all of their peers move to the "private" school for high school? Would the private school still get to operate a special education program approved by MDOE?

Section 6: We have a number of concerns about this section and would be happy to discuss them. But it basically boils down to the concern that, again, this will serve as a permission structure to violate the federally protected rights of students. And in some cases it looks like this contract would compel public schools to take actions ("use of applicable special circumstances removals", etc.) that will violate the federally protected rights of students, when a private school simply informs the public school that they cannot safely continue to serve the Student (we understand there are steps and it is more complicated, but it boils down to this – if a private school decides it won't serve a student, that Student's stay put rights will not be sufficiently protected by this agreement). This agreement is really concerned with the imagined rights of schools to exclude students and not the right of students not to be excluded for manifestations of their disabilities. If it were otherwise, the word manifestation would be in the draft agreement. It does not need to be this complicated. Just make clear, as New Jersey and other states have done, that private schools serving students protected under the IDEA are proper parties in IDEA proceedings and must fully comply with the IDEA.

Thank you and please reach out with any questions.

Atlee

Atlee Reilly | Managing Attorney
(he/him)

Disability Rights Maine
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DISABILITY
RIGHTS
MAINE

Regional School Unit No. 68

Serving the Communities of Charleston, Dover-Foxcroft, Monson and Sebec

SeDoMoCha Campus Entrance

Stacy Shorey
Superintendent of Schools

Susan Terrill
Special Services Director

Cameron Archer
Principal, PreK-8

Davan Walker
Assistant Principal, PreK-8

Matthew Larrabee
Technology Coordinator

11/14/25

To Whom It May Concern:

For the past 16 years I have been fortunate to hold the position of Director of Special Services for RSU #68. During these years over 800 students who receive special education services have been enrolled at Foxcroft Academy. With an average of 55 students annually attending FA, receiving special education direct and related services. As a district we pride ourselves on the inclusive education our students received during these same 16 years, just three students K-12, have been placed outside of the district to attend a special purpose private school. One of these transitioning to FA during their freshman year. None being enrolled at FA and moved to a SPPS in 16 years.

Given the above data, you can understand my confusion when being faced with this Master Agreement. FA and RSU #68 currently have a contract for FA to receive 100% of our students. They have continually held up this contract. We have provided educational opportunities to students in all exceptionalities, and provided them not just with the academic skills, but the community support that only a local school can.

As a community, all students are supported and expected to attend FA. Putting in place a Master Agreement may create roadblocks and additional expenses when our current contract is already working. Services are provided according to IEPs, attendance is tracked, and any discipline concerns are immediately brought to my attention.

A single point person at FA, would not support our working relationships, as depending on the needs being addressed certainly depends on the facility member that needs to be consulted. At FA, district staff are always welcome. Personally, I attend all IEP meetings, meet with both regular and special education staff, as well as administration to create an inclusive learning environment for all students. Oftentimes stopping by to chat with teachers, greet students, meet with guidance staff, or others, and no advance notice is ever needed, I am always welcome along with our social worker, and related providers.

Through each of the three monitoring cycles the district has completed, FA files have always been monitored for compliance. Transition plans and Summary of Performance reports have been a routine part of each cycle. To add another monitoring cycle for private schools would again place an additional burden on our office, as we are the placing SAU.

As I entered my 16th year this school year, I am proud of the working relationships that have been built with FA Administrators, and the district over the year. Students and families feel supported, our graduation rate is high, students are transitioning to college, military, or the workforce because of the exceptional education they are offered at FA.

Putting a Master Agreement in place is not necessary, as these requirements are already in MUSER and required for the district to meet for each student who resides in RSU #68, and a part of our contract with FA is to accept 100% of our district students.

Please reach out if you have any questions that I could assist in answering. I can be reached at 564-6535 ext 1103.

Sincerely,

Susan L Terrill
Director of Special Services, RSU 68

Friday, November 14, 2025

Dear Assistant Attorney General Forster and Director Frazier.

Thank you both for your time and thoughtfulness in drafting this agreement. As a Special Purpose Prive School provider, Spurwink appreciates the potential that such a document could provide in clarifying some important procedures and practices. From this agreement it is clear to see that we all share the same mission – providing safe and therapeutic environments for our students with special needs to develop skills, and for our staff to be able to provide support while ensuring safety.

Spurwink operates three K-12 day treatment programs for students with special needs, as well as a therapeutic preschool program. We currently serve approximately one hundred and twenty students in these programs. These students have not been successful in less restrictive environments and require a higher level of support and clinical intervention to meet their needs. Support includes smaller classroom sizes, a higher level of adult support, and specialized training for our staff.

Spurwink has longed prided itself on our ability to support students with significant mental health and behavioral challenges and provide them with a therapeutic environment structured to keep them safe and to build the academic, social, emotional regulation, and vocational skills to be successful post-transition. The students we, and other SPPS, serve continue to be the most difficult students in the state to place.

Spurwink currently has a detailed admissions policy. Review of all referrals and placement considerations is done through a team of educational, clinical, and related services providers. We consistently place and support some of the most challenging students in the state. Our goal with any placement is to ensure that the individual student is set up for success and has a social group to build skills. Additionally, our admissions policy and admissions criteria are reviewed every three years as part of our monitoring process and have consistently met the standards set by MDOE as part of that review.

Some positive pieces that we identify in this agreement include the specific responsibilities of the sending SAU to support SPPSs when we feel that we are no longer able to meet a student's needs, especially in situations where maintaining safety is the primary concern.

As a provider, Spurwink has three major concerns with this agreement as currently drafted. First, and most significant for us, is that this agreement, while well-meaning, does not adequately outline/detail the procedures proposed in section six. As written, subsections A-C are vague and it is unclear to us how they align in regard to each party's responsibilities in the scenarios given. For example, is the expectation that an SPPS maintain the student placement in a situation where they do not feel they have the adequate resources to maintain student safety, while the SAU seeks an alternate placement? If so, this would put our programs in an unsafe situation with no relief. Additionally, securing an alternate placement may take a significant amount of time, or may not be possible if other programs are not able to support the students' needs.

Second, this proposed agreement does not adequately outline timelines for the proposed procedures, and places significant responsibilities on the SAU, which may or may not be in disagreement with the SPPSs recommendation. The agreement is only between the private school and MDOE and does not require SAUs to sign on as well. In the event that there is a significant disagreement between the SPPSs and the SAU, what safeguards will be in place to ensure that the SAU provides the outlined support to the private school? While this agreement proports to outline relief for an SPPS faced with a situation where it is not able to safely maintain a student's placement, it seems to leave the SPPS without any clear action steps.

Our third concern is with the outlined procedures when "stay put" is required through the parents filing due process. As DOE has stated previously, private schools cannot be a party to due process procedures. As outlined in this agreement, the complaint would be filed against the SAU and it would become the SAUs responsibility to advocate for the private school to seek immediate relief from "stay put" and to ensure that the private school is represented and has the opportunity to present testimony. This places the SAU in the interesting position of having to represent the interests of a third party, and in some cases, those interests may not be aligned. As written, this agreement would ask private schools to trust the SAU and their legal representatives to advocate on their behalf. This seems like a potential conflict of interest. Additionally, this agreement would ask private schools to abide by the decision of the due process hearing officer without being a named party and having equal representation. In the past, it has been our understanding that MDOE has argued that a due process hearing officer is not able to order that a private school comply with its order. Section 6, vi, appears to propose the opposite.

As our history will show, we do not move toward a recommendation of discharge from our programs easily. When these situations occurred in the past, it was only after extensive conversations with parents/guardians and districts and after exhaustive attempts to support programming through a variety of strategies including increased staffing, service changes, and increased clinical and BCBA support. In the majority of these situations, we have been able to successfully partner with SAUs and families to support the transition. In only a very small number of these situations, differences of opinion on placement occurred. In those situations, and these have all been cases in which we, despite our resources, did not feel that we could safely support the student and maintain overall safety within the milieu, we have had to make a difficult decision and have worked through the IEP process. We feel that it is essential in our ability to continue to provide services to students we have the continued ability to initiate a change in placement to keep our students, staff, and school environments safe.

For the reasons listed above, and several others, Spurwink has concerns with the agreement as currently written, and being asked to sign such an agreement as currently written, would put us at significant risk. Spurwink greatly values its long-standing relationship with MDOE and looks forward to continuing to collaborate with the department and engage in discussions aimed at exploring solutions that support us as private schools and support the needs of the students we serve.

For any clarification or questions, please do not hesitate to contact me at 207.317.1952 or at ecampbell@spurwink.org.

Sincerely.

Eric J. Campbell, MS, BCBA
Vice President of Educational Services

SPUR WINK

207.871.1211, ext. 2155(office)/207.317.1952(mobile)/207.871.1232(fax)
901 Washington Avenue, Suite 100, Portland, ME 04103
www.spurwink.org

November 14, 2025

Dear Commissioner Makin and the Maine Department of Education Team,

As the Special Services Director for AOS 94, I appreciate the opportunity to submit comments on the proposed Master Agreement between the Maine Department of Education and Maine Approved Private Schools. While I recognize the Department's goal to establish clarity and consistency across the state, I have significant concerns about the practical implementation, legal ramifications, and operational challenges this Agreement may create for SAUs working with Special Purpose Private Schools and private academies.

My Areas of Concern

- Legal and Procedural Conflicts - The proposed Agreement creates concerning legal inconsistencies. Public schools bear legal responsibility for providing FAPE to students, yet are not signatories to this Agreement, raising questions about enforceability and creating potential procedural conflicts that could leave SAUs vulnerable.
- Expedited Hearing Requirements - The requirement for public schools to file expedited hearings when a private school requests student discharge presents multiple problematic issues: inherent conflict of interest between SAUs and SPPSs, serious ethical concerns as legal counsel cannot ethically represent both parties, liability insurance does not extend coverage to filings initiated at another entity's request, and puts SAUs in the untenable position of filing against our own interests.
- Admission and Enrollment Policies - The Agreement lacks specific guidance regarding private school admission procedures, including policies for waitlists, program-specific enrollment criteria, and program capacity limitations, leaving SAUs uncertain about placement options and timelines.
- Undefined Critical Terms - Terms such as "imminent risk" and "no longer appropriate placement" are not adequately defined, which will inevitably lead to inconsistent interpretation and application across districts and schools.
- Service Provision Ambiguity - The embedded checklist raises fundamental questions about service delivery, appearing to suggest private schools may selectively choose which special education services to provide regardless of what is specified in a student's IEP. This creates confusion about whether private schools can decline to provide services listed in an IEP despite being approved for special education programming, who holds responsibility for conducting required evaluations, and how service gaps would be addressed.
- Timeline Inconsistencies - Section 8(b) requires policy submissions by July 1, 2026, while schools in the current monitoring cohort have been directed to submit by January 2, 2026—an earlier deadline impossible to meet without a finalized Agreement.
- Lack of Clarity on Regulatory Approach - It is unclear whether changes of this magnitude should be implemented through formal rulemaking processes rather than through an Agreement, particularly given the widespread impact on SAUs, students, and families.
- Inappropriate Language for SPPS Settings - The requirement for "regular education services" referenced in Section 4 is incompatible with Special Purpose Private School settings that operate as 100% special education programs.

Recommendations to Consider

Based on these concerns, I respectfully recommend the following modifications:

- Develop separate agreements tailored specifically to Special Purpose Private Schools versus private academies and 60/40 schools, as their operational structures and purposes are fundamentally different.
- Provide explicit clarification of all consequences related to non-signature and noncompliance, and clearly articulate how this Agreement intersects with school approval processes and funding

mechanisms.

- Establish clear, consistent definitions for critical terms including "imminent risk" and "no longer appropriate placement" to ensure uniform application.
- Adopt language from MUSER XVIII.4.B to describe service responsibilities, specifically using phrasing such as "implementing the child's IEP" to align with established regulatory guidance.
- Reconcile all timeline conflicts and align submission deadlines with the actual finalization date of the Master Agreement.

Thank you for the opportunity to provide comment on the proposed Master Agreement. I strongly encourage revisions to address the concerns outlined above, particularly the ethical and legal implications of requiring public schools to file expedited hearings on behalf of private schools, and appreciate your continued commitment to supporting students with disabilities throughout Maine.

Sincerely,

Michele Horne, Special Services Director AOS 94

From:	Forster, Sarah
To:	Tardif, Tabitha
Subject:	FW: SPPS agreement
Date:	Monday, November 17, 2025 1:48:16 PM

From: Cyr, Laura <Laura.Cyr@maine.gov>
Sent: Sunday, November 16, 2025 1:54 PM
To: Welter, Megan <Megan.Welter@maine.gov>; Forster, Sarah <Sarah.Forster@maine.gov>
Subject: FW: SPPS agreement

- LMC

From: Sarah Bolduc-Ignasiak <signasiak@msad11.org>
Sent: Friday, November 14, 2025 3:59 PM
To: Cyr, Laura <Laura.Cyr@maine.gov>
Subject: SPPS agreement

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Ms. Cyr,

I am writing to provide feedback on several components of the master agreement as it relates to SPPS.

First, I have concerns regarding the requirement for public schools to file expedited hearings on behalf of SPPS. Our insurance policy does not provide coverage when the public unit files on behalf of another entity. This creates a significant conflict of interest, particularly when the public and private school may not be in disagreement about the underlying issue. I recommend revising or removing this requirement to avoid exposing public schools to potential legal and financial liability.

I would also appreciate clarification on whether a school that is approved to operate as a special education program and receives state funding may select which special education and related services it provides. Specifically, must the program provide all services outlined in a student's IEP, or may it offer only those services that fall within its approved service model? Clear guidance in this area is important for both placing SAUs and schools to fully understand their responsibilities.

Additionally, I am seeking clarification on the implications for private schools that choose not to sign the master contract. Would such a decision affect their approved status or their eligibility for state funding? This information is essential for planning and compliance.

I also recommend the following revisions to the contract language:

Section 2(5): *"The School shall inform the Placing SAU when a student is absent or out of program for 10 cumulative school days in the school year, and any subsequent 10 cumulative days out of program in that school year, so that the SAU can determine whether an IEP Team meeting is required."* This change supports timely communication and aligns expectations with IEP team processes.

Section 6(a): I recommend changing "10 business days" to "10 school days" to ensure clarity and consistency with standard educational timelines and reporting cycles.

Thank you very much for your consideration.

Sincerely,
Sarah Bolduc-Ignasiak

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Sarah Bolduc-Ignasiak

PRONOUNS: SHE/HER/HERS

DIRECTOR OF SPECIAL SERVICES
MLL COORDINATOR

SIGNASIAK@MSAD11.ORG
207.582.7366
150 HIGHLAND AVENUE, GARDINER, ME 04345

Written Comment for Master Agreement between the Maine Department of Education and Approved Private Schools

Dear Commissioner Makin and the Maine Department of Education Team,

On behalf of the Maine Administrators of Services for Children with Disabilities (MADSEC), thank you for the opportunity to provide public comment on the proposed Master Agreement between the Maine Department of Education and Maine Approved Private Schools. MADSEC supports efforts to create clarity and consistency; however, concerns remain regarding operational feasibility, ethical and legal implications, and the impact between SAUs, SPPSs, and private academies.

Key Concerns and Questions

- Public schools are legally responsible for FAPE, yet are not signatories, raising possible legal and procedural conflicts
- Requirement for public schools to file expedited hearings when the private school is requesting discharge of the student, not the public school
  - A conflict of interest between SAUs and SPPSs
  - Ethical issues (attorney cannot represent both)
  - Liability concerns (public school insurance does not cover filings when public school files)
- Need for clear guidance for private school admission policies for waitlists, program-specific enrollment, program capacity limits
- Undefined terms like “imminent risk” and “no longer appropriate placement” create inconsistent decision-making.
- Given the embedded checklist, is the intent that the private school can select which special education services they provide regardless of the services and supports listed in the student’s IEP even though the private school is an approved school for special education programming, including who is responsible for conducting evaluations
- Conflicting deadlines for program approval - Section 8(b) requires policy submission by July 01, 2026, but private schools in the current monitoring cohort have been directed to submit by January 02, 2026, which would be impossible without a final Agreement

- Vagueness in the Agreement language
- Question whether such changes should be made through rule making rather than an Agreement
- Language requiring "regular education services" (Section 4) does not align with SPPS settings that are 100% special education.

MADSEC *Recommendations*

- Create a separate agreement for Special Purpose Private Schools from other approved private schools
- Clarify all consequences for non-signature, noncompliance, and how the Agreement interacts with school approval and funding.
- Define vague terms such as "imminent risk" and "no longer appropriate placement."
- Use MUSER XVIII.4.B language to describe service responsibilities ("implementing the child's IEP…").
- Align deadlines with the finalization of the Master Agreement.
- Align language more closely with IDEA / MUSER language

In closing, MADSEC appreciates the Department's intentions in pursuing a statewide Master Agreement and the opportunity to provide comments on the proposed language. We strongly urge the Department to revise the Master Agreement to include language from the attached red-line version for clarity and better alignment to IDEA and MUSER and to further discuss the ethical and legal implications of requiring the public school to file an expedited hearing on behalf of another entity, i.e. private school.

Thank you for your consideration and continued work to best support public and approved private schools, and most importantly, students with disabilities in Maine's educational framework.

Respectfully,

Gay Anne McDonald

Gay Anne McDonald
Executive Director
MADSEC

[DOE letterhead]

MASTER AGREEMENT

Between an Approved Private School Seeking to Offer
a Special Education Program and the Commissioner of Education

STATUTORY AUTHORITY: **20-A M.R.S.A. §7252-A. Early intervention; special education programs; approval** . . . A special education program may be offered by a school administrative unit, an approved private school or a state licensed agency. All . . . special education programs offered by approved private schools or state licensed agencies must: **1. Supervision.** Be provided under the supervision of the school administrative unit responsible for the education of the child with a disability enrolled in the program; **2. Description.** Be described in a master contractual agreement between the agency or private school and the commissioner; and **3. Approval.** Be approved in advance of the enrollment of any child with a disability.

In accordance with 20-A M.R.S.A. §7252-A(2), to ensure compliance with State and Federal laws and regulations and to establish a common framework that defines the roles of the participants in order to provide education programming to students with disabilities served in private programs, **[Name of Private School]** (the “School”) and the Commissioner of Education hereby enter into the following Master Agreement governing the operation of a special education program. Nothing in this Agreement removes any obligation of the School to obtain the applicable school and/or program approval, or to comply with any applicable State or Federal law or regulation.

Nothing in this Agreement prevents the School from entering into contractual agreements with one or more school administrative units that place students at the School (Placing SAUs), so long as those agreements do not conflict with this Master Agreement.

1. <u>Services provided (MUSER X.2.A, XI)</u>. The School provides the following special education and related services:

☐Assistive technology services

☐Audiology services

☐Counseling services

☐Interpreting services (cut hearing aids)

☐Medical service

☐Orientation and mobility services

☐Occupational therapy

☐Physical therapy

☐Psychological services

☐Recreation services

☐Rehabilitation services (cut leisure services)

☐School health and nurse services

☐Social work services

☐Speech-language pathology services

☐Transportation

Based upon the needs of the enrolled students, the School may be able to expand the services offered, and to provide additional services in addition to those checked above.

2. Educational settings (MUSER X.2.C.2). All students with disabilities are entitled to receive special education and related services in the least restrictive environment (LRE). The School offers the following educational settings:

☐Special Education outside the regular classroom less than 21 percent of the day (MUSER X.2.C.2.a).

☐Special education inside the regular class no more than 79 percent of the day and no less than 40 percent of the day (MUSER X.2.C.2.b).

☐Special education inside the regular class for less than 40 percent of the day (MUSER X.2.C.2.c).

☐Separate School-Special Education outside public or private school for greater than 50 percent of the school day (MUSER X.2.C.2.d).

The School shall have policies and procedures in place to transition students with disabilities to less restrictive placements in accordance with the determinations of a student's IEP Team.

3. Admissions. The School must have a publicly available admissions policy that provides the criteria for admission as well as the process for determining how all students, including students with disabilities, are evaluated for admission. The admissions policy must ensure, at a minimum, that students with disabilities with an LRE that corresponds to educational settings available at the School (as identified in Section 2 above) are admitted in a non-discriminatory manner.

4. Provision of services. For each student with a disability enrolled at the School, the School shall provide regular education, special education and related services in accordance with each student's IEP. The School may not make any changes to a student's IEP without following the procedure in Section 6 below.

5. Attendance. The School shall maintain a record of the student's attendance, including any removal of the student by the School from their educational program, regardless of whether it is specifically identified as "disciplinary." The record of the removal shall identify the reason it occurred. ~~Early release from educational programming constitutes a removal~~. The School shall inform the Placing SAU when a student is absent or out of program for 10 cumulative school days ~~days~~ in the school year, and any subsequent 10 cumulative days out of program in that school year so that the SAU can make a determination whether an IEP Team meeting is required.

6. Removal or discharge (20 U.S.C. §1412(a)(10)(B); 34 C.F.R. §300.146(c)). The School shall have a policy for removal or discharge of students with disabilities that includes the following:

   a. Before ~~making **any** changes to a student's IEP or educational program (including the~~ ordering removal or discharge of the Student from the School~~)~~, the School shall provide written notification to the Placing SAU and to the student's parents, informing them of the intention to remove or discharge and the reasons for that intention. The Placing SAU shall then ~~ask the Placing SAU to ses~~schedule and hold an IEP Team meeting~~, even if the student's parent agrees with the proposed change. The IEP Team meeting shall be held~~ as soon as possible, taking into consideration the parent's right to attend, and no later than 10 ~~business~~ school days after receiving the School's ~~request~~notice of intent.
   b. If the IEP Team does not reach consensus on a proposed ~~change to a student's IEP or educational placement~~removal or discharge of the student, the following steps shall occur:~~, and the Placing SAU and the School are in disagreement:~~
      i. The Placing SAU and the IEP team shall develop an interim placement proposal for the Student and begin a search for an appropriate successor placement for the child. The School shall provide assistance to the Placing SAU regarding effective implementation of the interim placement. The Placing SAU shall issue a Written Notice documenting the decisions

made, including the School's decision to remove or discharge the student from its program. ~~If the School does not believe that it has the capacity to carry out a student's IEP safely and successfully, and/or believes that it is no longer an appropriate placement for a student – even after the consideration of changes to the IEP including additional supports – the Placing SAU shall provide Written Notice to the parent of a change of placement and begin the search for a successor placement.~~

ii. While the Placing SAU searches for a successor placement, the student shall continue to attend the School in accordance with the Student's last agreed upon IEP and placement, and the School and the Placing SAU shall work together in utilizing functional behavioral analysis, introduction or modification of behavior plans, use of applicable "special circumstances" removals by the SAU as set forth in IDEA/MUSER, or other interventions considered appropriate to ensure the student's, other students' and staff's safety.

iii. If the parent challenges the ~~change of placement~~removal or dismissal decision by exercising their due process rights, the School shall serve as the "stay put" placement. unless either the IEP team identifies a different and available placement that meets IDEA "maintenance of placement" requirements, or the School informs~~they inform~~ the Placing SAU that they are unable to maintain the child's current placement ~~do so~~ without a substantial ~~n~~ ~~imminent~~ risk of harm ~~to the health and safety of~~to the student, other students, and/or school staff.~~;~~

iv. Should the School conclude that maintenance of the student's placement will present a substantial risk of harm to the student, other students, and/or staff, the ~~If the~~ School shall inform~~informs~~ the Placing SAU and Parents in writing that they cannot continue to serve the student without the ~~imminent~~ risk described above, and the ~~District shall~~Placing SAU ~~develop an alternative educational plan and~~ shall seek relief ~~judicial relief~~ from any "stay put" order through an expedited due process hearing. The child's stay put placement during that expedited hearing shall be in accordance with applicable standards in the IDEA..

v. During the due process hearing, the Placing SAU shall ensure that the School has the opportunity to present testimony and documentary evidence and offer legal arguments regarding the placement of the student at the School. The Placing SAU may, however, provide evidence contrary to the position taken by the School.

vi. If a due process hearing officer or ~~a federal~~ court determines that the student's placement at the School is appropriate, or that there is not a substantial likelihood of injury if the student were to remain in the placement while alternatives are sought, then the Student shall remain at the School pending any appeal or any further judicial action.~~.~~

c. The process set forth in Section 6(b) above shall also apply to circumstances when the IEP team concludes that a student's misbehavior is a manifestation of the child’s disability, and the IEP team is unable to reach agreement on an alternative placement for the child.

d.. Nothing in Section 6 above shall in any manner limit the School or the Placing SAU from seeking judicial relief from any of the requirements set forth in that Paragraph.

c. If the School and one or more Placing SAUs agree on an alternative process to that described above in ~~sub~~paragraph 6~~b~~ that ensures the same outcome: that a student placed at the School has the same rights as a student served at a public school as required by federal law, the School may submit it to the Department for approval to replace ~~sub~~paragraph 6~~b~~ prior to implementation.

7. Relationship to the Placing SAUs (20-A M.R.S.A. §7252-A(2)). The School will designate an individual to be the single point-of-contact for all communications regarding programming for students with disabilities and will obtain a single point of contact from each Placing SAU. The School shall permit the Placing SAUs’ designees to enter the private school to visit classrooms, meet with the School’s designee, and talk to the staff about the progress of individual students.

8. Monitoring and enforcement.

a. Access to records. The School will allow the Department to access the records necessary to determine whether the School is in compliance with this Agreement.

b. To the extent that the School requires parent consent for release of education records to either the Department or the Placing SAU pursuant to MaineCare requirements, the School shall obtain such consents and keep them current over time.

~~a.~~c. The School shall provide copies of all Chapter 33 reports to the Sending SAU’s superintendent and Director of Special Education in a timely manner. The School shall also notify the Sending SAU’s superintendent of schools and director of special education of any incidents of drug violations, weapon violations, or the infliction of serious bodily injury.

~~b.~~d. Submission of policies/documentation. The School shall submit the policies referenced in this Agreement on or before July 1, 2026. Documentation of alternative removal/discharge arrangements between the School and one or more Placing SAUs pursuant to Section 6(c) must be submitted to the Department prior to their adoption.

~~c.~~e. Monitoring. The Department will establish a routine monitoring cycle for private schools that operate special education programs that is separate from the monitoring of the Placing SAUs.

~~d.~~f. Enforcement. As a result of the monitoring process above, in response to a complaint by a parent/guardian or a Placing SAU, or on its own initiative, the Department shall take the following steps to enforce this agreement: giving the School the opportunity to respond, conducting an investigation as necessary, issuing findings of fact and conclusions of law, and providing a corrective action plan (CAP) for any violation of the Agreement that must be completed within a time specified. If the School disagrees with the findings, conclusions or CAP, the Department will offer an administrative hearing in accordance with the Maine Administrative Procedure Act, 5 M.R.S. §9051 *et seq*. The determination reached at the end of the administrative hearing shall constitute the Department's final agency action.

~~e.~~g. Termination. Failure by the School to timely correct a violation of this Agreement or comply with the terms of a CAP shall result in termination of this Agreement at the end of the then-current school year.

Comments re: Proposed MDOE Master Agreement

November 14, 2025

To Whom It May Concern;

These comments are submitted on behalf of Waypoint Maine's Fraser Ford School, located in Sanford, Maine. Fraser Ford serves children with autism and related behavioral health needs in our year-round PreK through Grade 5 Special Purpose Private School and licensed Mental Health Facility providing Behavioral Health Day Treatment in addition to comprehensive educational programming aligned to the Maine Learning Results.

We agree that formal processes be adopted to ensure student's right to FAPE and also address the rare instances of disagreement between a Special Purpose Private School (SPPS, alternatively referred to as "School" below) and School Administrative Unit (SAU) when the SPPS has significant safety concerns and is therefore unable to meet the student's needs. Fraser Ford School has not discharged a student outside of the IEP process, nor initiated removals or abbreviated days, and takes seriously our obligation to implement each child's IEP with integrity.

Below are a number of stated SAU obligations. However, nothing in the Agreement compels an SAU to fulfill these requirements as they are not a party to signing the Agreement as drafted.

- In Section 6(a), the SAU ensures an IEP meeting *shall* be held as soon as possible after notice of intent to discharge/request for IEP meeting is made by the School and no later than ten (10) business days after the School's request;
- In Section 6(b)(i), if the School does not believe it can safely meet the child's needs and is no longer an appropriate placement, the SAU *shall* provide WN of a change of placement and begin the search for a successor placement; there is no timeline associated with this action and should be.
- In Section 6(b)(ii), the SAU *shall* work together in utilizing functional behavioral analysis, implement or amend a behavioral support plan, use applicable special circumstances removals, or "other interventions considered appropriate to ensure student's, other students' and staff's safety". Tutoring or remote supports for example?
- In Section 6(b)(iii)(iv), the SAU must file proceedings to seek relief from stay put requirements if the SPPS informs them of an imminent risk to health or safety;
- In Section 6(b)(iv), the SAU shall develop an interim alternative educational plan, if such relief is sought; and
- In Section 6(b)(v), the SAU shall ensure that the School has the opportunity to present testimony and evidence and offer legal arguments in the due process proceeding. If the SAU disagrees with the School's decision to discharge a student,

this "opportunity" to present testimony and the description of the procedural process is confusing and appears unworkable. Notably, the stay put provision under the IDEA applies to public agencies, not private schools. SPPSs are not public agencies within the meaning of the statute; they are private service providers operating under contract with public districts. Further, the proposed framework presents a challenge in cases where the SAU disagrees with the SPPS's assessment of imminent risk; they may be incentivized to delay action to avoid assuming responsibility for finding or funding the alternative placement. The SPPS would then be left indefinitely serving a student in an unsafe situation, with no ability to protect staff or other students. Other state models suggested for consideration are discussed below.

In Section 6.b.iii & iv, there exists a concerning gap in the process with clarification needed. If the parent challenges a change of placement and exercises due process, the School becomes the "stay put" placement *unless* they inform the SAU that they are unable to do so without imminent risk to the health and safety of the student, other students, and school staff. As drafted, the result is that the District *shall* develop an alternative educational plan and seek judicial relief from any "stay put" order. At this point, the child is removed from the School? What is the timeline for the SAU to develop an alternative educational plan?

In Section 6.b.vi, If the hearing officer/court determines that the student's placement at the School is appropriate, the student shall remain at the School. In instances of serious safety concerns where the School has expressed they are not able to meet the child's needs without imminent risk to health and safety, we do not support their continued placement in a program that can't keep the child and others safe.

The MDOE is encouraged to consider a model such as that used by New Jersey where they provide an SPPS the ability to discharge students, and place clear expectations on the SAU to find a new placement in a timely manner. Under this model the SPPS makes immediate notification to the SAU when they are considering discharge, an IEP meeting is convened within 10 school days, to include at least one member of the SPPS program who participated in recommending discharge. The IEP team reviews the child's needs and determines a new placement; once this written notice is provided to the parent the child may be discharged from the SPPS.

Alternatively, the model used in Massachusetts should be considered by MDOE. Massachusetts provides two types of termination/discharge procedures: (1) emergency and (2) planned. 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 SPPS must first inform the SAU, which assumes responsibility for the student. If the SAU cannot assume responsibility for the student immediately, it can request a delay of up to two calendar weeks in order to convene emergency meetings and other appropriate planning discussions before the student is terminated from the SPPS. Termination cannot be delayed past two calendar weeks unless both the SAU and SPPS agree to do so.

With planned terminations, (those that are not emergencies) the SPPS must request an IEP team meeting, with at least 10 days' notice, in order to plan and develop a written discharge plan for the student. The plan must describe the student's specific programmatic needs, short- and long-term goals; and recommendations for follow-up and/or transitional services. The discharge plan must be implemented in no less than 30 calendar days, unless the parties agree to an earlier date.

While it does not appear Massachusetts utilizes a state-mandated master agreement to govern private school placements, they provide sample contracts which include language regarding the discharge of a student from a private placement. Given the range of other alternatives, MDOE is encouraged to consider options that provide a consistent framework to manage instances of disagreement regarding discharge, while also acknowledging that the stay put provision under the IDEA applies to public agencies, not private schools. MDOE should consider developing separate master agreements; one governing 60/40 town academies, and another addressing SPPS'.

Finally, the MDOE's messaging to MADSEC in October was in part quoted as the following. "The agreement will not affect school approval status if a private school chooses not to sign". The Agreement states that failure to correct a violation of the Agreement results in termination of the Agreement at the end of the school year. The implications of contract termination require clarification.

Respectfully,

Tiffany Haskell, Special Education Director

Waypoint's Fraser Ford School

November 16, 2025

Dear Commissioner Makin and the Maine Department of Education Team,

On behalf of the Maine Administrators of Services for Children with Disabilities (MADSEC), thank you for the opportunity to provide public comment on the proposed Master Agreement between the Maine Department of Education and Maine Approved Private Schools. MADSEC supports efforts to create clarity and consistency; however, concerns remain regarding operational feasibility, ethical and legal implications, and the impact between SAUs, SPPSs, and private academies.

Key Concerns and Questions

- Public schools are legally responsible for FAPE, yet are not signatories, raising possible legal and procedural conflicts
- Requirement for public schools to file expedited hearings when the private school is requesting discharge of the student, not the public school
  - A conflict of interest between SAUs and SPPSs
  - Ethical issues (attorney cannot represent both)
  - Liability concerns (public school insurance does not cover filings when public school files)
- Need for clear guidance for private school admission policies for waitlists, program-specific enrollment, program capacity limits
- Undefined terms like “imminent risk” and “no longer appropriate placement” create inconsistent decision-making.
- Given the embedded checklist, is the intent that the private school can select which special education services they provide regardless of the services and supports listed in the student’s IEP even though the private school is an approved school for special education programming, including who is responsible for conducting evaluations
- Conflicting deadlines for program approval - Section 8(b) requires policy submission by July 01, 2026, but private schools in the current monitoring cohort have been directed to submit by January 02, 2026, which would be impossible without a final Agreement
- Vagueness in the Agreement language
- Question whether such changes should be made through rule making rather than an Agreement
- Language requiring “regular education services” (Section 4) does not align with SPPS settings that are 100% special education.

MADSEC *Recommendations*

- Create a separate agreement for Special Purpose Private Schools from private academies, 60/40 schools
- Clarify all consequences for non-signature, noncompliance, and how the Agreement interacts with school approval and funding.
- Define vague terms such as “imminent risk” and “no longer appropriate placement.”
- Use MUSER XVIII.4.B language to describe service responsibilities (“implementing the child’s IEP…”).

- Align deadlines with the finalization of the Master Agreement.

In closing, MADSEC appreciates the Department's intentions in pursuing a statewide Master Agreement and the opportunity to provide comments on the proposed language. We strongly urge the Department to revise the Master Agreement to include language from the attached red-line version for clarity and better alignment to IDEA and MUSER and to further discuss the ethical and legal implications of requiring the public school to file an expedited hearing on behalf of another entity, i.e. private school.

Thank you for your consideration and continued work to best support public and approved private schools, and most importantly, students with disabilities in Maine's educational framework.