

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