

SYSTEMIC COMPLAINT INVESTIGATION REPORT
Disability Rights Maine v. Maine Department of Education
Complaint 21.039CS
February 1, 2021

INVESTIGATION PROCEDURE

Complainant: Disability Rights Maine
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Respondent: Maine Department of Education
Erin Frazier, State Director of Special Services Birth to 22
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The Department of Education received this systemic complaint on December 15, 2020. Erin Frazier, State Director of Special Services Birth to 22, responded to the complaint on behalf of the Department of Education by taking the initial actions described below under “Corrective Action.” Due to the nature of the complaint, the Department determined that no factual investigation was necessary.

PRELIMINARY STATEMENT

This systemic complaint was filed on behalf of students with disabilities who are “aging out” of special education at the end of the school year in which they turn 20, pursuant to 20-A M.R.S. § 5201(1).

ALLEGATION

Maine Department of Education’s (MDOE’s) policy, practice, and procedure of terminating eligibility to a free appropriate public education (FAPE) at the end of the school year in which a student turns 20 years old violates the Individuals with Disabilities Education Act (IDEA).

FINDINGS

1. IDEA requires the provision of FAPE until age 22 unless -- for students ages 18-21 -- that would be “inconsistent with State law or practice.” 20 U.S.C. § 1415(a)(1)(A),(B).
2. Maine’s generally applicable age-eligibility statute states that students are eligible for a pK-12 public education until the end of the school year in which they turn 20. 20-A M.R.S. § 5201(1). As such, Maine has historically terminated a student with a disability’s eligibility for FAPE at the end of the school year in which they turn 20.

3. In 2018, the Court of Appeals for the First Circuit held that students are entitled to FAPE until age 22 (the so-called “federal standard”) where the state provides public education in the form of adult education to students who are under age 22 but older than the state “age out” for pK-12 education. *K.L. v. Rhode Island Board of Education*, 907 F.3d 639 (2018). The First Circuit concluded that for purposes of the IDEA, “public education” contains three basic attributes: (1) “a significant level of state or local government funding,[] (2) the public administration or oversight of the educational services” and (3) the education of students “up to the level of academic proficiency associated with the completion of secondary school.” *Id.* at 642, 644.
4. Maine’s adult education system meets the First Circuit’s definition of “public education” as it receives significant state and local government funding, is administered by the Department of Education and local public entities (primarily school administrative units either alone or in collaboration), and provides coursework that allows students to complete and receive their high school diplomas. As such, there is little question that the same result would be reached by the First Circuit if Maine’s statutes were challenged.

CONCLUSION

The Maine Department of Education’s policy, practice, and procedure of terminating eligibility to a free appropriate public education (FAPE) at the end of the school year in which a student turns 20 pursuant to 20-A M.R.S. § 5201(1) years is inconsistent with the IDEA as interpreted by the First Circuit in *K.L. v. Rhode Island Board of Education*, 907 F.3d 639 (2018). Maine is required to implement the “federal standard” and provide FAPE to eligible students until their 22nd birthday.

CORRECTIVE ACTION

By Administrative Letter dated January 21, 2021, the Department advised all school administrative units that, effective immediately, they were required to follow the “federal standard” and make FAPE available to all IDEA-eligible students until they either receive a regular high school diploma or reach their 22nd birthday, whichever occurs first. A copy of the Administrative Letter is attached hereto.

The Department has posted a copy of the Administrative Letter on the Special Services page of the Department’s website.

Although the “federal standard” is being implemented immediately, at the next available (non-emergency) opportunity, the Department will propose changing the definition of “child with a disability” in 20-A M.R.S. § 7001(1-B)(B) and 20-A M.R.S. § 7201(2-A)(B) from age 20 to 22. (Of note, these sections are incorrect as currently written as they purport to cut off eligibility at age 20 as opposed to the end of the school year in which the student turns 20. Maine has always treated students with disabilities in the same manner as their non-disabled peers under 20-A M.R.S. § 5201(1).)

The next time that the Department proposes changes to Chapter 101: Maine Unified Special Education Regulation, the Department will propose changing age 20 to age 22 throughout, including, but not limited to:

Each SAU will maintain and implement policies and procedures to ensure that all children residing in the jurisdiction between the ages of 3 and 20 years... who are in need of special education and related services, even though they are advancing from grade to grade, are identified, located and evaluated *at public expense*. MUSER IV.2.A., 34 CFR 300.111(a)(i,ii) and (c)(1,2). "Birth to Age Twenty," MUSER (Title Page); "the provision of special education and related services to eligible children age three to twenty with disabilities MUSER (SUMMARY); "age 3 to 20," MUSER II.19; "Three To Twenty," MUSER IV.2; "between the ages of 3 and 20 years," MUSER IV.2.A; "Age 3-20," MUSER IV.4; "age 5 to 20," MUSER 4.H; "Starting at age 5, and continuing to age 20," MUSER 4.H. 1; "CHILFREN (sic) 3- 20," MUSER V; "children 5-20 years," MUSER V.1.A(1)(a)(i); "Children 3 to 20," MUSER V.4; "between 16 and 20 years of age," MUSER V.5; "Has neither graduated from a secondary school program with a regular high school diploma nor reached 20 years of age at the start of the school year," MUSER VII.2; "children 5-20," MUSER IX3.A(b)(i); "Ages 15-20," MUSER X.2.C.(2)(c); "Related Services 3 to 20," MUSER XI; "age 3 to 20," MUSER XI; "Programs for Children with Disabilities 5-20," MUSER XII.2; "children 5-20 with disabilities," MUSER XII.2.A; "children B-20 with disabilities," MUSER XII.2.B; "Children with disabilities from birth to age 20," MUSER XIII.1; "Children 3-20," MUSER XVI.LB; "Part B (3-20)," MUSER XVI.10.A.