

SYSTEMIC COMPLAINT INVESTIGATION REPORT
Disability Rights Maine v. Maine Department of Education
Complaint 22.007CS
September 24, 2021

INVESTIGATION PROCEDURE

Complainant: Disability Rights Maine
Attorney Benjamin Jones, Esq.
160 Capitol Street, Suite 4
Augusta, Maine 04330

Respondent: Maine Department of Education
Pender Makin, Commissioner of Education
Erin Frazier, State Director of Special Services Birth to 22
23 State House Station
Augusta, Maine 04330-0023

PRELIMINARY STATEMENT

This systemic complaint was filed on behalf of students with disabilities who are placed outside their resident district, or SAU.

ALLEGATION

MDOE policies, practices, and/or procedures for providing oversight of students with disabilities who are placed outside their resident district, or SAU, are inadequate to ensure that all of those students receive a free appropriate public education in violation of MUSER I (stating that each school district must provide special education students with a free appropriate public education) and the IDEA at 20 U.S.C. Section 1412(a)(1) (stating that a free appropriate public education must be available to all children residing in the State between the ages of 3 and 21).”

CONCLUSION

The Department resolved the matter, as presented, in a way that does not require an investigation, within the 60-day period as required by the Individuals with Disabilities Education Act (IDEA) and 05-071 Chapter 101 – Maine Unified Special Education Regulation (MUSER XVI.4(1)(a)).

By Administrative Letter dated November 24, 2021, the Department advised all school administrative units, Special Purpose Private Schools, and Public Regional Programs of their obligations regarding the provision of a Free Appropriate Public Education (FAPE).

The Department has posted a copy of the administrative letter (page 2 of this report) in the MDOE Newsroom ([ADMINISTRATIVE LETTER: IEP REQUIREMENTS FOR OUT-OF-UNIT PLACEMENTS – Maine DOE Newsroom](#)) and on the Special Services page of the Department’s website.



STATE OF MAINE
DEPARTMENT OF EDUCATION
23 STATE HOUSE STATION
AUGUSTA, ME 04333-0023

JANET T. MILLS
GOVERNOR

A. PENDER MAKIN
COMMISSIONER

ADMINISTRATIVE LETTER: IEP REQUIREMENTS FOR OUT-OF-UNIT PLACEMENTS

Administrative Letter: 28

Policy Code: IHBEA

To: School Administrative Unit (SAU) Administrators, Special Purpose Private School Administrators and Public Regional Program Administrators

From: Pender Makin, Commissioner

Date: November 24, 2021

Subject: IEP Requirements for Out-of-Unit Placements

In Maine, before an IEP Team decides to place a child with a disability in an out-of-unit placement, it shall initiate and convene an IEP meeting to develop an Individualized Education Program for the child. The IEP developed will reflect the Team's program design to meet the child's needs and will include goals for the child's growth in the areas of concern. The IEP Team shall discuss and document the program components of a placement that will support the IEP developed at this meeting (MUSER IX.3.H). The sending SAU has the administrative responsibility for the education of a child with a disability who has been placed in an out-of-unit placement. Special Purpose Private Schools (SPPS) and other out of unit entities must ensure compliance with IDEA, utilizing the IEP team process and maintaining "stay put" in the event of a dispute (34 CFR §300.518).

The Department is concerned that some School Administrative Districts, SPPS, and Public Regional Programs believe that the language of MUSER XI.3.I allows a receiving out-of-unit placement to remove a student with a disability from school for any reason, without utilizing the IEP Team process, and without maintaining 'stay put' in the event of a dispute. MUSER IX.3.I requires a receiving placement to ensure compliance with "these rules and the Individuals with Disabilities Act." While the Department views this language to cover the requirements for a change of placement, and for stay put, it is clear that some School Administrative Districts, SPPS, and Public Regional Programs have not operated with this understanding.

After consulting with counsel, SPPS and other out of unit placements are not in compliance with IDEA when they terminate a student's placement without going through the IEP process. Maine will enforce the federal standard of using the IEP process in the change of placement. Effective immediately, All SAUs must notify the SPPS and Out-of-Unit placements that in order to continue these placements, they must abide by the federal standard and provide FAPE to eligible students, who are placed at SPPS and other out-of-unit placements. The MUSER reference can be found here:

[MUSER IX.3.I Revision of Out-of-Unit Placements](#)

For more information, contact Erin Frazier, State Director of Special Education Birth to 22, at erin.frazier@maine.gov.