Parent and Student Advocates[i] Respond to MSBA Statement Regarding LD 552

LD 552 - *An Act to Strengthen the Individualized Education Program Process* was designed to provide parents of students with disabilities with an equal voice during the development and revision of their Individualized Education Programs (IEPs). Specifically, LD 552 would require parental consent before a previously agreed upon IEP could be changed. The Maine Legislature's Committee on Education and Cultural Affairs recently voted to pass the bill and send it to the entire legislature.

But groups representing school administrators are working against the bill and using incomplete and at times misleading information as they do so. On 4/14/21, the Maine School Boards Association (MSBA) emailed a statement to all school board members and superintendents throughout the state regarding LD 552. We provide the following response to ensure that parents, teachers, and policy makers have access to accurate and complete information when assessing the potential impacts of this proposal.

MSBA claim	Response
"This bill requires a parent to provide informed consent prior to any proposed change in a student's IEP."	This is true. The bill would require parental consent, in contrast to current Maine regulations, which allow a school district to change a student's Individualized Education Program (IEP) over the objection of the parent as long as it provides 7 days written notice.[ii]
"This bill requires that changes to the individualized education program for a child with a disability be made by consensus of the team."	This is not true. The bill was amended before the committee vote to remove the language regarding consensus.[iii] And the vote was ought to pass, as amended.
"If the team is unable to reach consensus, the IEP in effect at the time of the proposed change remains in effect."	This is true. But this is already the case under the IDEA when there are formal disputes.[iv] This is called the "stay put" provision. Under LD 552, on the rare occasions where the school and the parent are not in agreement, the party proposing the change (either the school district or the parent) would be able to change the status quo only by working to reach an agreement, or by utilizing dispute resolution mechanisms under the federal Individuals with Disabilities Education Act (IDEA).[v] In the meantime, the previously agreed upon IEP would remain in place.
"This may result in a slight fiscal impact to the department for increased mediation services."	It is possible, but by no means certain, that there will be increased use of the mediation process under the IDEA. Mediation is generally encouraged under the IDEA.[vi]
"There will be a major fiscal impact to school administrative units. Currently, SAUs are covered under insurance for these claims if a parent initiates the due process. If the school initiates due process school board legal liability does not cover the legal costs."	This is not necessarily true. It will be completely up to schools to determine if a proposed change to an existing IEP is worth going to due process over. In the absence of consent, schools could simply keep implementing previously agreed upon services, hold another IEP meeting, or request mediation. While parents have the right to challenge a proposed IEP change through due process, the reality is that many families do not have the resources to actually do so.[vii] Nor do parents have insurance to cover the costs of due process. It appears from the MSBA statement that schools are relying on families not asserting their federally protected rights.

"The number of hearings that could take place if a parent does not agree with the changes in an IEP are estimated to be 60 per year with an average cost of $75,000 each and that could equal $4.5 million dollars."	MBSA cites no evidence for its cost estimate. Dr. Alan Cobo-Lewis, of UMaine's Center for Community Inclusion and Disability Studies, looked at states with parental consent provisions similar to those in LD 552 and concluded "the data indicate no obvious association between a state's rate of dispute resolution events and a state's policy on parent consent."[viii] MSBA's estimated litigation costs are almost certainly excessive. The $4.5 million figure appears to be based on the unsupported assumption that there will be 20 more due process hearings annually than there were last year, and that 100% of these will go through the entire administrative process. But MSBA's own information is that only 12.5% of due process filings went through the administrative process last year.
"Another SAU cost would be for complaint investigations that are estimated 40 at $15,000 each = $600,000."	This assertion makes no sense. Complaint investigations cannot be initiated by schools. LD 552 would not change that. In any event, schools could avoid these costs by simply complying with federal law and allowing MDOE to conduct the impartial investigation it is required to do under the IDEA.[ix]
"There is concern about parents being in the position to mandate curriculum and staffing for their child."	Nothing in LD 552 would permit parents to direct curriculum or staffing decisions. The only thing that parents will be able to "mandate" is that the current IEP remain in place until the issue is resolved through agreement or dispute resolution procedures. Parents already bear the burden of utilizing due process proceedings when they seek to change an existing IEP over the objection of the school district. LD 552 would not change that. It would simply put parents and schools on an equal footing in this regard.
"There is concern about meeting the requirement of providing free, appropriate public education in the least restrictive environment if parents are allowed to derail the process."	MSBA cites no basis for this concern. Parent advocacy on behalf of their children does not constitute "derailing" of the IEP process. The IDEA makes clear that parents are necessary and equal members of the IEP Team. The IDEA also makes clear in other contexts that if parents refuse to provide consent, then schools are not responsible for failures to provide a free and appropriate public education related to the refusal of consent.[x]
"Last year in Maine there were approximately 40 requests for due process. Only 5 moved through the process. This speaks to the commitment that our Special Education staff and districts have to work collaboratively with parents and to gain consensus on the development of a student's IEP."	It is true that the majority of IEP team meetings result in consensus. LD 552 simply addresses those rare circumstances when parents and schools cannot agree to changes to previously agreed upon IEPs.
"Due to the estimated costs, this could become an unfunded mandate of approximately $5.1 million dollars."	MSBA offers no evidence in support of this cost estimate. And as detailed above, it is almost certainly excessive.

[i] This response was prepared by: Disability Rights Maine; Center for Community Inclusion and Disability Studies; Autism Society of Maine; Maine Developmental Disabilities Council; and Maine Parent Federation.

[ii] Maine Unified Special Education Regulation (MUSER) Appendix 1, p.220 "Written Notice".

[iii] The amendment can be found through a link contained within the MSBA communication itself. See: http://msma.informz.net/MSMA/data/images/LD%20552%20Amendment.pdf

[iv] 20 U.S.C. §1415(j) (during the pendency of any proceedings challenging a student's placement, unless the educational agency and the parents otherwise agree, "the child shall remain in the then-current educational placement").

[v] In a decision regarding assigning the burden of proof to the party seeking relief under the IDEA, the U.S. Supreme Court seemed to presume that school districts seeking to change an IEP without consent would need to do so through dispute resolution mechanisms under the IDEA. *Schaffer v. Weast*, 546 U.S. 49, 53-54 (2005) ("School districts may also seek such hearings, as Congress clarified in the 2004 amendments. They may do so, for example, if they wish to change an existing IEP but the parents do not consent, or if parents refuse to allow their child to be evaluated.").

[vi] 20 U.S.C. §1415 (requiring the use of mediation or a resolution session before any due process hearing can be held)

[vii] See: GAO "SPECIAL EDUCATION IDEA Dispute Resolution Activity in Selected States Varied Based on School Districts' Characteristics" GAO 20-22 (November 2019) *available at*: https://www.gao.gov/assets/gao-20-22.pdf (noting barriers to parents in accessing dispute resolution and noting higher dispute resolution activity in high income school districts)

[viii] This testimony is available here: http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=148944

[ix] 34 C.F.R. 300.152 (outlining the minimum state complaint procedures under the IDEA)

[x] See: 34 C.F.R. 300.300