

## SPECIAL EDUCATION BOARD REPORT

Holly Day, Director

February 8, 2021

- Openings update  
We have hired a new ed tech for MCS! We continue to look for a teacher at Minot, and ed techs for ESS, Whittier and PRHS.
- Update on the “ending age” for identified students who have not met graduation requirements. In summary, students used to “age out” at the end of the school year in which they turned 20. Now the Maine DOE is authorizing services through the day the student turns 22, to be in line with federal law. We will have to work on what this will look like for our district, how we will serve older students, and when they will participate in graduation activities. I have asked to be on the State work group that will look at services for students age 20-22:

### **Administrative Letter: 1**

**Policy Code:** IHBEA

**To:** Public School Administrators

**From:** Pender Makin, Commissioner

**Date:** January 21, 2021

**Subject:** Change in the Ending Age for Special Education Eligibility – Effective Immediately

The Individuals with Disabilities Education Act (IDEA) requires states to provide “[a] free, appropriate public education . . . to all children with disabilities residing in the State between the ages of 3 and 21 inclusive[.]” 20 U.S.C. § 1415(a)(1)(A). IDEA permits an exception to this general age range: “[t]he obligation to make a free, appropriate public education available to all children with a disabilities does not apply with respect to children . . . [aged] 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to [such] children[.]” 20 U.S.C. § 1415(a)(1)(B)(i).

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 years old. 20-A M.R.S. § 5201(1). As a result, Maine has historically terminated a student with a disability’s eligibility for a free, appropriate public education (FAPE) at the end of the school year in which they turn 20.

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.

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.

After consulting with counsel, the Department has concluded that terminating eligibility to a free, appropriate public education 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).

Effective immediately, Maine will implement the “federal standard” and provide FAPE to eligible students until their 22<sup>nd</sup> birthday.

All school administrative units must notify adult students who would have previously “aged out” of special education on June 30, 2021 of their right to receive a free, public education until either they receive a regular high school diploma or their 22<sup>nd</sup> birthday, whichever comes first.

The Department will be providing technical assistance around the provision of FAPE beyond age 20. For more information, contact Erin Frazier, State Director of Special Education Birth to 22, at [erin.frazier@maine.gov](mailto:erin.frazier@maine.gov).

Special education counts and costs for students over 20 will be counted under Title 20 A §15681-A.2. Students 5-22 are now part of your child count and SAUs will receive state subsidy based on this count.

