State of Maine
DEPARTMENT OF EDUCATION

Testimony of Stephen Bowen Commissioner of Education

In Opposition To: LD 530

An Act to Apply the Standard of Best Educational Interest to Superintendent Agreements for Transfer Students

Before the Joint Standing Committee on Education and Cultural Affairs

Sponsored by: Representative Nelson of Falmouth
Co-Sponsored by Representative Kornfield, Daughtry, Hubbell, Kusiak, MacDonald, Monaghan-Derrig, and Pouliot, and Senators Millett and Johnson.

Date: March 25, 2013

Senator Millett, Representative MacDonald, and Members of the Joint Standing Committee on Education and Cultural Affairs:

My name is Stephen Bowen, I am the Commissioner of Education for the State of Maine and I am here today representing the Department speaking in opposition to L.D. 530 An Act to Apply the Standard of Best Educational Interest to Superintendent Agreements for Transfer Students.

As members of the committee are aware, current law allows students to transfer from one school administrative unit to another under what is known as a superintendent's transfer agreement if they find it in the student's best interest and if the parent agrees. In the event that one or both superintendents refuse the transfer request, parents may appeal that decision to the commissioner.

The bill before you seeks to do two things.

First, by inserting the word "educational" into the "best interest" language of the existing law, the bill seeks to significantly limit the use of superintendent transfers altogether by eliminating the right of superintendents to grant transfers for reasons other than "educational" ones, however that term comes to be interpreted. Today, roughly 1,600 superintendent agreements are in effect, the overwhelming majority of which were approved by both superintendents. The right these superintendents currently have to accommodate the unique needs of students and families, "educational" or otherwise, would be severely limited by the proposed requirement that an "educational" best interest be established as the sole basis for granting such transfers.

Second, the bill completely eliminates the right, currently enjoyed by Maine families, to appeal the "best interest" determinations made by the superintendents. It does this by only allowing the commissioner to "modify" (but evidently not reverse) a transfer denial, and allows that action only when a "finding" is made that the student would be denied a free and appropriate public

education without the transfer. In other words, if the resident school district has a school for the student to attend, the commissioner may not reverse the transfer denial, regardless of whether attending that school is in best interest of the student or not. This language effectively makes superintendents the sole and final authority when it comes to determining the best interest of the student (and thus determining whether a transfer will occur or not), leaving the courts as the only avenue of appeal for families improperly denied a transfer request on "best interest" grounds.

The combination of new limits on the authority of superintendents to grant transfer requests in the first place, combined with the complete elimination of any significant right to appeal such actions by superintendents when they are taken, makes this bill the most significant threat to existing school choice options I have seen in ten years of involvement in legislative affairs. In preparing this testimony, it was difficult for me to determine even in my own mind which parts of this bill I find to be the most troubling.

First, there is the hypocrisy of the proposed "educational" best interest language. In my experience with transfer appeals, families seek transfers for a number of reasons. Many times, transfer requests are based on a desire for different academic programming or are otherwise explicitly related to "educational" opportunities or achievement, or lack thereof, but many times they are not. In the majority of cases I have seen, requests are connected to concerns about issues such as bullying or other social, emotional and physical health issues. Many requests come because the transfer being sought would enable parents to more effectively support their children's learning needs by providing students more time at home, by allowing parents to volunteer in the school or by allowing easier access to afterschool programming and care. Parents have concerns about students coming home to empty houses, for example, or otherwise being without the kind of proper support and guidance after school that would help them succeed.

The bill before you would seek to eliminate all of these as reasons for superintendents to allow transfers, and yet in this very room, we hear repeatedly about how schools and teachers should not be held solely accountable for student achievement because so many other variables – social, emotional and physical health, parental involvement and support or the lack thereof, access to afterschool programming or lack thereof – have an impact on student learning. In the ongoing debate about teacher and principal effectiveness, for instance, we have heard time and again that it is unfair to hold teachers accountable for student learning gains specifically because issues like these have such a profound impact on academic achievement.

Yet this bill seems to be saying just the opposite. Under this bill, the ONLY factor superintendents are to consider in a transfer requests is the "educational" best interest of students, however superintendents choose to interpret that term. Is access to afterschool care in the student's educational best interest? Is a parent being able to help a child with his or her homework important to student success? We hear constantly that these factors matter, yet this bill seems to suggest that such factors should not be considered in transfer requests. So which is it?

The second element of this bill that the Department finds utterly unacceptable is the effective elimination of any right of appeal.

Let me begin my discussion of this issue with an important point I wish to emphasize for the record. There are roughly 1,600 superintendent transfers in effect at this very moment, the overwhelming majority of which were put in place by the superintendents themselves and were never appealed to the Department. Superintendents across Maine routinely work with parents to make these transfers happen, and in my discussions with them over the past two years, I have had any number of superintendents tell me that such transfers are not an issue. Indeed, there are superintendents in Maine - many of them – whose name I have never seen on a transfer appeal. For many, many superintendents, transfers between school districts are simply not a problem.

For others, however, they are. There are superintendents who routinely deny such requests, seemingly without any regard for the "best interest" language of the law. Superintendents refuse transfers because they don't want to "set a precedent" that other students and families might follow. They refuse transfers because they are worried about school budgets and the financial impact a transfer might have. One superintendent argued to me in a letter that the transfer denial I was reviewing should be upheld because it served "the needs of our taxpayers." They deny transfers because parents do not present what the superintendent finds to be "compelling reasons" for the transfer, even if the parents make clear and convincing cases for the best interest of the student.

Unbelievably, they deny transfers because students have disabilities and they don't want to take on the added costs associated with such students, effectively discriminating against such students on the basis of their disabling condition. I overturned such a denial just last week, one in which the superintendent, in his letter to the parents, wrote that the transfer request was denied because of the "financial hardship" on the district that the child's special education needs would create. How could this action by the district possibly be in the best interest of the student?

Superintendents also, it is important to point out, deny transfers through no fault of their own, because school boards, exercising an authority they do not have under statute, place stringent limitations on such transfers. Denial letters I've seen from one district in particular explain to parents that the district has made "a major shift in its approach" to granting transfer appeals and has determined that transfers will only be granted "in the most serious situations" and "when both the sending and receiving superintendents agree." This denial letter contains no mention of the one and only factor that the law says is to be considered in such cases, which is the best interest of the student.

Again, the majority of superintendents operate within the law. But the committee would be gravely mistaken if it took the position, by supporting this bill, that superintendents will always do what is in the student's best interest, educational or otherwise, and thus no appeal of their actions should be allowed.

The third and final element of the bill the Department finds gravely concerning is how internally inconsistent it is with regard to standards for appeal. In short, the language being added to subsection B, *the commissioner may modify the transfer decision only upon a written finding that the student may not have the opportunity to receive the benefits of a free public education without transfer* makes the commissioner's standard of review inconsistent with the standard the

superintendents are required to apply. Under the bill, superintendents are required to make a decision solely on the best educational interests of the student (whatever that means), but the new subsection B language only allows the commissioner to modify the decision if the student is not able to receive the benefits of a free public education in his or her resident district. This language thus establishes two different sets of standards for what constitutes an acceptable transfer, one for the superintendents and one for the commissioner, and would thereby require families to develop two sets of arguments in support of a transfer request, a "best educational interest" argument for presentation to the superintendents, and a "free public education" argument for the commissioner.

The ultimate result of this "two standard" language is that families desiring to appeal the "best educational interest" determination of the superintendent will need to seek relief from the courts. The commissioner, under the language proposed here, would have no authority to hear appeals on these grounds. An appeal to the courts is costly, of course, meaning that such appeals will effectively be out of the reach of many Maine families. We already confront the reality that families of means enjoy school choice options unavailable to disadvantaged families; this language change would only exacerbate that divide by requiring a resort to the courts in such instances. We already know superintendents deny transfer requests under the existing law because of a student's disabling condition, for example, are we prepared to force families to seek relief from this in the courts?

And what about students currently using a transfer agreement to attend a school in another school district? If the standards governing such transfers are to be changed and any right of appeal effectively eliminated, at least for underprivileged families, is the Committee content to have those agreements terminated and thus have those students return to their resident district whether it is in their best interest to do so or not?

In summary, this is a profoundly flawed bill that essentially eliminates a long-standing school choice option that has been available to all families, but most especially those families who can afford no other option when it comes to finding an educational setting that best meets their child's needs. For these reasons, the Department adamantly opposes to LD 530, An Act to Apply the Standard of Best Educational Interest to Superintendent Agreements for Transfer Students.

I would be happy to answer any questions the Committee may have, and I will be available for the work session.