

Testimony of Betsy Mahoney, Esq., Community Outreach Liaison, Autism Society of ME,
In Opposition to LD 464,
An Act To Change the Period To Request a Due Process Hearing for Costs Related to a Unilateral
Private School Placement from a Public School

Senator Millett, Rep. Kornfield, members of the Education and Cultural Affairs Committee, my name is Betsy Mahoney and I represent the Autism Society of Maine. The Society opposes L.D. 464 for two basic reasons. First, the bill is unnecessary, and second, it is unfairly punishes vulnerable families who choose to place their special needs children in private schools.

Why do we believe that the bill is unnecessary? School districts say they need to have these private school reimbursement cases resolved quickly. Yet they already have the legal means to address this issue. While they argue that parents should have to file for due process hearings very quickly, there is nothing in current law preventing them from filing for a hearing themselves. Districts can file as soon as they learn from parents (who are required to tell them two weeks before they remove the child) that the parents will be seeking reimbursement for private school costs. They don't have to wait for parents to file.

Why do we say that the bill is punitive? It would penalize a small group of parents who seek reimbursement after putting their children in private school because those children have been unsuccessful in public school. Under state law, these parents now have 4 years (2 years under federal law) to file a reimbursement request. This bill would reduce that period to only 90 days.

Why wouldn't 90 days be enough time? A reimbursement request initiates a rapid administrative hearing, complete with documentary evidence, testimony and filing briefs. These parents, who are already under extreme financial and emotional stress, would have less than three months, once they place their child in a private school, to find a lawyer, prepare their case and file for a hearing that will take place within a month's time. In addition, these parents also bear the burden of proving that the private school placement is appropriate to serve their child's special needs. That gives them only a few short weeks to gather data for use at the hearing.

Finally, proponents of this bill argue that it will reduce litigation costs. In fact, the 90-day filing period may actually increase litigation costs. Facing a 90-day deadline, parents would be in a hurry to file for a hearing, and there would be precious little time for settlement discussions before a suit is filed, compared to today. Perhaps the school districts hope that a 90-day deadline will discourage parents from filing for a hearing, which would of course save them legal fees. In any case, the best way to control litigation costs is to provide kids with the programs and placements they need, instead of treating every case as a fight to be won against parents seeking something other than what the school district wants to do.

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Fact Sheet on LD 464

An Act to Change Period To Request a Due Process Hearing for Costs Related to a Unilateral Private School Placement from a Public School

This bill is unnecessary and will penalize parents of children with special needs who are most vulnerable.

Who would this bill impact?

- This bill would apply to and penalize a small group of very vulnerable parents who have decided to place their disabled children, who have been unsuccessful in public schools, into private schools. This group of parents may seek reimbursement from public school systems for the cost of the private school.

What is the current law?

- Under state law, these parents now have 4 years to file a reimbursement request (2 years under federal law) for reimbursement. This type of request initiates a rapid administrative hearing, complete with documentary evidence, testimony and filing briefs. This bill would reduce that period to only 90 days.

Don't school districts need to have these cases resolved quickly?

- The bill is totally unnecessary. There is no evidence that current federal or state filing periods are causing problems. Under current law, if schools want to find out whether they are liable for reimbursing parents, they don't have to wait for parents to file for a due process hearing. They can file for a due process hearing themselves; starting from the first day they learn from parents (who are required to tell them two weeks before they remove the child) that the parents will be seeking reimbursement for private school costs.

What would these parents have to do if the bill passes?

- These parents, who are under extreme financial and emotional stress, would have less than three months, once they place their child in a private school, to find a lawyer, prepare their case and file for a hearing that will take place within a month's time. These parents also bear the burden of proving that the private school placement they have selected is appropriate to serve their child's special needs, despite having only a few short weeks to gather data for use at the hearing.

Won't this bill help school districts improve Special Ed services?

- No. This change serves absolutely no public purpose. It would not increase the quality of special education services. If anything, a 90-day rule would give districts an incentive to promote the transfer of difficult-to-educate children with disabilities to private schools, in the hope that the parents will fail to act in time to recover reimbursement.