



May 1, 2025

Submitted Electronically

Senator Joseph Rafferty, Chair
Representative Kelly Murphy, Chair
Joint Standing Committee on Education and Cultural Affairs
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

Re: Testimony in Support of LD 1098 – “An Act to Ensure Equal Access to a Full School Day for All Students”

Dear Senator Rafferty, Representative Murphy, and members of the Joint Standing Committee on Education and Cultural Affairs:

My name is Atlee Reilly and I am a Managing Attorney at Disability Rights Maine, Maine’s protection and advocacy agency for individuals with disabilities. I am providing testimony in support of LD 1098 “*An Act to Ensure Equal Access to a Full School Day for All Students*” and want to thank you for bringing this important legislation forward.

Over the last thirteen years, DRM staff have spent a significant amount of time simply trying to ensure that students with disabilities have access to a full day of school. We have represented children in all 16 counties, from kindergarten through high school, who have been subjected to shortened school day programs, sometimes for as little as 1-2 hours per school day, for periods that can stretch from weeks to months and even years. This has profound and negative impacts on the students, who miss vital instruction and are denied opportunities to access the same education made available to their peers; and it has significant impact on families who lose income and sometimes their jobs.

This practice is harmful. And it is widespread because an idea has taken root in Maine that there is such a thing as an “educational need” for less education.ⁱ When you say this out loud, the absurdity is apparent - What is an educational need for less education? Students might need more

160 Capitol Street, Suite 4, Augusta, ME 04330

207.626.2774 • 1.800.452.1948 • Fax: 207.621.1419 • drme.org

or different services and supports to access a full school day, but there is no support for the assertion that less education provides educational benefits.ⁱⁱ In addition, subjecting students with disabilities – and only students with disabilities – to shortened school day placements will often violate their rights under federal and state law to equal access to educational programs and activities.ⁱⁱⁱ

LD 1098 would address this widespread problem and would:

- Eliminate Maine’s “educational need” justification for denying students with disabilities equal access to a full school day.
- Define "abbreviated school day" as “any day that a student is required to attend school or receives educational services for less time than grade peers within the same school. This includes students placed in tutoring services for less than a full school day.”
- Require informed parental consent before placing a student on an abbreviated day program (any abbreviated day for more than 10 days in a year) for a documented medical or behavioral health need.
- Ensure that when there is agreement that a shortened school day is necessary, that a plan is developed to ensure continued access to the curriculum and to support a return to a full school day as soon as possible.
- Emphasize that a “school may not consider, recommend or implement an abbreviated school day program due to a lack of school resources, including, but not limited to, staffing resources, training resources and supportive services.”

Schools may argue they do not have the resources to meet the needs of all of their students for a full school day. Unfortunately, this may be true in some circumstances. But what cannot be acceptable is that a particular class of children – children with disabilities – are forced to bear more than their share of the burden of any resource inadequacies that may exist. The D.C. Public Schools made a similar argument over 50 years ago, resulting in a court decision often credited with giving rise to the Individuals with Disabilities Education Act, which held:

the defendants' conduct here, denying plaintiffs and their class not just an equal publicly supported education but all publicly supported education while providing such education to other children, is violative of the Due Process Clause... *If sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system then the available funds must be expended equitably* in such a manner that no child is entirely excluded from a publicly supported education consistent with his needs and ability to benefit therefrom. The inadequacies of the District of Columbia Public School System whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the [child with a disability than the child without a disability].^{iv}

The same reasoning applies to the length of the school day. There is no valid reason for subjecting students with disabilities to a shortened school day due to purported resource concerns when students without disabilities are able to enjoy access to a full school day. LD 1098 will help Maine schools move away from harmful and impermissible practices. There is no such thing as an educational need for less education.

I may be reached at areilly@drme.org or 207.626.2774 x220 and will make myself available for the work session. Please feel free to reach out at any time with any questions or concerns.

Respectfully Submitted,



Atlee Reilly
Managing Attorney
Disability Rights Maine

ⁱ Unfortunately, this idea is rooted in a state regulation (without any clear statutory authority) – MUSER VI.2.L(1) – which provides that a child’s school day can be reduced based on an “educational need” for less education. Several years ago, DRM formally raised concerns about the use of abbreviated school days in Maine schools with the Maine DOE and specifically requested that Maine remove the “educational need” justification for placing a student on an abbreviated school day. At that time, we were told that MDOE was in the middle of considering changes to MUSER and that this would be considered. And in October 2024, we were finally informed by MDOE, through its State Director of Special Services, that the “educational need” provision would be removed from MUSER in proposed rule changes that were forthcoming. This was welcome news. But the proposed rule has still not been released and in any event, it is not appropriate to leave something this important to that process, without statutory guidance.

ⁱⁱ In an ongoing case brought by Disability Rights Oregon against the Oregon Department of Education for failing to ensure that schools did not violate the federally protected rights of students placed on shortened school days, an expert declaration submitted highlights this point: “There is no research showing that removing students from school improves a child’s behavior or provides any academic or social-emotional benefits. Instead, research confirms my opinion that the overwhelming majority of students with disability-related behaviors can be effectively and safely included in school and in the general education classroom if they receive the behavior supports they need to obtain meaningful academic benefits.” *J.N. v. Oregon Dep’t of Educ.*, Case No. 6:19-cv-00096-AA, Decl. of Melody Musgrove ¶ 24 (doc. 67), available at: <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/PublicTestimonyDocument/98214>

ⁱⁱⁱ This was the case in Lewiston, where the United States Department of Justice investigated and concluded: “The department’s investigation found that the district routinely shortened the school day for students with disabilities without considering their individual needs or exploring supports to keep them in school for the full day. The district’s lack of training for staff on how to properly respond to students’ disability-related behavior contributed to the over-reliance on “abbreviated” school days.” For more information, see the press release, available here: <https://www.justice.gov/opa/pr/justice-department-settles-maine-school-district-protect-educational-rights-students> This investigation took place in response to a complaint from Disability Rights Maine in coordination with the ACLU of Maine, Kids Legal at Pine Tree Legal Assistance, and the Cumberland Legal Aid Clinic, a program of the University of Maine School of Law. The resulting settlement agreement requires Lewiston to end its systemic and

discriminatory practice of excluding students from full school days because of behavior related to their disabilities. The settlement agreement is available here: <https://www.justice.gov/crt/case-document/lewiston-public-schools-settlement-agreement>

^{iv} *Mills v. Board of Education of the District of Columbia*, 348 F. Supp. 866, 875-76 (D.D.C. 1972)(emphasis added) available at: <https://law.justia.com/cases/federal/district-courts/FSupp/348/866/2010674/>