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# Final Report of the Committee to Develop a Compensation Program for Victims of Abuse at the Governor Baxter School for the Deaf

Maine State Legislature

Office of Policy and Legal Analysis

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**STATE OF MAINE  
119TH LEGISLATURE  
SECOND REGULAR SESSION**

**Final Report  
of the**

**COMMITTEE TO DEVELOP  
A COMPENSATION PROGRAM FOR  
VICTIMS OF ABUSE  
AT THE GOVERNOR BAXTER SCHOOL  
FOR THE DEAF**

**December 2000**

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Representative Richard H. Thompson, Chair  
Senator John W. Benoit  
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## **Acknowledgements**

The Members of the Committee to Develop a Compensation Program for Victims of Abuse at the Governor Baxter School for the Deaf would like to take this opportunity to thank the many individuals and agencies who provided invaluable assistance, insight and input throughout the process of this work.

Attendance at Committee meetings was clearly based on the desire to attend and participate rather than it being a part of someone's job to be there. We choose not to single out particular State employees for individual recognition solely because we are afraid we cannot adequately list everyone and their contributions. All the time and energy devoted to this project is greatly appreciated.

We will, however, mention the ASL Interpreters who have stuck with the Committee throughout this year. Margaret Haberman, Elizabeth Reifman and Maurita Marr, we thank you for your professionalism, devotion, flexibility and sense of humor. We know we could not have gotten this study off the ground without you.

Last, but not least, we want especially to thank the victims and their families for coming forward and sharing their stories with us. We also extend thanks to A Safer Place and the Deaf Community as a whole. Without your courageous testimony, we would not have begun this journey. You have thanked us for our work; we know that we would not be here if not for your diligence and your support of each other. You and your families have suffered what no person should suffer, and you have somehow found the strength to tell your stories, demand redress and start a process to ensure that abuse of vulnerable children never happens again. You have been insistent and patient, both traits that you must continue to display as we move into this next phase of what started years ago. This report and the recommendations to establish the Baxter Compensation Program are but one more step on a journey that has taken too long, but a journey that we will eventually complete. Thank you for letting us be part of your healing process.

**FINAL REPORT  
OF THE  
COMMITTEE TO DEVELOP A COMPENSATION PROGRAM FOR VICTIMS OF ABUSE AT  
THE GOVERNOR BAXTER SCHOOL FOR THE DEAF**

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## EXECUTIVE SUMMARY

The Committee to Develop a Compensation Program for Victims of Abuse at the Governor Baxter School for the Deaf was created by Part B of Resolve 1999, chapter 127. The Committee was established to develop a program to compensate former students of the Governor Baxter School for the Deaf and its predecessor, the Maine School for the Deaf, who were sexually or physically abused while in the care and custody of the State at one of the schools. Earlier this year, the Legislature established the Governor Baxter School for the Deaf Student Trust Fund to support such a program, and funded it with an initial allocation of \$1 million.

The Committee consists of five legislative members appointed by the President of the Senate and the Speaker of the House of Representatives. The members are: Senator Sharon Anglin Treat, Senate Chair; Representative Richard H. Thompson, House Chair; Senator John W. Benoit; Representative Charles C. LaVerdiere and Representative William J. Schneider. All five serve as members of the Joint Standing Committee on Judiciary of the 119th Legislature.

The Committee met five times, each time with the assistance of interpreters. The Committee reviewed other compensation and redress programs, and identified elements that are essential to successful compensation programs. The Committee was fortunate to have Rene de Vos, Director of the Jericho Individual Compensation Program (Vancouver, British Columbia) accept the Committee's invitation to travel to Maine and discuss that program, his experiences and his recommendations.

Based on the information collected and the input of the many members of the public who closely followed the Committee's work, the Committee developed a proposed compensation program. A public hearing was held in late October to collect comments about the proposal. Using those comments, the Committee revised the proposal and recommends the creation of the Baxter Compensation Authority, which will oversee the Baxter Compensation Program.

The Baxter Compensation Program will pay compensation to former students who were abused while attending either the Maine School for the Deaf or the Governor Baxter School for the Deaf. The Program will provide assistance to former student who seek compensation by making claims consultants who are fluent in American Sign Language (ASL) available to help claimants throughout the process. A three-member compensation panel will review each claim and determine whether the claimant is eligible for compensation and the level of compensation. The three tiers of compensation, based on the severity and duration of the abuse the student suffered, are: \$25,000; \$60,000; and \$100,000. Appeals will be available to the Baxter Compensation Authority board.

The Committee also recommends additional funding of the Governor Baxter School for the Deaf Student Trust Fund to cover the cost of the compensation for the many students who were abused while in the care and custody of the State.

## **I. INTRODUCTION**

This report is but one step in a long process to come to terms with and provide redress for students abused while in the care and custody of the State as students at the Governor Baxter School for the Deaf. There are several public reports documenting some, but not all, of the abuse occurring at the school, the investigations and the resulting resignations by members of the school's and Department of Education's administration and staff. There were no criminal prosecutions after the investigations in 1982, and many students and their families have felt the abuse and its after-effects have simply been ignored.

### **A. Background**

This process began in the 119th Legislature with the introduction of LD 1620, Resolve, to Extend the Statute of Limitations for Victims of Abuse at the Baxter School for the Deaf, sponsored by Rep. Elizabeth Townsend, and cosponsored by Representative Elizabeth Watson, Senator Susan Longley and Senator Sharon Treat. LD 1620 proposed to eliminate the statute of limitations governing civil suits, as well as the statute of limitations within the Maine Tort Claims Act, to allow students who were sexually or physically abused to sue the Governor Baxter School for the Deaf. As written, the Resolve would have given persons who were students at the school between 1974 and 1998 three years to file suit alleging their abuse.

The Joint Standing Committee on Judiciary held a public hearing on LD 1620 in April 1999. It was a tense and emotional undertaking for the committee and audience, but especially for the witnesses. With at least two ASL interpreters helping the witnesses and committee communicate, the stories that filled the room were sad, heart-breaking and appalling. They ran the gamut from hair pulling by teachers to repeated sexual assault by administrators. Pleas for help went unanswered at the time. The picture painted by the former students and staff was one of fear, intimidation and an atmosphere where abuse was ignored. The committee was shocked at the stories and impressed by the strength of the survivors of the abuse, many of whom admitted

for the first time that day that they, too, were abused at the school. The committee also learned that abuse dated back to the Maine School for the Deaf, the predecessor of the Governor Baxter School for the Deaf, which opened in the late 1950's.

The Judiciary Committee recognized that a substantial effort would be required to address the issues presented by LD 1620. The Judiciary Committee sought and received permission to carry over LD 1620 to the Second Regular Session. It then proceeded to establish a subcommittee to begin examining the abuse and why it was allowed to continue for so long. It also looked at what could be done for the students who were abused, and what steps to take to ensure that other vulnerable people who trust the State to care for them are not similarly abused in the future.

The subcommittee of the Judiciary Committee spent the summer and fall of 1999 working with several State departments and agencies to build a safety net of services and preventive measures. Those involved included: the Department of Mental Health, Mental Retardation and Substance Abuse Services; the Department of Human Services; the Department of Labor, Bureau of Rehabilitation; and the Department of Education.

The Judiciary Committee sought and received input from A Safer Place, a support group for Deaf persons who were abused at the Governor Baxter School for the Deaf, which was used to establish goals for each of the departments. A matrix of needs and required services was developed which showed which department or agency was responsible for each task. This matrix helped guide the Judiciary Committee and the departments and agencies through this process. The matrix is included in this report as Appendix D. The progress was slow but rewarding. As a result, free counseling services are now available to former students through the Department of Mental Health, Mental Retardation and Substance Abuse Services, and a directory of signing therapists, along with their photographs, is available. The Department of Human Services is taking the lead on developing and adopting a protocol for handling new allegations of abuse at the school.

When the subcommittee of the Judiciary Committee considered the issue of waiving the statute of limitations to allow suit by the victims of abuse, or, in the alternative, providing direct compensation to the victims, the members recognized two facts. First, the subcommittee members were not unanimous in supporting anything beyond the provision of services and assistance in the future. Second, for those in favor of providing some form of compensation, the process of creating such a program appeared complicated, and everyone agreed that more information was necessary. In order to understand the extent of the abuse that had taken place and to help determine the need for compensation, the subcommittee recommended that the entire Judiciary Committee have access to confidential files concerning the abuse and allegations of abuse at the Governor Baxter School for the Deaf.

LD 2394, An Act to Allow Limited Access to Information Relating to Investigation of Abuse at the Governor Baxter School for the Deaf was introduced and referred to the Judiciary Committee in the beginning of the Second Regular Session. Passed as an emergency bill (Private and Special Law 1999, chapter 62), LD 2394 as amended directed the Governor Baxter School for the Deaf and all agencies and departments having records or other information relating to abuse or allegations of abuse at the school to so notify the Judiciary Committee and make those records available for review. In executive session, the Judiciary Committee reviewed confidential records provided by: the Department of the Attorney General, relating to the investigation and reports in 1982; the Department of Education, also focusing on the complaints leading up to the 1982 reports; the Department of Human Services, including records detailing the child abuse investigations from that same time period; and the Governor Baxter School for the Deaf, including records since 1982. The Judiciary Committee also requested their staff attorney to review the records and summarize the extent and severity of abuse. The records review reinforced many members' belief that some form of compensation was necessary and appropriate.

At the same time the discussions about LD 1620 were being held, the Judiciary Committee held a public hearing and considered LD 2453, An Act Regarding the Statute of Limitations for Sexual Misconduct with a Minor. Building on their work on LD 1620, the Judiciary Committee members unanimously supported the elimination of the statute of limitations for civil suits seeking



redress for sexual abuse of minors. The Judiciary Committee recognized that the significant consequences suffered by the victims of child sexual abuse will not go away with the erasure of the time bar on lawsuits. However, the members felt that providing victims with the opportunity to bring an action against their abusers might be a helpful part of the healing process for at least some of the victims. The Judiciary Committee also wanted to make sure that child abusers do not benefit from the fact that most child victims do not actually acknowledge their victimization until many years after it occurs.

After much discussion and deliberation, the Judiciary Committee unanimously reported out LD 1620 in a substantially amended form. Resolve 1999, chapter 127 consists of two parts. Part A requires the several State departments to continue their multiagency efforts to address the response to abuse at the Governor Baxter School for the Deaf. Part B establishes the Committee to Develop a Compensation Program for Victims of Abuse at the Governor Baxter School for the Deaf. In addition, with the full support of members of the Judiciary Committee, the Supplemental Budget, Public Law 1999, chapter 731, Part PPP, created a trust fund from which to pay compensation to the victims of abuse at the Baxter School. Initial funding came from unused monies in the Victims' Compensation Fund, establishing a trust fund balance of \$1,000,000. Additional funding will be necessary to pay appropriate compensation.

## **B. The Committee to Develop a Compensation Program for Victims of Abuse at the Governor Baxter School for the Deaf**

The Committee to Develop a Compensation Program for Victims of Abuse at the Governor Baxter School for the Deaf was created by Part B of Resolve 1999, chapter 127. See Appendix A. The committee consists of five legislative members appointed by the President of the Senate and the Speaker of the House of Representatives. The members are: Senator Sharon Anglin Treat, Senate Chair; Representative Richard H. Thompson, House Chair; Senator John W. Benoit; Representative Charles C. LaVerdiere and Representative William J. Schneider. All five serve as members of the Joint Standing Committee on Judiciary, and all five are attorneys, giving

them the background and knowledge to quickly identify and resolve the legal and policy issues involved in developing a victim compensation program.

The committee met five times, each time with the assistance of interpreters. Because of the demand for qualified interpreters and the small population of such interpreters in Maine, the committee encountered significant scheduling problems. The lack of qualified interpreters is a significant problem in Maine and should be addressed by the Legislature. Thanks to the generosity of one interpreter who agreed to interpret two short work sessions on her own, the committee was able to continue its work with some regularity. The committee asked for and received from the Legislative Council an extension of the committee's reporting date from November 1 to December 1, 2000.

The committee began its work in August 2000 by reviewing other compensation and redress programs at the state and federal levels. The information was helpful in focusing attention on critical elements of a compensation program: who is eligible; what evidence is necessary; who makes the decision about whether compensation is warranted; and what amount of compensation is appropriate.

The committee met on September 13, 2000 with Rene de Vos, the Director of the Jericho Individual Compensation Program (JICP), which was created to pay compensation to former students who were victims of abuse at the Jericho Hill School for the Deaf in Vancouver, British Columbia, Canada. Mr. de Vos was extremely helpful in giving factual and practical information about the JICP, the problems and barriers they encountered, and the solutions they crafted. The JICP has almost completed its mandate to collect, process and pay compensation claims, so Mr. de Vos's insights were particularly beneficial. Many of the concepts and principles of the JICP

Building on the JICP experience, the committee met to construct the framework for a compensation program. The committee met September 27, 2000 and October 25, 2000 in work

session to discuss various elements of a compensation plan. A proposed plan was distributed prior to the public hearing held on the afternoon and evening of October 25, 2000.

Many people attended the committee's public hearing, and several testified. A few who spoke were former students at the Governor Baxter School for the Deaf who had been abused while attending the school, and who were appearing before the committee for the first time. The comments about the proposed plan were generally positive, with specific concerns raised about the concentration of power in a single decision-maker, and that the proposed levels of compensation were too low.

The committee met again on November 15, 2000 to consider the comments made at the public hearing, discuss the proposal, and finalize its recommendations.

Throughout the process the committee's ability to communicate with interested parties was enhanced significantly by the use of e-mail and the committee's web page, which was created and supported by the Office of Policy and Legal Analysis. Members of the Deaf community were assisted by ensuring that information was shared as widely as possible with the Deaf community.

## II. DISCUSSION AND RECOMMENDATIONS

The committee has identified the following elements as being essential to a compensation program.

### A. Framework: The Baxter Compensation Authority

**Recommendation: That the Baxter Compensation Authority be created as an independent agency, governed by a 5-member board that is appointed by the Governor and confirmed by the Legislature. The board is responsible for establishing and operating the Baxter Compensation Program.**

The committee recommends that the Baxter Compensation Authority be created to administer the compensation program. After weighing carefully whether such a program could be part of the Legislative, Judicial or Executive branches of Maine State Government, the committee determined that the program should be operated by a new, independent entity. Part of the need for this level of independence is the lack of trust and faith the Deaf Community has in the existing governmental entities. Placing the program within the existing departments and agencies of Executive Branch would allow abuse survivors to see too many connections with the Department of Education that was responsible for the Baxter School in the late 1970's and early 1980's when some of the most significant abuse occurred. It has been only within the last two years that the Governor Baxter School for the Deaf has been made almost autonomous from the Department of Education. Some compensation programs in other jurisdictions have been created within their equivalent of our Department of the Attorney General. However, survivors also harbor disappointment that the Attorney General's Office did not pursue criminal charges against identified abusers in 1982. By establishing the Baxter Compensation Authority outside of the existing departments, the committee hopes to start over with a clean slate, providing the Deaf Community an opportunity to work with and trust a State agency designed to serve the goal of providing appropriate compensation to victims of abuse.

A board consisting of 5 members, nominated by the Governor, reviewed by the Joint Standing Committee on Judiciary, and confirmed by the Senate, would govern the Baxter Compensation Authority.

The Baxter Compensation Authority will have the powers necessary to carry out the compensation program, including the power to own and lease property for office space, employ staff and consultants and contract for services. For the most part, the Authority will operate and be treated like other independent State agencies.

## **B. Eligibility for compensation**

**Recommendation: That any former student of the Maine School for the Deaf or the Baxter School for the Deaf is eligible for compensation if he or she was physically or sexually abused while attending one of the schools, and the abuse occurred before January 1, 2001.**

The committee was presented with the task of determining who would be eligible for compensation, and what types of abuse would constitute a compensable claim. Many options were presented and advocated, but the committee decided that the central focus of the inquiry has always been the redress for abuse of students whose families trusted the State of Maine to provide a safe environment and an enriching educational experience. These students were the ones whose trust was betrayed and whose childhood was stolen. It is clear that teachers and staff, including houseparents, who lived and worked in what turned out to be a poisoned environment also suffered, most often because they felt powerless to stop the abuse or affect the atmosphere of abuse. But they could have chosen to leave the school. The children were unable to leave, though some tried to run away, and many tried to communicate the situation to their parents, but were ignored. Some were able to get across the message to their parents, but the school administration authoritatively denied to the parents that such stories were true. And the abuse continued. The people who wanted to help the students couldn't, and the people who could help the students, wouldn't. If the committee realistically had unlimited funds at its disposal, it might consider compensating everyone who suffered from being in contact with the abusive atmosphere

at either the Maine School for the Deaf or the Baxter School for the Deaf. That is not the case, and the limited funding must be reserved for those who were given no choice but to suffer abuse while in the care of the State.

For the same reasons, the committee also recommends limiting compensable abuse to physical and sexual abuse. The committee has no doubt that there are students who were victims of neither physical nor sexual abuse who have nevertheless been haunted by what they experienced and what they saw and felt in such an abusive environment. The committee recommends, however, to reserve the compensation for those who were subjected to physical abuse, sexual abuse or both. This recommendation is partly influenced by the high threshold under Maine law for proving intentional infliction of emotional distress when no physical contact or injury occurs. Some of the most chilling stories heard from the survivors of the schools involve the outrageous physical treatment students received on a regular basis at the hands of the teachers, administrators and staff, even though no sexual abuse was included. Shackling a student in chains or slamming a student's head or body against the wall, for example, cannot be tolerated to any degree. The committee believes such treatment is inexcusable and the students from the Maine School for the Deaf and the Baxter School must have some form of redress available as a result.

The committee is aware that in such an abusive atmosphere, some students were victimized by other students. To the extent the State would be liable for that abuse in any other school or residential setting – for example, under a theory of negligent supervision – that abuse should be compensable under this program. The fact that a student who was abused then became an abuser does not make the student ineligible for compensation. Student-against-student abuse was condoned at the Baxter School and at the Jericho Hill School for the Deaf, and the JICP proceeded on the same principle.

The committee also discussed when to cut off claims for compensation under the program. That is, when is an instance of abuse so recent so as to allow the victim to take advantage of current laws and unexpired statutes of limitation and file suit directly, rather than having this

compensation program as the only remedy available? The committee decided that abuse that occurs after December 31, 2000 would not be compensable under this program. In setting this claim cut-off date, the committee reviewed statutes of limitation for civil suits based on physical abuse (“assault and battery,” 14 MRSA § 753: two years) and sexual abuse of minors (14 MRSA §752-C: has been lengthened over the past 15 years from 6 years to unlimited, depending on when the abuse occurred), as well as the Maine Tort Claims Act (14 MRSA c. 741: two years, but includes a 180-day notice of claim requirement). The committee fervently hopes that no abuse has occurred so recently so as to need so late a cut-off date, but it does not want to foreclose the claim of any student who has suffered while the committee has deliberated.

### **C. Compensation levels**

**Recommendation: That three tiers of compensation be established: \$25,000; \$60,000; and \$100,000; and that the board establish criteria for each tier.**

Perhaps the most difficult decision for the committee in setting up the compensation program was determining the recommended amount of compensation to be awarded in each case or category of cases. The Jericho Individual Compensation Program utilized three tiers of compensation, based on the severity and duration of the sexual abuse experienced. The committee has discussed whether the decision-maker (see E below) should be directed to set an appropriate amount on a case-by-case basis within a broad possible range of compensation, or, alternatively, have the decision-maker determine which tier of abuse an individual case falls into, and the compensation is the amount set for that tier.

The committee has chosen to support the three-tiered approach. The committee recommends that the board determine the appropriate categories of abuse that would apply for each tier. The basic amount of compensation should be \$25,000. This minimum amount should be awarded to each former student who proves that he or she was abused by a state employee or as a result of state action or inaction while a student at the Maine School for the Deaf or the Governor Baxter School for the Deaf. To be awarded the second or third tier of compensation --

\$60,000 and \$100,000, respectively – the student would have to prove more about the severity, duration or other factors related to the abuse suffered. The committee proposes that the board use well-established legal principles concerning the award of damages to delineate the tiers, and that the decision-maker will use those principles in determining the appropriate level of compensation in each case. The committee strongly recommends that in all cases, if there is doubt as to whether the facts of a claimant’s case fall into one tier or another, the panel shall always err on the side of the claimant, and should award the claimant the compensation associated with the higher of the two tiers.

The committee does not want receipt of a compensation award to adversely affect a claimant’s eligibility for public benefits, such as SSI, SDI and Medicaid. The committee recommends that legal and financial advice be funded through the compensation program to help compensation recipients set up supplemental or special needs trusts, or other use financial tools to meet their needs. Awards are not intended to be taxable, as they are compensation for a personal injury. The board must ensure that this is clearly documented when compensation is paid.

#### **D. Claim-filing process**

**Recommendation: That the compensation program be inviting and uncomplicated, and that claims consultants be available to assist former students throughout the process.**

The committee determined early in the study process that the compensation program that is established must be extremely simple for the victims of the abuse to use, and that they must be made to feel as comfortable as is possible at every step.

##### **1. Outreach**

The committee recommends that the compensation program be responsible for making the availability of the compensation program known to all potential claimants under the program. The committee anticipates that notice and information will be



distributed on a national basis. The compensation program should work collaboratively with the Deaf Community to make use of the Community's networking skills.

The compensation program should recognize that some former students have limited capacity to understand the significance of the program and the potential for the help it can provide in their lives. The compensation program should develop procedures to identify, contact and work with former students who have mental disabilities or otherwise diminished capacity to help them participate in the program. Again, a collaborative effort with the Deaf Community is essential in making this work.

## **2. Starting the process**

The committee recommends that the steps required to file a claim for compensation be simple and easy to understand. There should be an application form that is easy to read and complete, and it should be widely available, including on the Internet. Assistance should be available to answer questions and to help victims file the claim application. The committee recommends that the compensation program make available ASL-fluent staff at the program office to help claimants complete the form. The entire process should accommodate and encourage the participation of family and friends.

## **3. Developing the claim**

The committee believes that reasonable information must be presented to the decision-maker to support a decision on eligibility for compensation and the appropriate amount of compensation. To the extent possible, certain information must be corroborated to ensure that the claimant is eligible to receive compensation. The committee recognizes that in some cases there may be very little reliable already-documented evidence available regarding the actual abuse students suffered at either the

Maine School for the Deaf or the Governor Baxter School for the Deaf. There must be some verification that the student was enrolled at the school. Other information may be corroborated by the existing records, or through the information provided by other students or others present at the time. The fact that no police, personnel or medical record is available to back up a former student's claim should not disqualify a claim.

The information should be collected and provided to the decision-maker. Collection of the information may include written information prepared by the former student, a family member or some other support person, or by a claims consultant who is assisting the claimant. The claims consultant should include any information gleaned from existing records and interviews with other persons. The information may be collected through electronic means including videotape. The committee recognizes that this is a particularly important option because of the visual nature of ASL and the significant role that visual, more so than verbal, communication modes have in the communication process for persons who are deaf or hearing-impaired. Past experience has taught the committee that writing down in words what a person is saying in sign language can be far removed from an accurate translation of the story. Capturing the telling of the former student's story on video tape would be a meaningful step in the compensation program process, and it would allow the maintenance of the story in the person's own mode of communication.

The committee recommends that claims consultants be available to help former students develop their claims. However, a claimant should not be required to make use of the claims consultant's services. The former student should be able to use the expertise and services of the claims consultant as the claimant sees appropriate to put together the information needed by the decision-maker.

There should be a sufficient number of claims consultants, both male and female, with diverse backgrounds so as to be able to accommodate the needs and comfort levels of the claimants. The Deaf Community is often referred to as a tightly-knit community in

which everyone knows everyone else. This may give some former students comfort in filing their claims, but it may be intimidating to others, especially if they have information that they feel may be sensitive. The committee therefore recommends that there be some qualified claims consultants available who are not associated with the Maine Deaf Community. A claimant should have the option of working with the claims consultant with whom he or she feels the most comfortable.

## **E. Decision-making process**

**Recommendation: That a three-person compensation panel review claims and decide whether the claimant is eligible for compensation and the appropriate amount of compensation. The compensation panel shall employ the standard of proof of whether there is a “reasonable likelihood” that the claimant was abused. A compensation panel decision should be overturned by the authority board sitting as the appeal board only if the decision is arbitrary and capricious.**

### **1. Compensation Panel**

The committee examined other compensation and redress programs and looked at how the responsibility for making eligibility and award decisions was allocated. The committee narrowed its preferences to the single-magistrate system of the National Vaccine Injury Compensation Program and the three-person panel of the Jericho Individual Compensation Program.

The committee initially favored the single-decision-maker – a “compensation officer” – model for several reasons. First, having a single compensation officer provides important administrative and substantive efficiency. Scheduling is much easier with one person. Meetings and discussion are not required, and decisions can be made as necessary. The compensation officer can travel where needed without coordinating schedules with other panel members. Second, the committee believed it is easier to keep decisions consistent if the same person is making them. Third, having one highly qualified

compensation officer should result in lower administrative costs than a three-person panel. Fourth, the program includes an appeal to a separate appeal board. Under the JICP, a panel decision could be appealed back to the same three-person panel. (In British Columbia, the option for civil suit against the Province or the perpetrators was not time-barred by the statute of limitations as such suits, because of the age of the claims, are in Maine.) The committee believes having a board separate from the decision-maker to handle final appeals is a better practice that avoids the possibility of irrelevant factors being considered in the final decision.

After receiving the testimony at the public hearing and the comments sent to the committee about this element of the compensation program, the committee reconsidered. Opposition to a single compensation officer as expressed in the testimony and in e-mail received by the committee was strong and universal. There was great concern about concentrating so much power in one person. Based on history, the Deaf Community will not view this “total control” arrangement as fair or equitable. Relying on one person to make all the decisions for consistency purposes ignores the fact that the one person may leave the program before the work is completed, with the result that the program would have no experienced hearing officers. It also places a huge responsibility on one person’s shoulders; it would be very difficult to hear and decide every survivor’s case with no one available to confer with.

The committee recommends that a three-person compensation panel review each claim on a case-by-case basis, determine eligibility for compensation, and determine the compensation award by applying the three tier criteria to the facts. By relying on a three-person panel, more diverse and yet in-depth background can be brought into the process. Collectively, the panel should have knowledge or experience in several areas. First, at least one person on the panel should have knowledge and experience with the legal system, especially with the weighing of evidence and with working with case law and well-established principles of awarding damages. Second, at least one member of the panel should be knowledgeable and experienced with Deaf culture, which will help the panel

understand not just communication issues, but also how life experience can be so different for Deaf individuals and their families, and the implications that may have in the context of abuse and seeking redress. Third, at least one member of the panel should have knowledge and experience in working with abuse issues, abuse victims and the apparent and subtle effects abuse has on victims and their families.

The committee recommends that a claimant not be required to personally present the claim or even be present when the compensation panel is reviewing that case. All proceedings of the compensation panel will be open to the public pursuant to the Freedom of Access law.

The compensation panel should determine whether a claimant is eligible for compensation. The compensation panel should also determine the amount of compensation that is appropriate based on the facts presented in the claim.

## **2. Standard**

The committee recommends adoption of the standard of proof used in the Jericho Individual Compensation Program: “reasonable likelihood.” If the compensation panel finds, based on the information presented, that there is a reasonable likelihood that the former student was abused at the Maine School for the Deaf or the Governor Baxter School for the Deaf, the claimant is eligible for compensation. “Reasonable likelihood” requires less proof or degree of certainty than the preponderance of evidence standard (“more likely true than not true”). This lower threshold requires some proof of eligibility, but it is not a difficult standard to meet.

### **3. Communicating the decision**

The committee recommends that the claims consultant be required to communicate the compensation panel's decision directly to the claimant. The decision must be in written form and provided to the claimant, but the claims consultant should be available to explain the decision and answer questions.

### **4. Appeals**

The committee recommends that each claimant have an opportunity to appeal the compensation panel's decision. A claimant should have 60 days in which to appeal the panel's determinations on eligibility and compensation to the Baxter Compensation Authority members acting as the appeal board. The appeal board should have the authority to overrule the compensation panel's determination of ineligibility and to increase the compensation award. The committee believes that with the three-person compensation panel and the rule that the compensation panel must award the higher compensation when in doubt, there will be few appeals from compensation panel decisions. In fact, the committee would like to discourage appeals, but not foreclose an appeal when it is necessary. The committee recommends that the appeal board use the "arbitrary and capricious" standard to review compensation panel decisions on appeal. That means that the appeal board will not overrule the compensation panel's decision unless it finds that the compensation panel's decision was founded on prejudice or preference rather than reason or fact. The committee also recommends that a claimant who appeals a decision because he or she thinks the compensation award is too low should be required to pay an appeal fee of \$2500 that will be subtracted from the compensation award if the appeal board does not agree with the claimant and overrule the compensation panel by increasing the award. If the compensation panel makes a determination that a claimant is not eligible for any compensation, that claimant may appeal the decision to the appeal board without payment of any appeal fee.

The appeal board has the discretion to rule on the appeal based on the record of the claim; it should not be required to conduct a hearing or take testimony, but may do so if it so chooses.

The decision of the appeal board should be final and not subject to appeal in any court or other tribunal, including under the Administrative Procedure Act as a final agency action.

#### **5. Acceptance of compensation; release**

When the claimant accepts a compensation award, the claimant should be required to execute a written document that releases that State from any further liability for the abuse the claimant suffered while a student at the Maine School for the Deaf or the Governor Baxter School for the Deaf. Although in most cases the various statutes of limitation will have barred all claims against the State, there otherwise would remain the legal possibility that a claim exists against the State that is not yet time-barred. The committee does not believe it is fair for a claimant to receive compensation under the compensation program, and still have a viable option to sue the State for the same injury. For that reason, the committee recommends that a release be required in every case prior to payment of a compensation award.

#### **F. Program time frame**

**Recommendation: That the compensation program start accepting claims for processing by April 1, 2002, and that the program stop accepting claims on March 31, 2006.**

A significant issue facing the committee was the time frame under which the compensation program should operate. The committee agrees with public hearing testimony and other

comments that the program should begin as soon as possible, but, at the same time, the program must be constructed carefully so that it is effective. With that in mind, the committee recommends that the legislation establishing the Baxter Compensation Authority and the compensation program be enacted as emergency legislation in the First Regular Session of the 120th Legislature. The Governor must appoint members and the Legislature must vote on their confirmation as soon as possible, so the administrative organization can begin. The committee recommends that the program begin accepting claims applications no later than April 1, 2002.

The committee recommends that compensation awards be paid within 30 days of the final decision.

The committee recommends that all applications for compensation be filed on or before March 31, 2006.

## **G. Apology**

**Recommendation: That each former student who receives compensation also receive a personal apology from the State.**

The committee's research into other compensation and redress programs indicates that an official apology is an integral part of these programs. It is an important part of the healing process, partly because the victims of abuse need to know that they have been taken seriously, and partly because the entity making the apology needs to admit responsibility for the abuse and make sure the same abuse does not happen again.

The committee recommends that an apology be made to each person receiving compensation under the program. The apology needs to come from the State, and it cannot be a simple form letter. The committee recommends an official process whereby the Legislature and the Governor have roles in conveying the apology.



## **H. Continuation of services**

**Recommendation: That the counseling and other services made available in 1999 to former students continue to be provided.**

The committee recommends a continuation of the services that were established through the hard work of the Judiciary Committee subcommittee and specific departments in 1999. The compensation program will provide compensation as recognition of the abuse the former students suffered; but the program will not provide the counseling and other services that the former students will continue to require. Those needs may become more acute as the former students begin to consider and apply for compensation, and must face telling their stories of abuse publicly. The committee recommends that the compensation program include close connections with therapists and other support professionals to help claimants through the process. The committee anticipates that there will be at least some former students who will disclose, as part of the compensation process, for the first time that they were abused at one of the schools. The program and staff need to be prepared for how this will affect the former student and the program staff.

## **I. Other services**

**Recommendation: That the compensation program include stipends for legal and financial services for claimants.**

The committee recommends that the program provide a stipend for legal advice and for financial advisors for each claimant, as well as for interpreter services to assist in seeking and making use of the advice.

## **J. Confidentiality**

**Recommendation: That compensation panel proceedings should be open to the public and that claims, once submitted to the compensation panel, should be public records.**

The committee understands the very sensitive and personal nature of much of the information that former students will be disclosing and asking the compensation panel to review. However, the committee believes it has no choice but to make all claims, once submitted to the compensation panel, and all panel deliberations open to the public. The Freedom of Access laws require agencies to operate in public and take action in public proceedings. The compensation panel will be awarding state money, and the public has a right to hold the program accountable for its awards and disbursements. If a claimant uses his or her own confidential records to support the claim, that information becomes public as part of the claim.

All of the former students who have testified before the Judiciary Committee and before this study committee have already made some of the most personal and private details of their ordeals public. It is the committee's intent that the Baxter Compensation Program continue to provide a supportive environment for the necessary disclosure of such facts; the committee trusts the public and its representatives in the media to treat the information and the victims and survivors with gentleness and civility.

## **K. Funding**

### **Recommendation: That additional money be appropriated to the Governor Baxter School for the Deaf Student Trust Fund.**

The committee recommends that the Trust Fund receive additional funding to pay the compensation due under the compensation program. In reviewing the information from other compensation programs, initial appropriations are not sufficient to cover the compensation payments of all the claimants who seek compensation. The committee recommends funding for the biennium of and additional \$5,000,000. Funding beyond that point can be evaluated by the Baxter Compensation Authority board, which can make recommendations to the Legislature for funding and statutory changes.

**RESOLVE 1999  
CHAPTER 127**

**H.P. 1135 - L.D. 1620**

**Resolve, to Establish the Committee to Develop a  
Compensation Program for Victims of Abuse at the Governor  
Baxter School for the Deaf and to Continue Oversight of  
Multiagency Cooperation**

**Emergency preamble.** Whereas, Acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Committee to Develop a Compensation Program for Victims of Abuse at the Governor Baxter School for the Deaf needs to begin working before July 1, 2000; and

Whereas, there continues to be a need for oversight of the ongoing multiagency efforts of the Department of Education, the Department of Labor, the Department of Human Services and the Department of Mental Health, Mental Retardation and Substance Abuse Services; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

**PART A**

**Sec. A-1. Reports. Resolved:** That the Department of Education, the Department of Labor, the Department of Human Services and the Department of Mental Health, Mental Retardation and Substance Abuse Services shall continue their multiagency efforts begun in 1999 to address the response to abuse of students at the Governor Baxter School for the Deaf and the provision of services to the deaf community. The departments shall jointly report to the joint standing committee of the Legislature having jurisdiction over judiciary matters by August 1, 2000 and January 31, 2001. The reports must include:

1. The number of allegations of abuse at the Governor Baxter School for the Deaf, the number of abuse investigations undertaken and the action taken in each instance;

2. Progress reports on the actions taken in furtherance of the goals identified in the matrix presented to the Joint Standing Committee on Judiciary in January 2000; and

3. An update of the matrix to show the progress.

## **PART B**

**Sec. B-1. Committee established. Resolved:** That the Committee to Develop a Compensation Program for Victims of Abuse at the Governor Baxter School for the Deaf, referred to in this Part as the "committee," is established; and be it further

**Sec. B-2. Members; chair. Resolved:** That the committee consists of 5 members appointed as follows:

1. Two members of the Senate, appointed by the President of the Senate. The first named Senate member is the Senate chair of the committee; and

2. Three members of the House of Representatives, appointed by the Speaker of the House of Representatives. The first named House member is the House chair of the committee; and be it further

**Sec. B-3. Appointments. Resolved:** That all appointments must be made no later than 30 days following the effective date of this resolve. The appointing authorities shall notify the Executive Director of the Legislative Council upon making their appointments. When the appointment of all members is complete, the committee chair shall call and convene the first meeting of the committee no later than June 30, 2000; and be it further

**Sec. B-4. Duties. Resolved:** That the committee shall develop a compensation program for victims of abuse at the Governor Baxter School for the Deaf.

1. In developing the program, the committee shall:

A. Review existing compensation programs in other states and countries;

B. Review federal compensation programs;

C. Consult with recognized experts and participants in other compensation programs;

D. Consult with the deaf community, including former students and staff at the Governor Baxter School for the Deaf; and

E. Consider the need to use confidential records in the compensation program.

2. The committee may hold one or more public hearings.

3. The program must include at least the following elements:

A. The best method of determining compensation, which may be a hearing officer, panel or other method;

B. A recommendation on how the person or persons making the compensation determinations are selected or appointed;

C. The process to be used to determine individual compensation awards;

D. Provisions for staff to help complainants develop their claims for presentation for consideration;

E. Provisions for counselors and other support services to assist complainants;

F. A timeframe for the establishment of the compensation program and the decision-making process and for the consideration of claims and issuance of final payments;

G. A process for making recommendations for changes in the process to the Legislature;

H. Rules or guidelines to ensure that deaf and hard-of-hearing persons can fully communicate and participate in the process; and

I. Any other elements the committee determines to be appropriate; and be it further

**Sec. B-5. Staff assistance. Resolved:** That upon approval of the Legislative Council, the Office of Policy and Legal Analysis shall provide necessary staffing services to the committee; and be it further

**Sec. B-6. Reimbursement. Resolved:** That the committee members are entitled to receive the legislative per diem and reimbursement of necessary expenses for their attendance at authorized meetings of the committee; and be it further

**Sec. B-7. Report; extension. Resolved:** That the committee shall submit its report with any accompanying legislation to the First Regular Session of the 120th

Legislature by November 1, 2000. If the committee requires a limited extension of time to conclude its study and make its report, it may apply to the Legislative Council, which may grant the extension; and be it further

**Sec. B-8. Termination. Resolved:** That upon submission of its report, the committee terminates; and be it further

**Sec. B-9. Budget. Resolved:** That the committee chair with assistance from the committee staff shall administer the committee's budget. Within 10 days after its first meeting, the committee shall present a work plan to the Legislative Council for approval. The committee may not incur expenses that would result in the committee's exceeding its approved budget; and be it further

**Sec. B-10. Appropriation. Resolved:** That the following funds are appropriated from the General Fund to carry out the purposes of this Part.

**2000-01**

**LEGISLATURE**

**Committee to Develop a Compensation Program for Victims of Abuse at the Governor Baxter School for the Deaf**

Personal Services	\$2,200
All Other	29,500

Provides funds for the per diem and expenses of legislative members of the Committee to Develop a Compensation Program for Victims of Abuse at the Governor Baxter School for the Deaf, for costs related to consulting with compensation program experts, for public hearing costs and to print the required report.

**LEGISLATURE**

**TOTAL**

\$31,700

**Emergency clause.** In view of the emergency cited in the preamble, this resolve takes effect when approved.

Effective May 10, 2000 .

## **Members**

### **Committee to Develop a Compensation Program for Victims of Abuse at the Governor Baxter School for the Deaf**

Appointments by the Senate President:

Senator Sharon Anglin Treat, Senate Chair

Senator John W. Benoit

Appointments by the Speaker of the House of Representatives

Representative Richard H. Thompson, House Chair

Representative Charles C. LaVerdiere

Representative William J. Schneider

**AN ACT TO ESTABLISH THE BAXTER COMPENSATION PROGRAM**

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** former students of the Governor Baxter School for the Deaf and the Maine School for the Deaf have been waiting for years for the State to acknowledge the abuse they suffered; and

**Whereas,** it is important to start the compensation process as expeditiously as possible; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 5 MRSA §12004-G, sub-§26-E** is enacted to read:

<u>26-D. Legislature</u>	<u>Baxter Compensation Authority</u>	<u>Legislative per diem and expenses</u>	<u>5 MRSA §22002</u>
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**Sec. 2. 5 MRSA Part 28** is enacted to read:

**PART 28**  
**COMPENSATION AND REDRESS**

**CHAPTER 601**  
**THE BAXTER COMPENSATION AUTHORITY**

**Subchapter I**  
**General Provisions**

**§22001. Definitions**

As used in this chapter, the following terms have the following meanings, unless the context otherwise indicates.

**1. Abuse.** “Abuse” means sexual abuse, physical abuse or both.



**2. Administrative expenses.** “Administrative expenses” means the expenses necessary for the operation of the program, including the costs of the authority and stipends for legal and financial advice for claimants, but not including compensation payments.

**3. Appeal board.** “Appeal board” means the authority board when acting to hear and decide appeals of the compensation panel’s decisions as provided in section 22005.

**4. Authority board or board.** “Authority board” or “the board” means the 5-member governing body described in section 22002, subsection 3.

**5. The Baxter Compensation Authority or authority.** “The Baxter Compensation Authority” or “the authority” means the legal entity established in section 12004-G, subsection 26-E.

**6. The Baxter Compensation Program or program.** “The Baxter Compensation Program” or “the program” means the compensation program established in section 22021.

**7. Claims consultant.** “Claims consultant” means the person employed by the program to assist claimants in preparing their claims for submission to the compensation panel.

**8. Claimant.** “Claimant” means a person who alleges abuse while a student at the Maine School for the Deaf or the Governor Baxter School for the Deaf and applies for compensation from the program.

**9. Compensation panel.** “Compensation panel” means the 3-person panel appointed by the authority to hear claims and make decisions, consisting of the determination of eligibility and determination of the compensation amount, as provided in section 22004.

**10. Final compensation decision.** The “final compensation decision” means the decision of the compensation panel with regard to eligibility and level of compensation if it is not appealed within 60 days of the decision, and the decision of the appeal board if the decision of the compensation panel is appealed.

**11. Program Director.** “Program director” means the person appointed by the authority to direct the program as provided in section 22003.

**12. Program principles.** “The program principles” means the compilation of theoretical and practical bases for operation of the program as provided in section 22007.

**13. Trust Fund.** “Trust Fund” means the Governor Baxter School for the Deaf Student Trust Fund established in Title 20-A, section 7412.

## **§22002. The Baxter Compensation Authority**

**1. Established.** The Baxter Compensation Authority, established in section 12004-G, subsection 26-E, is a public instrumentality of the State and the exercise by the authority of the powers conferred by this chapter are deemed and held to be the performance of essential governmental functions.

**2. Purpose.** The authority is established to administer the Baxter Compensation Program.

**3. Members.** The authority board consists of 5 members, to be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and confirmation by the Legislature. Collectively, the members must have knowledge and experience in Deaf Culture; abuse and its effects; the legal system; and redress and compensation principles.

**4. Chair; quorum.** The members of the board shall select a chair from among the members. Three members constitute a quorum. Action taken by the board must be by majority vote.

**5. Powers.** The authority may:

A. Buy or lease real and personal property to carry out its duties;

B. Establish positions and employ and contract with persons to carry out its duties; and

C. Accept funds from all sources to be deposited in the Trust Fund.

**6. Duties.** The authority has the following duties.

A. The authority shall establish the Baxter Compensation program as provided in section 22021.

B. The authority shall appoint a program director as provided in section 22003.

C. The authority shall appoint a compensation panel as provided in section 22004.

D. The authority board shall serve as the appeal board as provided in section 22005.

E. The authority shall complete the training and education under section 22006.

F. The authority shall adopt program guidelines as provided in section 22007.

G. The authority shall establish criteria for three tiers of compensation based on the severity of abuse suffered by the former students using well-established legal principles governing awarding damages. The three tiers of compensation are: \$25,000; \$60,000; and \$100,000.

H. The authority shall submit an annual written report by January 15th of each year to the Governor, the Attorney General and the joint standing committee of the Legislature having jurisdiction over judiciary matters. The report must include information on the following:

- (1) The activities of the authority within the last 12 months;
- (2) The number of employees and volunteers and their responsibilities;
- (3) Data pertaining to the following:
  - (a) Requests for information;
  - (b) Applications filed;
  - (c) Claims submitted to the compensation panel;
  - (d) Decisions made by the compensation panel, and the nature of the decisions;
  - (e) Decisions appealed to the appeal board, and the grounds for and outcomes of the appeals;
  - (f) Claims pending completion prior to being submitted to the compensation panel;
  - (g) Claims pending decision by the compensation panel;
  - (h) Claims pending resolution by the appeal board; and
  - (i) Awards made and paid;
- (4) Amount of compensation paid;
- (5) Any other information that would help to evaluate the performance of the program; and
- (6) Any recommended legislation the authority determines is necessary to carry out its duties.

I. The authority shall develop an evaluation process to make ongoing determinations concerning the program's effectiveness and operation within the program guidelines.

**7. Application of laws.** The authority is subject to the budget, accounts and control and auditing requirements of Title 5, Part 4.

**8. Use of Trust Fund.** The authority may use up to 15% of the Trust Fund for administrative expenses.

### **§22003. Program Director**

The authority shall appoint a program director to serve as staff to the authority and to direct the program.

### **§22004. Compensation panel**

**1. Appointment.** The authority shall appoint 3 persons to serve as the compensation panel. The compensation panel shall make decisions about the eligibility of claimants and the appropriate compensation payments to be made.

**2. Qualifications.** Collectively, the members of the compensation panel must have the following qualifications:

A. Familiarity with the legal system, including experience with:

(1) The weighing of evidence and making decisions based on that evidence; and

(2) Well-established legal principles governing awarding damages;

C. Experience or knowledge of abuse and its effects; and

D. Experience or knowledge of Deaf culture.

**3. Chair.** The members shall select a chair from among the members.

**4. Decision-making; quorum.** The compensation panel members shall work together as collaboratively as possible. Decisions on claims must be determined by a majority vote. All 3 members must be present to vote.

**5. Training and education.** Before handling any claims, the compensation panel shall complete the training and education under section 22006.

### **§22005. Appeal board**

**1. Appointment.** The authority board shall serve as the appeal board to hear and decide appeals of the decision of the compensation panel.

**2. Decisions.** Decisions on claims must be determined by a majority vote. Three members constitute a quorum.

### **§22006. Training and education**

**1. Training and education program.** The program director shall coordinate training and education for the members of the authority, the program director and the compensation panel in the following subject areas:

A. Deaf culture;

B. Physical and sexual abuse and its effects;

C. Basic applicable legal principles; and

D. Any other subject useful to the operation of the program.

**2. Required.** Members of the authority, the program director and the compensation panel shall participate in the training and education.

### **§22007. Program principles and guidelines**

**1. Principles.** The program must be based on the following principles.

A. The purpose of the compensation program is to help the former students that were abused at the Maine School for the Deaf and the Governor Baxter School for the Deaf.

B. It is the responsibility of the compensation program to provide ASL interpreters to ensure communication between program staff and claimants, their families and friends and advocates providing support. The program shall provide ASL interpreters and shall welcome the participation of Deaf interpreters.

C. It is the responsibility of the program to explain the compensation process from initial contact with the program through acceptance of the award, release of the State from further liability and the making of the apology.

D. Claimants may be accompanied in all steps of the process by friends, family and other support people.

E. Claimants recounting their experiences, especially those disclosing abuse for the first time, need support and immediate access to counseling resources.

I. As many former students as possible must be informed about the compensation program and given an opportunity to apply for compensation.

J. It is the responsibility of the program to work with former students and their families in situations in which the former student is not capable of making decisions concerning participation in the compensation program.

K. The program is responsible for developing a plan for working with and providing services to former students no longer living in the State.

**2. Program guidelines.** The authority shall adopt program guidelines as the theoretical and practical bases for the operation of the program and that are consistent with the principles in subsection 1, using the following sources as guidance:

A. The final report of the Committee to Develop a Compensation Program for Victims of Abuse at the Governor Baxter School for the Deaf, established by Resolve 1999, chapter 127, Part B;

B. The guiding principles that have been adopted and used by other compensation programs as bases for operation of the programs;

C. The report of the Law Commission of Canada, *Restoring Dignity: Responding to Child Abuse in Canadian Institutions*, issued in 2000;

D. Judicial practice, in Maine and elsewhere, concerning the awarding of damages;

E. Any other reports, rules or other sources the authority determines useful.

**3. Process.** The program guidelines are not rules and the authority is not required to proceed under the Administrative Procedure Act in adopting the program guidelines, although the authority may hold public hearings and solicit comments as provided in that Act. In developing the program guidelines, the authority shall seek input from and work as collaboratively as possible with all interested parties and groups, including the Deaf Community.

## **§22008. Status of members, employees**

**1. State employees.** Members and employees of the authority may not be construed to be state employees for the purpose of the state civil service provisions of Title 5, Part 2 and Title 5, chapter 372, and any other purpose except for the following:

A. Employees of the authority are state employees for the purposes of the state retirement provisions of Title 5, Part 20, and the state employee health insurance program under Title 5, chapter 13, subchapter II; and

B. For the purposes of the Maine Tort Claims Act, the authority is a governmental entity and its members and employees are employees as those terms are defined in Title 14, section 8102.

**2. Limitation of liability.** A person who is a member of the authority or an employee of the authority is not subject to personal liability for having acted within the course and scope of the person's membership or employment to carry out any power or duty under this chapter. The authority shall indemnify any member or employee of the authority against expenses actually and necessarily incurred by the person in connection with the defense of any action or proceeding in which the person is made a party by reason of past or present association with the authority.

## **22009. Public proceedings and records; confidentiality**

**1. Public proceedings and records.** Except as provided in subsection 2, all meetings and records of the authority are subject to the provisions of Title 1, chapter 13, subchapter I.

**2. Confidential.** All information provided by a claimant or a claimant's family is confidential until the claim is submitted to the compensation panel. Once the claim is submitted to the compensation panel, the claim is a public record.

## **§22010. Repeal**

This chapter is repealed on July 1, 2007.

### **Subchapter II** **The Baxter Compensation Program**

## **§22021. Baxter Compensation Program**

**1. Purposes.** The purposes of the Baxter Compensation program are:

A. To provide compensation to former students who suffered abuse by a state employee or as a result of State action or inaction while students at either the Maine School for the Deaf or the Governor Baxter School for the Deaf;

B. To assist in the victims' healing process by admitting the State's responsibility for not protecting students from abuse by a state employee or as a result of State action or inaction while the victims were attending the Maine School for the Deaf or the Governor Baxter School for the Deaf; and

C. To apologize to the students who were abused and to their families.

**2. Program Director.** The program director shall direct the program.

A. The program director is responsible for hiring, supervising and firing all employees authorized by the authority. The program shall maintain only the number of employees necessary to operate the program.

B. The program director is responsible for the day to day operations of the program, including overseeing the work of the claims consultants.

C. The program director shall report to the authority on a regular basis as determined by the authority, and shall keep the authority informed about the program and its operation.

D. The program director shall maintain communication with the Deaf community and other potential beneficiaries of the program.

**3. Location; travel.** The program must be established in a central office location. The program director and all program personnel, including the claims consultants and the compensation panel are based in the central office. claim consultants shall travel as needed to assist claimants in preparing their claims. The compensation panel shall travel as needed to carry out its responsibilities.

**4. Claims consultants.** The program director shall hire a sufficient number of claims consultants to work with the persons applying for compensation. Claims consultants must be selected to provide personal and professional diversity sufficient to allow claimants to select the claims consultant with whom they feel the most comfortable.

A. The qualifications for claims consultants include:

(1) Fluency in American Sign Language;

(2) Knowledge of or familiarity with abuse and its effects;



- (3) Knowledge of or familiarity with Deaf Culture;
- (4) Ability to work with deaf interpreters;
- (5) Ability to work with and refer claimants to therapists and counselors.

B. The duties of claims consultants include:

- (1) Working with claimants and potential claimants;
- (2) Helping claimants prepare their materials for submission to the compensation panel;
- (3) Recording claimants' stories and experiences for use in the claims process, including presentation to the compensation panel. Recording may take the form of written, audio and visual taping or other formats;
- (4) Assisting claimants in collecting and corroborating information;
- (5) Explaining the compensation program process to claimants;
- (6) Explaining the decision of the compensation panel;
- (7) Assisting claimants in assembling the materials necessary to appeal the compensation panel's decision to the appeal board;
- (8) Referring claimants outside the program in order to secure legal and financial advice;
- (9) Referring claimants to counseling when appropriate; and
- (10) Other reasonable duties necessary for the operation of the program as assigned by the program director.

A claimant is not required to use the services of a claims consultant to file a claim for compensation.

**6. Additional staff.** The program director may hire additional staff necessary for the operation of the program.

**§22022. Eligibility**

A person who meets the following requirements is eligible to receive compensation:

**1. Former student.** The person was a student at either the Maine School for the Deaf or the Governor Baxter School for the Deaf;

**2. Victim of abuse.** The person was abused by a state employee or as a result of State action or inaction while a student at the Maine School for the Deaf or the Governor Baxter School for the Deaf, and the abuse occurred either at the school or was associated with the school;

**3. Date of abuse.** The abuse occurred prior to January 1, 2001; and

**4. Filing deadline.** The claim for compensation is filed with the program by March 31, 2006.

### **§22023. Claim process**

**1. Application.** A person may apply for compensation by submitting a completed claim form to the program.

**2. Role of claims consultant.** If requested by the claimant, the claims consultant shall assist the claimant in collecting, recording and corroborating the information necessary to prove the claim.

**3. Submit to Compensation panel.** The claimant or the claims consultant shall submit the information about the claim to the compensation panel.

### **§22024. Decision**

The compensation panel shall issue a decision on each submitted claim. The decision consists of two parts.

**1. Eligibility determination.** The compensation panel shall determine whether the claimant is eligible to receive compensation by determining if the claimant meets the following eligibility requirements. For the claimant to be eligible for compensation, the compensation panel must determine that:

**A.** The claimant was a student at the Maine School for the Deaf or the Governor Baxter School for the Deaf. The compensation panel may use reliable information in addition to the information included in the claim;

**B.** The allegation of abuse includes abuse that occurred before January 1, 2001; and

**C.** The claimant was abused by a state employee or as a result of State action or inaction while a student at the Maine School for the Deaf or the Governor Baxter

School for the Deaf. The compensation panel shall make this determination if the compensation panel finds there is a reasonable likelihood that the claimant was abused while a student at the Maine School for the Deaf or the Governor Baxter School for the Deaf. The abuse may have occurred at either school or elsewhere, but the abuse must have been associated with attendance or residence at either school while the State was responsible for the claimant's care and custody.

**2. Determination of compensation amount.** If the compensation panel determines that the claimant is eligible under subsection 1, the compensation panel shall review the claim to determine the amount of compensation. The panel shall apply the criteria adopted under section 22002, subsection 6, paragraph G, to the facts of the claim to determine which level of compensation is to be awarded. When making the determination, the panel shall award compensation at the highest level that the facts of the claim support.

**3. Communication of the decision.** The compensation panel shall provide to the claims consultant a written statement of the decision, including separate findings on each of the determinations. The claims consultant shall provide the statement and explain its content and meaning to the claimant. The claims consultant shall also explain the options available to the claimant if the claimant is not satisfied with the compensation panel's decision.

## **§22025. Appeal**

**1. Appeal.** If the claimant is not satisfied with the final decision of the compensation panel, the claimant may appeal the decision to the appeal board. The appeal must be submitted within 60 days of the communication of the decision to the claimant, although the appeal board may extend the time limit for good cause.

**2. Appeal costs.** If the claimant appeals the decision, the claimant is responsible for paying the costs of the appeal as follows.

**A. If the claimant is appealing the compensation panel's decision under section 22024, subsection 1, that the claimant is not eligible for compensation, the claimant is not required to pay any appeal costs.**

**B. If the claimant is appealing the compensation panel's decision under section 22024, subsection 2 regarding the level of compensation, the costs must be paid as follows:**

**(1) If the appeal board disagrees with the claimant and upholds the compensation panel's decision, the appeal cost is \$2,500, to be withheld from the compensation payment;**

(2) If the appeal board agrees with the claimant and increases the compensation award of the compensation panel, the appeal cost is zero.

**3. Assistance of claims consultant.** At the request of the claimant, the claims consultant shall assist the claimant in assembling the materials necessary to appeal the decision.

**4. Appeal on the record.** The appeal board may make the decision on the appeal based solely on the record of the claim and documents submitted with the appeal. The appeal board is not required to conduct a hearing or take testimony, but may do so if it so chooses.

**5. Standard of review.** The appeal board shall review the decision of the compensation panel and shall overrule the decision only if the appeal board determines the decision of the compensation panel is arbitrary and capricious.

**6. Communication of decision.** The appeal board shall provide to the claims consultant a written statement of the appeal board's decision. The claims consultant shall provide the statement and explain its content and meaning to the claimant.

**7. Final.** The decision of the appeal board is final and is not appealable to any court or other authority.

#### **§22026. Acceptance**

**1. Notification.** The claimant shall notify the claims consultant whether the claimant will accept the compensation awarded by the program.

**2. Release.** To receive payment of the compensation, the claimant shall release the State from any further liability by signing a release form provided by the program.

**3. Financial advice.** The claims consultant shall provide to the claimant who has been awarded compensation the names and addresses of professionals who have agreed to work with claimants to provide financial advice. The program will cover the costs as provided in section 22042 for professional fees for financial advice, and interpreting services for claimants to obtain and use the advice.

#### **§22027. Payment**

The program shall pay compensation within 30 days of the final compensation decision, or as soon thereafter as possible.

## **§22028. Apology**

**1. Personal apology.** When the program pays compensation as awarded, the State shall issue a personal apology to the claimant.

**2. Process.** The State shall issue the apology as follows.

**A.** The program director shall prepare the apology, and deliver the document to the Legislature and the Governor.

**B.** The President of the Senate, the Speaker of the House of Representatives and the Governor shall personally sign the apology document.

## **Subchapter III** **Services**

### **§22041. Referral for counseling**

**1. Referrals.** Claims consultants shall refer claimants and their families for counseling when the claims consultants believe such referral may be helpful.

**2. Counseling.** Claimants are eligible for counseling without cost to them as provided through the Department of Mental Health, Mental Retardation and Substance Abuse Services. The Department of Mental Health, Mental Retardation and Substance Abuse Services shall continue to provide counseling services for former students of the Governor Baxter School for the Deaf and the Maine School for the Deaf.

### **§22042. Legal and financial advice**

The Compensation program shall provide stipends to each claimant of up to \$1,000 to use to secure legal advice and up to \$1,000 to use to secure financial advice at any time during the process and about any aspect of that claimant's claim, including the amount of the compensation award. The stipends may be used to pay the costs of interpreting services to obtain and use the legal and financial advice.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.

## SUMMARY

This bill is a recommendation of the Committee to Develop a Compensation Program for Victims of Abuse at the Governor Baxter School for the Deaf, created by Resolve 1999, chapter 127, Part B. The committee's final report was submitted in December 2000.

This bill creates the Baxter Compensation Authority, which will establish the Baxter Compensation Program to pay compensation to the former students who were sexually or physically abused while attending the Governor Baxter School for the Deaf or its predecessor, the Maine School for the Deaf. The authority consists of a board of 5 members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and confirmation by the Legislature.

The Baxter Compensation Program will be run by a program director, appointed by the authority board. Claims consultants will help former students develop and file claims for compensation. A 3-person compensation panel, appointed by the authority, will review each claim individually and decide whether the claimant is eligible for compensation and how much compensation is appropriate. The claimant must show that there is a reasonable likelihood that the claimant suffered abuse by a state employee or because of the action or inaction of the State while the claimant was a student at either the Governor Baxter School for the Deaf or the Maine School for the Deaf. The compensation panel will apply criteria adopted by the authority board to determine which of 3 tiers of compensation applies, based on the severity of the abuse as well as other factors. The 3 tiers of compensation are \$25,000, \$60,000 and \$100,000. The claimant may appeal the decision of the compensation panel to the authority board sitting as an appeal board. The appeal board may overturn the compensation panel's decision only if it finds that the decision was arbitrary and capricious. The final compensation decision is not appealable to any court or other tribunal. Claims must be filed by March 31, 2006. All compensation must be paid out by July 1, 2007, when the program ceases to exist.

The Baxter Compensation Authority must report on an annual basis to the Governor, the Attorney General and the joint standing committee of the Legislature having jurisdiction over judiciary matters.

**AN ACT TO IMPLEMENT THE FUNDING RECOMMENDATIONS OF  
THE COMMITTEE TO DEVELOP A COMPENSATION PROGRAM  
FOR VICTIMS OF ABUSE  
AT THE GOVERNOR BAXTER SCHOOL FOR THE DEAF**

**Sec. 1. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act:

	<b>2001-02</b>
<b>Governor Baxter School for the Deaf Trust Fund</b>	
All Other	\$5,000,000
Provides funds for the Baxter Compensation Program for payment of compensation to former students who were abused at the Maine School for the Deaf or the Governor Baxter School for the Deaf and for operation of the program	

**SUMMARY**

This bill is a recommendation of the Committee to Develop a Compensation Program for Victims of Abuse at the Governor Baxter School for the Deaf, created by Resolve 1999, chapter 127, Part B. The committee's final report was submitted in December 2000.

This bill provides an additional \$5 million to the governor Baxter School for the Deaf Student Trust Fund to be used to pay compensation and to cover the costs of the operation of the Baxter Compensation Program.

**AN ACT TO IMPLEMENT THE CONTINUATION OF SERVICES  
RECOMMENDATIONS  
OF THE COMMITTEE TO DEVELOP A COMPENSATION PROGRAM FOR  
VICTIMS OF ABUSE AT THE GOVERNOR BAXTER SCHOOL FOR THE DEAF**

**Sec. 1. Continuation of services.** The Department of Mental Health, Mental Retardation and Substance Abuse Services shall continue to offer counseling and other mental health services at no cost to former students of the Governor Baxter School for the Deaf and the Maine School for the Deaf.

**SUMMARY**

This bill is a recommendation of the Committee to Develop a Compensation Program for Victims of Abuse at the Governor Baxter School for the Deaf, created by Resolve 1999, chapter 127, Part B. The committee's final report was submitted in December 2000.

This bill requires the Department of Mental Health, Mental Retardation and Substance Abuse Services to continue to provide counseling and other mental health services to former students of the Governor Baxter School for the Deaf and the Maine School for the Deaf. These services must be provided at no cost to the service recipients.



**Appendix D**  
**Not available electronically**

**APPENDIX E – SURVEY RESULTS**  
**Not available electronically**

**SUMMARY OF COMMENTS TO COMMITTEE as of 11/2/00**

<u>SUBJECT</u>	<u>COMMENTS</u>	<u>SOURCE</u>
apology	♦ Someone from committee, Senate and Governor should sign apology	PH
	♦ Apology – people who were involved should be part of it	PH
	♦ Apology should also come from Department of Education – they've done nothing. If had done their job, we wouldn't be here	PH
appeal	♦ Change appeal date from 30 days to 60 days – extend deadlines because of interpreters	PH
claims process	♦ Language important – needs to be a native language user – won't be the same through interpreter	PH
	♦ Claims consultants should work closely with therapists – immediate referrals, help people tell their stories	PH
	♦ Presenting the cases – need a consultant to help prepare people – male and female – could and should therapist or friend be involved?	e-mail
	♦ Possible options for telling the story – in person, in writing, videotape or consultant tell the story	e-mail
	♦ If therapists are to be involved, plan now for a training to happen for how the process would work	e-mail
	♦ Any forms for survivors to fill out must be very readable.	e-mail
	♦ Any information regarding pursuing compensation should be in writing as well as alternative format (videotaped) – in standard English as well as ASL	e-mail
	♦ Former students with mental retardation or other disabilities – many are not able to communicate for themselves – who will advocate for them.	e-mail
compensation	♦ Once interviewed, should receive compensation within a week or a month	PH
	♦ Tiers of compensation – maybe consult with psychiatric, medical doctors re how severe	PH
	♦ Excellent job – but some changes – don't like "pain and suffering" – we can't judge, depends on background. etc. – simply be for the person who was	PH

	abused	
	♦ Minimum \$3,000 is an insult it is so low. If I were in a car accident – at least \$10,000 just for whiplash	PH
	♦ Compensation should start at \$75,000 and go up	PH
	♦ Compensation should start at \$75,000	PH
	♦ Compensation should start at the highest level – I don't care if it breaks the State of Maine	PH
	♦ Provide compensation to families of victims who died	PH
	♦ Consider more than \$75,000	PH
	♦ Limit impact on entitlements as much as possible – SSI, SDI, Medicaid, etc.	e-mail
compensation officer	♦ Defined key person ("Compensation Officer") but no one lives forever. What happens if lose that person? Maybe have an understanding that will stay for the duration	PH
	♦ Compensation Officer – need minimum of three. One person – afraid of abuse of power. Better to have decision among three	PH
	♦ One compensation officer – would have to be the right person, a very quick study or intimate knowledge of the deaf community	PH
effects of abuse	♦ People abused in the school, go from hospital to hospital to hospital; they said they were here to help me, but only there to help themselves make money	PH
	♦ Lost a lot of adult role models because of what happened	PH
	♦ Victim of physical abuse at GBSD, graduated in 1974. Not involved in A Safer Place because I've had a hard time coming to terms with the abuse I suffered, and afraid it would close GBSD	PH
	♦ Depression, still on Prozac – no pension, no 401K, lost a lot of jobs because of the abuse and trauma, lost vocational opportunities	PH
	♦ People with more education have more ability to recover	PH
	♦ So many results from abuse – twice accused of sexual abuse, involved in judicial system – all a result of trauma	PH

- ◆ My son abused at GBSB – abuse went through the whole family PH
- ◆ Kelly stole my youth, stole my childhood PH
- ◆ Imagine how my parents feel after sending me to a school they thought was safe PH
- ◆ Post Traumatic Stress Disorder – tried counseling but too expensive. Have lost job, house, two wives, my children – I am alone, I just work and sleep, I've been betrayed by the State PH
- ◆ I was sexually abused at GBSB by an unknown person – I lost my memory. Tried counseling 17 times but didn't work PH
- ◆ I was taught it was okay to hit, okay to have sex at inappropriate times and in inappropriate places PH
- ◆ So much sexual abuse – we became passive about it PH
- ◆ No good role models PH
- ◆ If you cannot go to school and trust the people there, whom can you trust? PH
- ◆ Abuse is a lot further than physical, sexual, emotional, verbal – affects everyone differently – problems they had to go through PH
- ◆ Can't put a price on pain and suffering PH
- ◆ My marriage fell apart because my wife heard me say over and over that I wanted to kill myself PH
- ◆ Don't count our lives so cheaply PH
- ◆ I lost my job, I lost my salary, I lost my marriage PH
- ◆ Impact of physical and mental abuse of teachers and other staff who did complain – their lives were shattered because the state did nothing. e-mail
- ◆ Info from DMHMRSAS, Office of Trauma Services: e-mail  
 What can happen to abused children when they grow up (with details, statistics, and sources):
  - ◆ serious mental health problems
  - ◆ suicide and self-injury
  - ◆ alcohol and drug abuse
  - ◆ delinquency, violence and criminal behavior
  - ◆ serious medical problems
  - ◆ developmental or physical disabilities
  - ◆ severe social problems

	♦ revictimization	
evidence	♦ No records that students were abused – school didn't keep, no police records	PH
	♦ No medical or mental illness records to prove abuse took place	e-mail
	♦ Use prescription records for depression drugs, alcohol and drugs	e-mail
	♦ Use counseling records	e-mail
forum	♦ Wish Deaf Community had more workshops	PH
	♦ Thank State agencies for setting up the forum	PH
GBSD	♦ We all have strong attachment to GBSD	PH
interpreters/ signers	♦ Deaf people's native language is ASL	PH
	♦ ASL fluency so no interpreter, but may need another deaf person to interpret	PH
	♦ Deaf or natural signer should be involved as a helper or supporter during the application process (telling the story).	e-mail
Kelly and others	♦ Abuse by Kelly – wish he were here to face his crimes	PH
	♦ Bring Principal Kelly back to face the crimes he committed – we need the Legislature to waive the statute of limitations on him	PH
	♦ Would like to see Kelly face what he caused – destroyed people's marriages, drugs and alcohol, ruined our lives	PH
	♦ Stop Kelly's retirement benefits	PH
	♦ Kelly not the only one – can we prosecute anyone?	PH
	♦ An abuser will abuse again – their time will come; eventually they will pay for it	PH
	♦ Strip pensions from the staff responsible for the abuse at GBSD – Robert Kelly, Mary Youngs, Vernon Davis. Can't get at them because of statute of limitations, but taxpayers shouldn't be paying for their benefits	e-mail
miscellaneous	♦ There are some people in the Deaf Community that deny the abuse happened	PH
	♦ Perhaps a trust fund set up for those who don't want the \$. Donated \$ could go to a fund to benefit the	e-mail

Deaf Community

other programs	♦ I'm sure abuse happens in Deaf schools – Canada and Australia are light years ahead	PH
	♦ School for the Deaf in Texas, Wisconsin – when abuse discovered the administrators were fired, but no help for the victims – Maine the first state to help survivors heal	PH
	♦ Look at how the Law Commission of Canada approaches	e-mail
outreach	♦ Former students who live out-of-state – transportation? They come to us? We go to them? Who pays for transportation? How do we get their story?	e-mail
	♦ Who will pay for ads for finding former students who may not know about this initiative? There are many Deaf publications in print and online	e-mail
oversight	♦ Replace legislative panel members after January 1 <sup>st</sup> for oversight?	e-mail
proposal	♦ You have heard us – relief that action happening	PH
	♦ Proposal good	PH
	♦ I'd like to applaud you for all the work you've done	PH
release	♦ Release the State – also release employees	PH
services - advisors	♦ Help establish financial advisors for victims	e-mail
	♦ Allowance of up to \$1,000 for legal services to review settlement – not what lawyers trained in, so might be meaningless	PH
services - counseling	♦ Counseling – make sure provided, long-term, for free. What is being provided free now should continue	PH
	♦ Provide counseling	PH
	♦ Continue counseling	PH
	♦ For people out of state, provide free counseling for them there – don't make people come here	PH
services - education	♦ Free education for high school, college, even masters – for people who were afraid to learn or their lives have improved and want education for better jobs. Free if reside in Maine for the year. Texas does this	e-mail
	♦ Should provide remedial education – can't learn if you	PH

are scared

services – out of state	♦ People who left the State – I should be able to avoid Maine and go through compensation process	PH
State	♦ No support from Department of Education	PH
time	♦ We do need 5 or 6 years to file claims	PH
	♦ Four years enough – most will come in during the first two years, but keep open for third and fourth because some people can't come forward	PH
	♦ Need four years – need to instruct consumers on how to file claim. Fear and cognitive disabilities	PH
	♦ Amount of time to come forward – minimum of four years – takes a long time to find, a long time to come forward – took 25 years for some people to come forward	PH
	♦ Four years minimum	PH
	♦ Needs to be done as soon as possible because people are still suffering	PH
	♦ Process is long – will take very long for survivors to heal	PH
	♦ It is a slow process, we need to give people time to trust	PH
	♦ Allow enough time for the compensation process – perhaps 6 years as in statute of limitations.	e-mail
	♦ No limit on person's age to file – most cases involved the 60's and 70's, but pretty incredible stories from older people	e-mail
types of abuse	♦ Crazy people there while Kelly was there	PH
	♦ Maine School for the Deaf – a study conducted for seven years – tore down old school because of the bad history – abuse started before 1949, and still a culture of abuse	PH
	♦ I tried to kill myself when I was 8 and a student there – the pain was unbearable – the nurse laughed at me	PH
	♦ Should compensate for mental or emotional abuse	PH
	♦ Should cover witnesses to abuse	PH
	♦ Abuse – a lot of gray area – verbal, emotional	PH
	♦ Forum last week – talked about sexual, physical.	PH



emotional abuse – was very powerful

- ◆ Define physical and sexual abuse more clearly PH
  - ◆ Forum last week – different forms of abuse PH
  - ◆ Happy child until age 5 when I went to GBSD – lost my childhood – physical, emotional and verbal abuse PH
  - ◆ Abuse is not limited to physical and sexual – we were all abused – that crazy man – include emotional abuse PH
  - ◆ Not just non-Deaf – some Deaf abusers PH
  - ◆ Many of my friends and acquaintances suffered trauma PH
  - ◆ Need to include emotional abuse – all therapists and counselors I've talked to agree PH
  - ◆ There were no interpreters at GBSD when I was there PH
  - ◆ Verbal and physical abuse by Kelly PH
  - ◆ I told my mother what happened – Kelly would yell at us and make us look like we were lying PH
  - ◆ Include emotional abuse and suffering – emotional abuse is an equally potent form of violence and trauma against a person. Pervasive environment of fear, intimidation, and anxiety that was the day-to-day life of students at GBSD e-mail
  - ◆ Include physical, sexual and emotional abuse – witnessing harm to others can be just as harmful to a person's soul e-mail
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