DEVELOPING SCHOOL DRUG POLICY

A GUIDE FOR ADMINISTRATORS

MAINE DRUG EDUCATION PROGRAM

DEPARTMENT OF EDUCATIONAL AND CULTURAL SERVICES

STATE OF MAINE

DEPARTMENT OF EDUCATIONAL & CULTURAL SERVICES

In July 1973 the Curriculum Division created the HUMAN DEVELOPMENT & GUIDANCE UNIT. Since the Maine Drug Education Program emphasizes the human behavioral approach and promotes the concepts of human development as a basis for primary prevention of potentially self-destructive behavior, the program was linked with guidance.

HUMAN DEVELOPMENT & GUIDANCE UNIT

Carl D. Mowatt, Coordinator

Gerry A. Loney, Training Consultant

Richard Wheeler, Drug & Alcohol
Program Liaison

William Sparks, Staff &
Program Assistant

Betty L. McLaughlin
Guidance Consultant

Joanne Cassidy
Guidance Intern

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Maine Drug Education Program staff conducted extensive research prior to the preparation of this guide. Staff who contributed to the guide were:

Susan F. Scanlan, Program Coordinator

Gerry A. Loney, Training Consultant

Francis W. Miller, Field Consultant (Part time)

Robert P. Soulas, Former Associate Director

Carl D. Mowatt, Director

Lyn Ballou of Portland is credited with the final preparation of this document for publication.

FOREWORD

The Maine Drug Education Program intends this Administrator's Guide to be an aid to local school administrators who formulate policies and procedures for dealing with drug-involved students. The intent of the Guide is to suggest alternatives for those engaged in such policy making rather than to mandate a single course of action for all school districts. The Guide is not intended to limit a community's prerogative to determine its own rules and regulations under existing State and Federal law.

Many communities in Maine and throughout the nation have acknowledged the need and have developed school drug policies. Still, far too many communities wait for the drug problem to affect them directly before establishing such policies and procedures. Action before a crisis allows the community time to examine its own needs, consider several alternatives for action, and select the most appropriate alternatives to become policy.

Drug policies should be flexible and possess a high degree of individual application, as simplified, rigid, and general policies are frequently unworkable. Any action designed to help students meet and cope with their problems must steer a course between two concerns: what is best for the individual and what is most desirable for the total school population.

Responsive administrators are sensitive and aware that the future life plans of a young person may well be determined by administrative decisions made for the sake of expediency, under stress and without due consideration of many complicated and related

matters. The development of sensitive and humane policies on the student drug question is a complex and difficult task, one which is essential at this time.

Policies and procedures established to deal with student drug use are most effective when compatible with general school policies governing the total range of student issues. These policies and procedures are most relevant when revised periodically to meet changing needs. The Maine Drug Education Program encourages policy-making administrators to use their community resources to help them assess the needs and desires of their community. Parents, teachers, students and individuals and groups who have had experience with drug education may provide input to the policy makers.

This guide was written in response to a large number of requests from school administrators and superintendents for direction in handling drug cases. We recognize that policy making is an important and difficult responsibility, and we hope that this guide will provide direction in this process.

Carl D. Mowatt, Director
Maine Drug Education Program

PROCEDURES FOR DEVELOPING POLICY

Major responsibility for the development of school drug policies falls on several different school administrators. There is a need for each school district to establish a group, council or committee to assist the school administrators in these and other health matters.

Membership on this committee could include representatives from the school committee, superintendent of schools, building principals, guidance or pupil services staff, the classroom teaching staff, drug team trained by the M.D.E.P., parents, and the students themselves. Legal opinion should be sought as needed in the respective communities. Appropriate medical and pharmacological experts may be consulted statewide and locally when needed to clarify scientific and medical issues.

All school policies and regulations, including those pertaining to drugs, should establish procedures by which all avenues for correction and rehabilitation within the school setting would be exhausted in an effort to help students prior to any considerations of suspension or exclusion. <u>These latter actions are a "last resort" to be used only when all possible efforts to help have failed</u>.

Finally, distribution of the policy to students, parents, staff and administration is essential. A clear understanding of the school's policy and of the consequences of policy violations will make the implementation of the policy more effective.

SPECIAL ROLE OF THE PRINCIPAL

The school principal must, of necessity, play the major role in each specific case of student drug involvement which is brought to his or her attention. We recommend, however, that the principal depend on the consultation, advice, and cooperation of his or her entire school staff, especially classroom teachers who may have knowledge of the student, as well as guidance staff and school medical personnel. Once school policy has been established and implementation procedures set, it is the principal's responsibility to interpret the policy and adjust its implementation for each situation. The principal applies policy with as much knowledge of the circumstances associated with each specific case as is possible, and this interpretation should be governed by sympathy and understanding, and a striving to act in ways which offer the most hope for the student's rehabilitation and continued education.

Communication between staff and principal makes possible a steady stream of information to the principal, who is legally and officially responsible for a particular school. Building principals traditionally have developed their own unique ways of developing channels of communication with the student body. In cases of drug use it is vital that the principal be alerted to the earliest signs of drug involvement by any student. All pertinent information should be transmitted to him to assist in the determination of appropriate administrative procedures. In such a determination the principal may choose to solicit the opinions of staff members regarding possible approaches to be taken with a particular student.

Certain staff members may be able to relate well to a given student and thus can play a key role in assisting the student's rehabilitation and return to productive educational endeavors.

TOPICS FOR CONSIDERATION

School committees and administrators, together with others concerned with the formulation of policies and regulations regarding drug users, might consider the following suggested topics and approaches. Although the following topics specifically refer to problems related to drugs, it is assumed that the procedures outlined will be consistent with the school's disciplinary policy in general.

For each of the following topics we have attempted to state clearly the issue in question, to refer the reader to any pertinent law which should be considered, to suggest possible approaches to policy and to explain, where necessary, the reasons for the approach taken.

Areas covered are:

I. Role of School Personnel with Respect to Confidentiality

II. Contents of Pupil Personnel Records

III. School's Relationship with Police

IV. Rights of Students with Respect to Questioning by Community Authorities

V. Rights of Students with Regard to Search

VI. Procedures Regarding Suspension and Expulsion

VII. Procedures Regarding Re-admission

CONFIDENTIALITY

The question of confidentiality is a central issue in the development and implementation of school drug policy. The teacher's relationship to the student is potentially one of the most promising instruments to effect attitudinal and behavioral change in the drug-involved student. The teacher, however, needs to feel secure in relating to the drug-involved student and have a degree of confidence regarding his or her own role.

Many teachers currently are reluctant to establish a positive relationship with the drug-involved student. This may be due to teacher bias about drugs and drug users and/or insecurity about their own position and role in relation to existing drug laws.

Often, teachers face the dilemma of wanting to assist the student by establishing open communication and trust while fearing the consequences of possible violations of the law. In order to protect himself, the teacher often feels obligated to report confidential drug information to some authority. It is precisely at this point that the need for a valid mechanism for disposition becomes evident, because if confidential statements are made by the student, then the teacher must make a decision concerning the position and action he or she will take regarding the information given.

Carefully constructed administrative policies and procedures which are known and understood by all teachers in a school can remove many doubts and serve to strengthen the school's role of educating all students.

The decision a teacher makes will be affected by the teacher's conception of his or her role. The Proposed Philosophy for Maine Schools defines the teacher's role in this way: "The teacher must become more of a listener and a facilitator than a lecturer." This document also states that, ". . . it is part of the school's function to aid pupils in their development of a consistent commitment to attitudes, values and moral outlook that will promote their mental, emotional and social well-being."[1]

More specifically, the N.E.A. has taken a positive position on confidentiality. "In fulfilling his obligation to the student, the educator . . . . shall keep in confidence information that has been obtained in the course of professional service, unless disclosure serves professional purposes or is required by law."[2]

These statements strongly suggest that a student's statements to a teacher about his or her drug, or other personal, problem represent an opportunity for a very special and very important kind of teaching to take place, and that this personal or social education is an appropriate and necessary part of the teacher's role.

This does not mean, however, that the teacher should bear sole responsibility for changing the student's behavior.

When a student confides to a teacher that he or she is

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[1]Proposed Philosophy for Maine Schools, Dept. of Education, Augusta, Me. - 1971.

[2]"Code of Ethics of the Education Profession," adopted by the N.E.A. Representative Assembly, July, 1968, amended July, 1970.

using drugs, the teacher should be honest and forthright with the student. The teacher may wish to help the student understand the possible consequences of drug involvement and then motivate the student himself toward making a decision for positive action.

The teacher can encourage the student to talk to his or her parents and might suggest possible medical or psychiatric referral. Emphasis should be placed on assisting the student to determine a more constructive course of behavior for himself.

Courts in other jurisdictions have held that statutes comparable to Maine's law defining accessories after the fact do not apply to persons who merely fail to inform public authorities about felonies which may or may not have been committed (Boyett v. United States, 48 F.2d 482 (Fla. 1931); Commonwealth v. Giacobbe, 341 Pa. 187, 19 A.2d 71; Lowe v. People, 309 P.2d 601 (Colo. 1957)). In fact, there is supportive authority to indicate that someone who has knowledge of the commission of a felony and who denies having such knowledge is not guilty of being an accessory after the fact, unless such concealment of knowledge or giving of false testimony is for purpose of giving some advantage to the perpetrator of the crime (Findley v. State, 378 S.W.2d 850; State v. Potter, 221 N.C. 153, 19 S.E.2d 257; cf. People v. Lauria, 59 Cal. Rptr. 628).

The cases cited accurately represent the state of the law, vague and undeveloped. The following is the text of the Maine statute defining an accessory after the fact:

> "Every person, not standing in the relation of husband or wife, parent or child to the principal offender, who harbors, conceals, maintains or assists any principal felon or accessory before the fact, knowing him to be such, with the intent that he may escape detection, arrest, trial or punishment, is an accessory after the fact . . . ." 15 M.R.S.A. § 342.

There is very little decisional law on this statute in Maine. However, there is no mention of a teacher-student privileged relationship and it seems unlikely the courts would create one. The statute states that one who "harbors, conceals, maintains or assists" a felon, intending that the felon escape "detection, arrest, trial or punishment," is an accessory. Whether a teacher, possessed of confidential information and trying to counsel, is within the ambit of this language is conjectural. It is important to note that accessory crimes, before or after the fact, apply only when related to the commission of a felony.

However, it would seem that a teacher who merely fails to convey information to public authorities about a student who may have violated a felony drug law is not committing a crime unless the concealment of knowledge is for the purpose of giving advantage to the student so as to escape detection. Also, it would seem that a teacher who denies having knowledge about a student using drugs when, in fact, the teacher has this knowledge most probably is not committing a crime, subject to the exception in the previous sentence. Unfortunately, these points remain speculative since Maine courts have not passed on this particular question.

It seems advisable to alert teachers to the fact that, except as provided by statute: (1) possession of cannabis (marijuana)

is a misdemeanor, 22 M.R.S.A. § 2383-1; (2) the sale, exchange, delivery, barter, giving or furnishing of cannabis to any person is a felony, 22 M.R.S.A. § 2384; and (3) the possession or sale of narcotic drugs are felonies, 22 M.R.S.A. §§ 2362 and 2362-C. Thus, the offense of accessory after the fact applies to those felonies involving narcotic drugs and to the sale, exchange, etc. of cannabis, not to possession of cannabis.

If teachers and administrators consider the student's welfare as being of primary importance, then confidentiality becomes a tool whereby the school may fulfill its basic educational function. On the other hand, breaking the trust of a student who reveals confidential information will most likely shut off further communication at the precise crisis point where such communication is most needed by a student struggling with personal decisions about drugs.

Many drug-involved students have a strong desire to talk about their drug involvement, but only with certain teachers with whom they feel secure. The school should encourage such trust among its students and teachers, rather than destroy it.

Although there is no one distinct or best way to resolve the question of confidentiality in any given school district, it seems clear that administrative guidelines are needed if the schools are to provide opportunities for students to seek help when help is needed.

Counselors recognize that any information or disclosures

made by a counselee during a counseling interview constitute hearsay evidence and are not, therefore, ordinarily admissible in court. Although there are exceptions to this rule, they are considered rare.[3]

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[3]"Counselor Confidentiality and the Law": Report of the Legislative Committee of the Rhode Island Personnel and Guidance Association, 1967.

CONTENTS OF PUPIL PERSONNEL RECORDS

A pupil's record becomes a diary of his past and an introduction of the student to others. Often, before a student has an opportunity to communicate who he is, opinions are formed about him based solely on his past record. This past record may not accurately reflect recent changes the pupil may have undergone.

Pupil records also become the basis for recommendations which may be written long after memory can accurately recall details and may, therefore, preserve a memory of facts which, however important at some past time, may no longer be relevant.

Pupil records may be used by persons who never knew the individual pupil nor the circumstances of the events noted, making the events recorded stark in the absence of necessary evaluative criteria.

Students, teachers and parents must be adequately informed and made aware of the crucial role that student records and student conferences may play in the total life career of the individual.

The following statement indicates who may inspect permanent records and what the conditions must be.

> "Your parents are entitled to inspect the official or permanent school records (those which are retained after you leave school) relating to you. This means that they themselves have a right to inspect the actual record, relating to achievement, testing and conduct. However, school officials may withhold items of information which, in their judgment, are of a confidential nature or in which the applicant for such information has no legitimate interest. School authorities may determine the time and manner of presentation of this information; for example, they may suggest that a counselor, qualified to interpret data in the records,

be present.

> "Access to written records of pupils is not permitted by statute unless a person is a parent or guardian, a person designated by a parent or guardian, an official of a public or private school where a pupil attends or intends to enroll, a State or local law enforcement officer, probation or parole officer seeking information in the course of his duties, the Commissioner of Education or a member of his staff, a superintendent of schools, or member of his staff where a pupil attends or intends to enroll, or a college or university official requesting scholastic records of a pupil who has applied for admission." "School Records," Maine School Approval Procedures and Standards, Jan. 14, 1972, as cited in "Rights and Responsibilities of Maine Students," State Principals Association and Division of Federal Resources, State Dept. of Education and Cultural Services.

Policy should govern which reports are retained in the permanent file of the student. Questions arise as to how much and what type of information should be recorded, and whether a distinction should be made between items appearing in the permanent record as contrasted with personal notes which various staff members may make and keep in their own files for their own professional use, later to be destroyed when the professional relationship is terminated.

Behavior records kept by school authorities and counselors are in constant need of careful reappraisal, particularly with respect to what is in the record and the extent to which these records are kept confidential. Such appraisal should also be given to records of any conferences about pupils with parents, teachers or other concerned individuals.

The question of reporting drug incidents on record cards

should be studied carefully. If such incidents or other similar behavior patterns are to be recorded, it is suggested that they be maintained in a separate folder for the exclusive use of counselors in the development of constructive plans for the student's rehabilitation. These reports should not become a part of the permanent record nor forwarded to others not directly working with the student on a particular program. The persons who have access to this special folder should be specifically designated and limited. Access should be granted only to those individuals whose professional responsibility makes access to such information necessary and to those upon whom one can rely for the maintenance of confidentiality. These reports should not be made available to any and all individuals within the school system who might well be conducting a general "fishing expedition" for information totally unrelated to a specific professional role.

Because these records are of a psychological nature, it is recommended that they be kept in the counselor's confidential file. In addition, the pupil personnel file must indicate that separate files are being kept.

It would be wise to limit the permanent record folder to items related only to the student's academic progress, including appropriate test scores of achievement, aptitude and intelligence.

Regardless of the specific policy adopted, regulations and procedures governing school records should be reviewed periodically to keep them and the record gathering techniques in harmony with the best educational, psychological and legal practices.

SCHOOL'S RELATIONSHIPS WITH POLICE

At times, students in our schools are apprehended by the police and charged with drug law violations. Many of these occurrences are totally unrelated to school hours, school property, and school activities. At other times, the school administrators are informed about a student's drug involvement associated with school activities or become suspicious about the same and wish to involve the police for possible legal action. Perhaps school and/or police officials become aware of, or suspicious about, a possible general drug problem and wish to conduct an investigation to discover the facts of the situation. In such situations many questions arise as to the relationship to be maintained between school and police. What machinery should be established in order to develop and maintain an ongoing relationship with good communication between agencies with distinct responsibilities?

A liaison between school and police officials within each community would encourage close cooperation and, in the case of drug problems, allow coordinated efforts. When drugs are being sold on school property, for example, immediate action could be taken to inform and work with police officials in the apprehension of the individual or individuals responsible and in the confiscation of the drugs.

Care must be taken, however, that school personnel do not act in a disciplinary fashion when only suspicion of involvement is present. Prior to actual conviction, a student's right to be considered innocent must not be abrogated by school personnel who may act out of fear or on the basis of rumor.

It is suggested that school administrators consider appointing one specific liaison person to coordinate actions between police and the schools. This appointment of a single person might well lead to a closer link between both agencies than would otherwise exist.

An enlightened working relationship between local education and law enforcement can facilitate handling of drug cases, and other problem areas of mutual concern.

RIGHTS OF STUDENTS WITH RESPECT TO QUESTIONING BY COMMUNITY AUTHORITIES

In dealing with students on disciplinary matters, including drug involvement, discussion with the individual or individuals concerned is frequently necessary. School authorities may seek data upon which to make decisions concerning possible actions to be taken. At other times the police, in the investigation of a matter related to school activities or in connection with incidents totally unrelated to school, may wish to talk with one or more students. Knowing that the students may be reached at school during school hours, they may wish to seek out the individual and talk with him or her in the school.

What conditions should prevail in the course of any such questioning? What policies would be appropriate in enabling school authorities to secure information that they may need while at the same time assuring protection of the student's civil rights? Under what conditions should police be permitted to interrogate students at school? What procedures should be followed in order not to jeopardize specific future action by school authorities or possible court proceedings?

The United States Supreme Court in the Gault decision (18 F.2d 426, May 15, 1967) contains the following comment by Justice Douglas:

> "neither man nor child can be allowed to stand condemned by methods which flaunt constitutional requirements and due process of law."

Justice Douglas added,

> "from the inception of the juvenile court system, wide differences have been tolerated--indeed insisted upon--between the procedural rights granted to adults and those of juveniles. In practically all jurisdictions there are rights granted to adults which are withheld from juveniles. In addition to the specific problems involved in the present case [Gault case], for example, it has been held that the juvenile is not entitled to bail or to indictment by grand jury. It is a frequent practice that the rules governing the arrest and interrogation of adults by the police are not observed in the case of juveniles."

Questioning students by police or other authorities on school property and during school hours has generally been a routine process. Schools can model citizenship by showing high regard for the protection of the legal rights of the students involved. It would appear that, on the basis of Supreme Court decisions (e.g., Gault case), these rights must be carefully guarded by school committees and staff. Policies covering this area should be drawn with this caution in mind.

Constitutional rights do not stop at the school door. Our Constitution guarantees that no one shall be compelled to be a witness against himself when he is threatened with the deprivation of his liberties and privileges, including his privilege and right to a free public education.

In a disciplinary or a quasi-judicial action, an individual's admission of wrongdoing is detrimental to his civil rights and therefore he or she should never be coerced without being advised of the right to maintain silence.

In the words of the United States Supreme Court,

"evidence is accumulating that confessions by juveniles do not aid in 'individualized treatment' as the court put it, and that compelling the child to answer questions, without warning or advice as to his right to remain silent, does not serve this or any other good purpose." (18 F.2d 426 at 559)

Therefore, it is suggested that the following procedural steps be taken when questioning students about possible violations of law, including those involving drugs.

I. NOTICE OF CHARGES - Specific statements of all accusations that will be made at any hearing should be given in advance to the parents of any juvenile or the individual representing him.

II. RIGHT TO COUNSEL - Every student should be given the opportunity to be represented by his parents as well as by legal counsel at any hearing or in a questioning procedure which may result in exclusion.

III. RIGHT TO CROSS-EXAMINATION AND CONFRONTATION - A juvenile has the right to face his accusers and demand that the accusations be substantiated beyond a reasonable doubt. This means that the student and his representatives have the right to question principals, teachers, and superintendent concerning any exclusion or refusal to admit the student to the public schools.

IV. PRIVILEGE AGAINST ANY DEGREE OF SELF-INCRIMINATION - The student and his representatives should be instructed that no abrogation of the 5th Amendment rights against self-incrimination will be permitted.

The student and his representatives may refuse to answer any questions which might incriminate or constitute an admission even though the student is not under oath or subject to penalties of perjury.

V. RIGHT TO A TRANSCRIPT OF THE PROCEEDINGS - In order to allow the privilege of having any action in a quasi-judicial proceeding reviewed by higher authority and in order that any action which deprives a student of his rights may be appealed, a transcript of any testimony and a record of factual or hearsay information which served as the basis for the action taken should be provided.

VI. RIGHT TO APPELLATE REVIEW - Any administrative, judicial, or quasi-judicial body should provide the opportunity for review of any action taken by such body, questions of applications of law, school system policy, or proper and ethical procedure. In most instances dealing with human rights, the law specifically provides for review. In school law, this specificity is not always clearly set forth allowing review "de novo", i.e., from the beginning. In most instances, such review beyond the level of the school committee constitutes only a review of procedures or points of law.

NOTE: Laws do not specifically designate internal procedures for the control and discipline of students

or personnel. It is recommended, however, that school committees formulate policies which clearly delineate the powers and responsibilities of each officer and the level of administration to provide for objective evaluation of each subordinate decision by the next higher level.

Concerning the protection of the civil liberties of students where school regulations are involved, the Court (Farrell v. Smith) stated at 310 F.Supp. 732 (D.C. Me. 1970):

> "It is now clear that students at a public institution are entitled to the protection of the rights guaranteed by the Constitution, applied in light of the special characteristics of the school environment." Farrell, supra, at 736.

> "It must be recognized, however, that school authorities are entitled to make and enforce reasonable regulations for maintaining an effective school system and that the courts should refrain from interference with the functions of the school authorities unless their action is so arbitrary and unjustified as to constitute a significant encroachment upon personal liberty." Farrell, supra at 737.

The thrust of the above seems to allow school systems considerable leeway in formulating and enforcing regulations. Care must be taken, however, to protect fundamental liberties.

Questions have arisen concerning police interrogations of students at school when the matter at issue concerns activities unrelated to school time, school property or official school-sponsored activities. It is recommended that, unless the police possess a warrant, or have caught a student in the act of violating a law, the student's school activities should not be interrupted when such interrogation can be accomplished after school hours. (State Principals Association bulletin, Jan. 9, 1967)

RIGHTS OF STUDENTS WITH REGARD TO SEARCH

Frequently when a question of possible student drug involvement arises, the related problem of the possible presence of drugs in the school is faced. Are drugs being stored in student lockers?

What policy guidelines are needed to conduct a search in the school where suspicion of the presence of drugs exists? What about the wholesale search of student lockers or the selective search of specific ones? In the possible search of lockers, if such is deemed prudent, what about the search of a student's personal belongings which are in that locker? What issues are involved in the search of a student's belongings (pocket, pocketbooks, etc.) in the context of a personal interview with an individual staff member?

The federal court in 284 F.Supp. 725, at footnote 10 on p. 730 (1968) stated that

> "no distinction can be drawn between the fundamental duties of educators to maintain appropriate campus discipline, or reasonable right of inspection of school property and premises even though it may have been set aside for the exclusive use of a particular student . . . ."

There is authority suggesting that school authorities may search such premises without a warrant. (Moore v. Student Affairs Com. Tray St. U., 284 F.Supp. 725) This does not necessarily mean that law enforcement officers, with consent of school authorities but without a warrant, can search such areas (see 316 F.Supp. 624). Also, it is well to include a statement concerning the ability of

school authorities to search school-owned areas (notably lockers) in the general school regulations. (See Comment, 22 Vanderbilt L. Rev. 1078, 1079.) (Unfortunately, this issue has not crystallized to the extent where a definitive statement can be made as to how the Maine courts will treat it when it arises.)

Inspection of student lockers and their contents appears to be a right and the responsibility of school administrators, especially where positive evidence supports such action, and when there is evidence that drugs are concealed within a student's locker. It would also seem wise, when there is sufficient evidence to indicate the possibility that there may be widespread possession of drugs at a school, that a general inspection of all lockers should be authorized.

It is suggested that policy should clearly prohibit a staff member from attempting a search of an individual's belongings (pockets, purses, etc.) in the context of a personal confrontation. When a situation warrants such action, there are sufficient procedures available to police personnel to take such action. This action by police would, on the one hand, make any evidence uncovered admissible in court, and, on the other hand, would protect the legal rights of the individual. The destruction of any such evidence can be prevented by detaining the student in the presence of a school staff member until he can be turned over to the police. This distinction between inspection of lockers and search of an individual is made out of the belief that in the case of the inspection of lockers the school staff is exercising jurisdiction

over school property, necessary to the orderly administration of the school. The search of an individual, however, is a police-type action and is inappropriate for school staff and unnecessary since the proper persons to carry on such activity are readily available.

A word of caution is in order. Inspection of an individual locker or generalized inspection of all lockers should not be undertaken without careful thought and then only for clearly compelling reasons. Policy should indicate that this step be undertaken only after consultation with and approval by several persons, specified in the policy statement. Such an invasion of the students' personal property should not be conducted except as an extreme measure, after all other efforts to obtain information have failed, in order not to create an atmosphere of mistrust and paranoia from students toward the administration.

PROCEDURES REGARDING SUSPENSION AND EXPULSION

Since tensions may arise when there is a possibility of drug involvement, many administrators are asking whether or not students who become involved with drugs should be retained in school. Some feel that such students are potential contaminants and should be removed from the schools. The basic policy decision remains to be made as to whether students involved with drugs should be retained in school or excluded. This question breaks down into several detailed issues.

Should a student convicted of violating the drug laws be suspended or permanently expelled from school? Is there a distinction to be made as to whether the violation involves activity associated with the school as contrasted with activities totally unrelated to the school? Should school authorities draw the line between the case of a student arrested and charged by the police with drug violations, and cases where a court finding of guilty has been obtained?

Answers to such questions must guide the development of policy. In an effort to assist in this area of policy development, the following information is offered.

In a recent finding of the Massachusetts court (Leonard v. Attleboro School Committee, 349 Mass. 704 at 709), the statement is made that

> "a finding, made in good faith by a school committee that a pupil's behavior so interferes with the discipline and management of the school that expulsion is necessary, is within the school's discretion."

The courts have begun to enlarge upon student freedoms which are to be protected against interference. Numerous courts have held that students cannot be penalized for the way they choose to wear their hair.

The Supreme Court of the United States has placed certain limitations on grounds for expulsion which must be considered as examples of the courts' recognition of student rights. In Tinker v. Des Moines Independent Community School District, et al., 37 L.W. 4121, the Court found that students could not be excluded for wearing arm bands in school as a protest symbol against the war in Vietnam. In so holding, the Court quoted the following portion of the opinion in West Virginia v. Barnette, 319 U.S. 624:

> "The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all its creatures, Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the bill of Rights, that they are educating the young for citizenship is reason for scrupulous protection of constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes."

It must be understood that although the rights of students have been expanded, this does not mean that students involved in selling or using drugs cannot be expelled from school. The above case law is important because it states that students in school possess basic constitutional protections which cannot be arbitrarily infringed upon. The requisites which must be met as a condition to expulsion must, therefore, be carefully adhered to.

As a general rule, courts are requiring that the major elements of procedural due process be met when a school system makes and applies regulations. There is every reason to suspect that this would be the approach of the Maine courts as issues arise.

Moreover, from a traditional educational point of view which reflects concern for the individual, suspension of students from school should occur only if a careful study of all facts surrounding each individual case indicates that no other approach is feasible. Student suspension without proper controls is of little therapeutic value. Placing students out of the supervision of the school may serve to increase the antisocial activities of the student.

From an educational as well as legal standpoint, suspension or expulsion should occur only after due process and very careful consideration supported by records of testimony, not simply by hearsay or supposition.

Any action of a school committee to exclude from or to refuse admission to any pupil to any public school must follow procedures of a quasi-judicial proceeding requiring a hearing and a careful examination of all available evidence. Such evidence should reflect repeated efforts of school authorities to help the student concerned prior to recommendations of suspension or expulsion. Detailed data should be presented as to what has been attempted and wherein failure has resulted.

Statute defines the difference between suspension and expulsion, and prescribes the necessary procedure:

"Suspension, which is a function of the school administrator, and expulsion, which is a function of the local board of education, are serious disciplinary sanctions which may be imposed against you.

"School committees or boards of directors may expel any obstinately disobedient and disorderly student, after a proper investigation of his behavior, if found necessary to the peace and usefulness of the school; and restore him on satisfactory evidence of his repentance and amendment.

"Although not specifically expressed in the law, principals by necessity have the authority to suspend students for definite periods of time to maintain good order in the school.

"Continued and willful disobedience, the habitual use of profanity or obscene language or injuring of individuals or school property are causes for punishment and suspension from school. You can be suspended for something you have done off as well as on school property if school authorities can prove that such action is reasonably necessary for your physical or emotional safety and well being, or for the safety of other members of the school community. Certain rules governing suspensions are designed for your protection:

1. The principal must report your suspension immediately to the superintendent.
2. The superintendent must report it to the school board at its next regular meeting.
3. Either the board or the superintendent may reinstate you after your suspension.

In case of either suspension or expulsion you have the right to the following elements of due process:

1. A written statement of the charges against you and the grounds justifying the sanction to be imposed.
2. A hearing.
3. A means of effective appeal.

The following are your rights regarding hearings:

A. Informal Hearing

Under ordinary circumstances you are entitled to the opportunity to demonstrate to the superintendent of schools that there is a case of mistaken identity or some compelling reason why you should not be suspended pending a full hearing.

B. Formal Hearing

Court and school law decisions have held that in any situation where a fundamental right may be denied, students must be afforded all appropriate elements of due process. This may apply in cases involving expulsion or suspension in which the timing of the punishment is crucial for that particular student, prohibition against certain student activities, or other instances of a serious nature.

(1) The full hearing must be held within a reasonable period of time after the suspension.
(2) You may be represented by a lawyer.
(3) The hearing shall be held by the board of education.
(4) You are entitled to the rudiments of an adversary proceeding. Courts have held that these rudiments may include the right to be presented with the names of witnesses against you and copies of the statements and affidavits of those witnesses, the right to demand that any such witness appear in person to answer questions, and the right to testify and produce witnesses on your own behalf. The precise nature of the hearing depends upon the circumstances of the particular case, such as the sanctions to be imposed or at what level the hearing is held.
(5) A record must be kept of the hearing procedures. You are entitled, at your own expense, to a copy of that transcript.
(6) The proceeding must be held with all reasonable speed.

"If you are found innocent, you may request that any written entry referring to the incident be expunged from your school records."

APPEALS

"You may appeal a decision made by your principal to the superintendent and the local board of education. If this is unsuccessful you may (through an adult) appeal your case in court."

--U.S.C.A. Amend. VI, XIV
--Title 20, R.S. 1964, Ch. 15, § 473, ¶ 5.
As cited in Rights and Responsibilities of Maine Students prepared and printed by the Educational Policies Committee of the State Principals Association and by the Division of Federal Resources of the State Department of Education.

School authorities, when considering suspension and/or expulsion, should contact the parents of the student involved as soon as possible. A student showing possible emotional and psychological problems should be directed for psychological examination and/or counseling. If the goal is to change the undesirable activity of the student, this can be best achieved by the school providing necessary assistance rather than by suspension or expulsion of the student. The school committee, however, should provide for uniform procedures to be utilized in all suspension or expulsion proceedings.

With regard to establishing policies and procedures governing suspensions or expulsion, the following guidelines may prove helpful and should be considered:

1. Definite and concrete evidence that the student's behavior interferes with the maintenance of discipline and the learning processes or other students.
2. Reputable advice that it is in the best interest of the student, in terms of his intellectual and social development, to remove him from the school system.
3. A student being excluded or suspended should be

advised as to vocational or other educational opportunities he is required or encouraged to pursue subsequent to any action taken, and which may be useful in his gaining re-admission.

In the absence of duly promulgated regulations regarding expulsion, school boards are left to decide each case on an individual basis. However, the possibility of fairness in adjudicating individual cases is greater where existing regulations are the basis for actions taken.

PROCEDURES REGARDING RE-ADMISSION

Any student suspended from school because of drug-related problems ought to have the right to be re-admitted. It is necessary, therefore, to clarify the conditions which must be fulfilled for such action. What must the student do during his suspension to earn his right to be re-admitted? What evidence of progress must be produced to justify re-admission? What conditions will be imposed upon the re-admitted student as a basis of his retention in school? Such questions should be faced and answers developed as policy governing re-admission of any student suspended, including those involved in drug abuse.

Re-admitting a student to the school following a period of suspension might be based on a review of:

1. Steps taken to seek solutions to the problems which were the basis for the suspension, and
2. The medical and psychiatric records available from treatment and rehabilitation agencies.

School authorities may wish assurance that an honest attempt has been made by the student to deal with the problem while out of school.

It is suggested that a Board of Review be established. A possible composition of such a board might be the school principal, vice-principal and a guidance counselor having knowledge of the student.

This board could meet with the student, his parents or guardians and any other professional persons who may have been

working with the student during his suspension to discuss re-admission. The board of review could prepare recommendations which would be forwarded to the superintendent of schools for his action or his presentation to the school committee for their action.

Since the rehabilitation of a student who has been involved with drugs is a difficult process, the school staff will want to work closely with the young person. An important part of the rehabilitation process for such an individual might well be the opportunity to return to the regular school environment. This opportunity could be made available when the evidence indicates that the re-admission of the youngster would not reflect in an adverse manner on the school population as a whole and would be of benefit to the individual concerned.

CONCLUSION

In summary, we recommend that administrators establish a clear and flexible policy before drug related incidents actually occur in their school. We hope that these policies will have as their goal the education or rehabilitation of the offending individuals, rather than their punishment, which is best left to the courts. The usefulness of such policy will be increased by getting input from students, teachers, parents, by wide distribution and explanation, and by periodic review and revision.

We recommend that several overriding concerns govern the formulation of policy. It should be consistent and compatible with other student policies. If the school is to fulfill its responsibility to educate, expulsion and suspension will be prescribed only after attempts at changing the students' behavior have failed. Policy makers will want to be aware of civil rights guaranteed students and be certain that their policy does not abridge those rights.

We hope that this publication will assist local school committees and administrators in the formulation of policies and procedures governing the handling of students who become involved with drugs. School policies which follow these recommendations will provide maximum protection for the total school population and will also work toward the rehabilitation and further educational development of the individual student.

APPENDIX: SAMPLE SCHOOL POLICY

The Maine Drug Education Program staff has looked at a wide variety of school drug policy statements. The following policy is one which follows many of the suggestions set forth in this guide and also includes a high degree of specificity. It is one which maintains the balance between protecting the school community and encouraging the growth and rehabilitation of the individual. As you look at the policy, remember that it is only an example intended to serve as a springboard to assist you in the development of a policy which meets your particular school's needs. We are indebted to the Drug Education Office of Columbus School in Bridgeport, Connecticut, whose policy formed a basis for our own.

BOARD OF EDUCATION POLICY DEALING WITH THE USE OF DRUGS

The Committee strongly recommends that the total educational community recognize the clear and present danger of drug abuse in our schools. We understand that parents, teachers, and administrators tend to deal with the problem in different ways. Consequently, we request that a clear and comprehensive policy be adopted and strongly adhered to in regards to the use of drugs in the school system.

We further recommend that all personnel involved in education avail themselves of the opportunity to become fully informed regarding the total drug scene. We feel that this type of awareness will, hopefully, prevent rash and ill-considered judgments on the part of all concerned.

This policy is to be distributed to all students, staff and parents, and is to be discussed in all social studies classes.

A. DIRECT POSSESSION, SALE, OR TRANSFER OF DRUGS IN SCHOOL OR ON SCHOOL PROPERTY.

1. STUDENTS All students will be notified that direct possession, sale or transfer of drugs by students within a school or on school property will result in the immediate notification of the school police liaison officer. Absolutely no exceptions will be made to this rule.

2. TEACHER In the event of direct possession, sale or transfer of drugs, the teacher will take the following steps:

   a. Immediate notification of school administrator;
   b. Keep a written copy of said notification of administrator.

3. ADMINISTRATOR In the event of direct possession, sale or transfer of drugs, the administrator will take the following measures:

   a. Immediate notification of police authorities;
   b. Make a full, written report of the incident, forwarding a copy to the Superintendent of Schools. The report will not become part of the student's permanent record and will be destroyed when he is no longer enrolled in this school.

B. SUSPICION OF POSSESSION, SALE OR TRANSFER OF DRUGS IN SCHOOL OR ON SCHOOL PROPERTY.

1. STUDENTS All students will be made aware that, in the event of suspicion of possession, sale, transfer of drugs, desks and lockers may be searched. The decision to conduct a general

search must be made by the Superintendent only after consultation with the building principal.

2. TEACHERS In the event of suspicion of possession, sale or transfer of drugs, the teacher will take the following steps:

a. Immediate notification of school administrator;
b. Keep a written copy of notification of school administrator. This written copy shall be destroyed if suspicion is unwarranted.

3. ADMINISTRATOR In the event of suspicion of possession, sale or transfer of drugs, the school administrator shall take the following measures:

a. The school administrator, upon notification of suspicion, shall immediately conduct a search, with the student's (s') home room teacher(s), of school property for suspected contraband material;
b. An authorized school administrator may search a student's locker or desk, but the following three conditions must be present:
1) The probable presence of contraband materials poses a serious threat to the maintenance of discipline and order within the school; also, when such presence may threaten the educational process and health; and
2) There is reason to believe one or more students have contraband materials in desks or lockers; and
3) The students have been informed in advance that, under school board regulations, desks and lockers may be inspected if the administration has reason to suspect that materials injurious to the best interests of the school are kept on school property;
4) All three of the conditions above, 1, 2 and 3, must be met in every case.
c. If suspected contraband materials are found, the school police liaison officer will be notified immediately;
d. Should suspected contraband materials be found, the parent or guardian of student(s) will be notified at once and required to come to school immediately and attend a conference with the school administrator concerning materials found on school property. At this conference the pupil(s) must be made aware, through a parent or guardian or an attorney, of his rights to remain silent;
e. If suspected contraband material is located, the Superintendent of Schools will be alerted and kept fully informed;
f. The school administrator will turn over suspected contraband material to proper authorities. A receipt must be given by the officer who takes possession.

g. A full report of the incident will be kept, with a copy forwarded to the Superintendent of Schools. The report will not become a part of the student's permanent record.
h. Be sure all legal and administrative reponsibilities have been met.
i. Make every effort to cooperate with other agencies involved in the drug problem.

C. STUDENTS UNDER DIRECT INFLUENCE OF DRUGS IN SCHOOL OR ON SCHOOL PROPERTY.

1. STUDENTS Students will be made aware that it is a violation of school policy for a student to appear in school or on school property under the influence of drugs.

2. TEACHERS If a student appears to be under the influence of drugs, the teacher will take the following steps:

a. Immediate notification of school administrator;
b. Student tactfully escorted to the School Nurse by an educator;
c. In event of an emergency situation, C.2.a. be nullified, and the School Nurse be called directly to the room;
d. Keep a written record of the incident, carefully distinguishing between facts and impressions. Copies of this record will be forwarded to the school administrator and the Superintendent of Schools, if the student indeed was under the influence of drugs. If not, all copies of this record will be destroyed. In any case, the record will not become part of the permanent record.
e. Student should not be questioned until steps a. and b. or c. of Sec. C.2. have been completed. In the event the case did involve drugs, and then only in the presence of the involved teacher and school administrator, should the student be questioned, after being assured that no criminal action will follow. Written report of this conference will be made by the administrator and copies forwarded to the involved teacher and the Superintendent of Schools.

3. ADMINISTRATOR In event a student was under the influence of drugs, will take the following measures:

a. Principal should notify the parent or guardian of the problem and set up a required conference;
b. Develop corrective plans with the parents or guardian and school personnel;
c. Keep a written record of proceedings in Sec. C.3.a. and b., forwarding a copy to the Superintendent of

Schools; this record is not to be part of the student's permanent file, and will be destroyed when the student leaves the school;

d. Be sure all legal and administrative responsibilities are met.

4. SCHOOL NURSE In event that a student is judged to be under the influence of drugs:

a. The nurse shall make determination as to whether further medical attention is necessary;
b. If so, the nurse will notify the student's parent or guardian immediately to make arrangements to transfer the pupil to the local hospital;
c. In cases when, in the nurse's judgment, hospitalization is not required, the pupil's parent or guardian is informed that the student is ill, and required to come to school immediately. When the parent or guardian arrives at school, he is informed of the problem and requested to have the student seen by the family physician;
d. Accurate and detailed records will be kept by the school nurse of all such incidents for purpose of confirmation of student's visit to doctor.

D. SUSPICION OF DRUG INFLUENCE Suspicion of drug influence shall be taken to mean a self-destructive, disruptive and marked change in appearance, behavior, achievement, attitudes or verbal admission on the part of the student.

1. STUDENTS All students will be informed of the following procedures.

2. EDUCATOR If a student is suspected to be under the influence of drugs, the following steps will be taken by the educator:

a. Hold a private conference with the student. That this conference be confidential in nature and no duress placed on the pupil for information or admission.
b. In event that suspicion is well-founded or admitted, educator will recommend that help be sought. Educator should give information as to where pupil may go for help without fear of legal reprisal. He should also suggest that student seek the help of parent or guardian. Suggest a conference between student, parent or guardian and educator should be held, if possible.
c. Request the student to return to see what steps, if any, he has taken. If he has taken no action, student should be informed of possible implication if he does not seek help.

d. Should any educator feel ill at ease in dealing with such a problem, he should seek advice of personnel he sees fit.
e. In no way should the confidence given by the student to the educator be betrayed, except where required by law.

E. LEGAL ASPECTS AND SUMMATION Drug addiction is not a crime, but is a form of physical and mental illness and should be treated as such. However, possession, sale, or transfer of drugs is a crime and will be dealt with in that respect.