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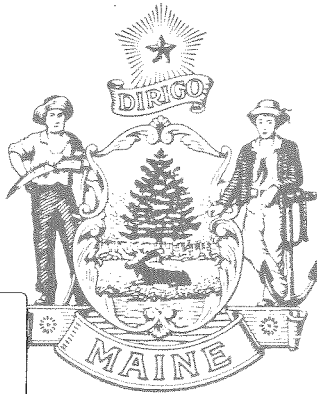


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RIGHTS AND RESPONSIBILITIES

A Guide for Students, Parents and School Staff



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Department of Educational & Cultural Services
State House Station 23
Augusta, Maine 04333

March, 1985

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Maine Department of Educational & Cultural Services

RIGHTS AND RESPONSIBILITIES

A Guide for Students, Parents, and School Staff

Robert E. Boose, Commissioner

Department of Educational & Cultural Services
State House Station #23
Augusta, Maine 04333

March, 1985

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Introduction

Rights and Responsibilities of Maine students was developed at the request of Robert E. Boose, Commissioner of Educational and Cultural Services. It was prepared to provide students, parents and educators with a narrative summary of those rights and responsibilities.

This booklet was researched by the Department of Educational and Cultural Services professional staff. The Commissioner expresses his gratitude to these and to others who offered valuable assistance in reviewing and editing the contents.

The Department has issued this booklet to assist students and educators in better understanding their educational and legal rights and responsibilities and in response to questions most frequently asked. It is not intended as a legal brief, but rather to serve as a guide for both educators and students.

This publication outlines the rights and responsibilities of Maine public school students as defined by state and federal laws, including both legislation and court decisions. It does not promote or advocate a philosophy of "student rights", "administration rights", or "teacher rights" but rather provides an understanding of the rights and responsibilities of public school students.

Although the legal principles set forth here have been researched, these guidelines are not intended to be a final statement of all the rights and responsibilities now enjoyed by students. The exact nature and extent of any legal right or responsibility is dependent upon the prevailing set of circumstances. It is hoped that this publication will promote a balanced understanding of public school students' rights and responsibilities.

To Students, Parents, School Staff, and Citizens

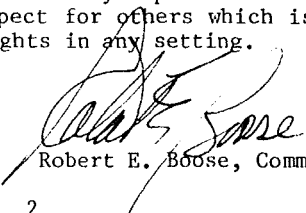
I have identified as one of the top priorities the need to develop student responsibility. This priority has been noted in a concept paper developed to increase educational effectiveness in Maine's public schools which I plan to use as the framework for immediate and future progress toward educational excellence.

I am pleased to approve Rights and Responsibilities, A Guide for Students, Parents and School Staff. The booklet has been developed to assist school officials in formulating a uniform code regarding rights and responsibilities within our schools. Because of the numerous questions concerning an individual's right and responsibility, it is necessary to have a statewide concept of what this broad area of coverage entails. This document was originally prepared and sent to school officials in 1970 to assist them in better understanding this broad and encompassing area of contents. Due to a number of events that have occurred in the past decade, the booklet needed revision to reflect current legal and educational thought.

The courts have found inherent in the right to an education the right to learn, and this entails a responsibility to educate on the part of our schools. This is by no means a one-way street, for students have a responsibility to participate in the educational system in such a way as not to inhibit the learning process by others. Students have the responsibility to respect the law and the rights of others and, in so doing, to obey the regulations of the local school board and school officials. Students may not act in a manner which will disrupt the educational activities. By their recent decisions regarding student rights, the courts have not intended to abrogate the rights of school administrators to run their programs smoothly and efficiently but have required that school staff treat students with justice and equality.

While the purpose of schools is to teach academic, vocational, and disciplines, they also socialize the students into the larger community. Schools are the first, and possibly the longest contact an individual may have with a governmental agency and is the forum in which the individual is introduced to a democratic society. The pattern of recent educational philosophy has been away from strict adherence to regulations and bans and toward a more adult socialization of the student through the promotion of general, affirmative guidelines for behavior.

In the process of education there should be an honest feeling of mutual respect between all members of the school and community and equal treatment for all regarding individual rights and responsibilities. It is my hope that this booklet will further enhance the respect for others which is necessary for the enjoyment of human rights in any setting.



Robert E. Boose, Commissioner

I. The Right and Responsibilities To An Education

1. Free Public Education

Students, as citizens of Maine and the United States, are guaranteed certain individual rights and assume corresponding individual responsibilities. State law assures that ..."every person between the ages of 5 and 20 years shall have the right to attend as a full-time student or, with the consent of the school committee or board of directors, as a part-time student, the public schools in the administrative unit in which his/her parent or guardian has residence..."¹

This statutory declaration of the right to a free public education has existed since shortly after Maine's founders acknowledged by constitutional declaration that a "general diffusion of the advantages of education is essential to the preservation of the rights and liberties of the people..." and thereafter directed the legislature to require all Maine towns to make "suitable provision" for the support and maintenance of public schools.² Over the years, the law relating to the right to public schooling has been amended many times but nearly always in the direction of expanding this right of attendance to the point that today every child, including the handicapped, may attend school from grade kindergarten through high school at no cost to the student or his/her parent(s) or legal guardian.

¹ 20-A M.R.S.A., Section 5, subsection 1.

² Maine Constitution, Article VIII, Part First, Section 1.

2. The Responsibility for an Education

Education is both an economic and social necessity for the individual. It is also a necessity for the well-being of society.

With the right to a free education comes the responsibility to attend school. Students should take advantage of the opportunity for learning provided for them. Maine has a compulsory school attendance law³ from age 7 to 17. During that time, it is the parent or legal guardian's responsibility to ensure the student is in attendance,⁴ and the school's responsibility to notify the proper authorities of a student who is not⁵ in attendance or not otherwise being educated. It is the student's responsibility to attend school and to receive an education. Student's must share the responsibility of safeguarding a productive educational climate and understand that responsible behavior allows and fosters academic freedom.

³ 20-A M.R.S.A., Section 5001.

⁴ 20-A M.R.S.A., Sections 5051-5053.

⁵ 20-A M.R.S.A., Sections 5051-5053.

II. RIGHT AND DUTY TO ATTEND SCHOOL

1. Compulsory Education

Maine law requires that all children between their 7th and 17th birthdays attend school each day of the regular session.⁶ Absences are excused for personal illness, medical appointments that cannot be made outside of the regular school day, observance of religious holidays when the observance is required during a regular school day, emergency family situations, or planned absences for personal or educational purposes which have been approved by the school officials.

⁶ 20-A M.R.S.A., Section 5001 (1).

2. Age Requirements

Maine law gives every child between 5 and 20 the right to a free public education in the school administrative unit in which his/her parent or legal guardian has residence. A child must be 5 years of age on or before October 15th to enroll in kindergarten and must be 6 years of age on or before October 15th to be admitted to grade one.⁸

School boards are authorized to establish reasonable regulations relating to the continuing right of children to attend and to adopt educational standards for promotion and graduation.

⁷ 20-A M.R.S.A., Section 5201, 1.

⁸ 20-A M.R.S.A., Section 5201, 2.

3. Married Students and School Attendance

Under state and federal statutes⁹ school boards "shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex." Based on this law, married students have a right to attend school and cannot be barred from participation in extracurricular activities.

⁹ M.R.S.A. Title 5 and Title IX of the Educational Amendments of 1972, Section 86.40.

4. Pregnancy and School Attendance

State and federal statutes¹⁰ also prohibit discrimination against students on the basis of pregnancy. The Title IX regulation states "(1) a recipient shall not discriminate against any student from its educational program or activity, including any class or extra-curricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient," and "(2) a recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician."

¹⁰ M.R.S.A. Title 5 and Title IX of the Educational Amendments of 1972, Section 86.40.

5. Alternative Instruction

A student may be excused from attending a regular public day school if "equivalent instruction" is obtained in a private school or in a manner arranged for by the local school Board and approved by the Commissioner of Educational and Cultural Services.¹¹

¹¹ 20-A M.R.S.A., Section 5001.

6. Student Evaluation, Promotion, and Graduation Standards

The Commissioner of Educational and Cultural Services by rule prescribes the basic courses of study for elementary and secondary schools. The basic courses of study must be consistent with state law requirements¹². A diploma is issued to secondary school students who have satisfactorily completed requirements in accordance with the academic standards of a school unit.¹³

¹² 20-A M.R.S.A., Section 4703.

¹³ 20-A M.R.S.A., Section 4721 (3).

7. Truancy

A student is a habitual truant if absent from school the equivalent of 10 full days or for 1/2 day on 7 consecutive school days within any 6-month period for other than an excusable absence.¹⁴ The parent or legal guardian of a child may be held liable for truancy.

The school board is responsible for the enforcement of school attendance laws and is authorized to adopt rules and regulations to carry out this responsibility. If an attendance problem cannot be resolved at the school administrative level, the board may waive the compulsory attendance law, if the student is at least 14 years of age.¹⁵ The school board may also excuse the student from regular full time attendance to participate in an alternative program of work, work study or training when in their judgment the student would not benefit from continued attendance in regular school programs.¹⁶

¹⁴ 20-A M.R.S.A., Section 5051, 1,B.

¹⁵ 20-A M.R.S.A., Section 5051, D(2).

¹⁶ 20-A M.R.S.A., Section 5051, 2,D(1).

8. Education for the Handicapped

Special education programs are designed to meet the needs of all school-age handicapped students. Federal legislation¹⁷ requires all states, which receive federal funds for special education to provide a free appropriate education to all school-age handicapped students. The federal law establishes extensive rights and protections for handicapped students and their parent(s) or legal guardians and correspondence obligations for local educational agencies. The provisions of the federal law are implemented statewide in Maine.

Maine law¹⁸ requires all school units to provide ..."equal educational opportunities for all exceptional children, as defined" and further specifies that such opportunities ..."shall be provided by means of the addition of appropriate supportive assistance to regular educational programs."¹⁹

Both federal and state laws require that handicapped students be educated in regular educational programs with students who are not handicapped to the extent appropriate. In addition, both laws require that parents or legal guardians be accorded certain procedural rights in decisions about the classification, placement and evaluation, of their children.

¹⁷ Education of the Handicapped Act, P.L. 94-142, 1975.

¹⁸ 20-A M.R.S.A., Section 7201(1).

¹⁹ 20-A M.R.S.A., Sections 5011(d), 5051(d), 5104(3).

III. SCHOOL AND STUDENT DISCIPLINE

1. School Rules

The adoption of reasonable rules and regulations concerning the conduct of public school students is essential if a school is to function properly. Maine law authorizes school boards to adopt policy to meet their responsibility for overseeing "the management of the schools"²⁰ within their units. This general authority covers student discipline, attendance, health and safety, assignment and promotion, damage to property, school bus transportation, etc.

This rule making authority is not unlimited. School officials may not make rules which are arbitrary, capricious, or outside the scope of their statutory authority or which conflict with constitutional principles or state law. Their rules must also stand the test of fairness and reasonableness. While there is no hard and fast rule of what is "reasonable," a rule is generally considered to be reasonable if it is a rational means of accomplishing some legitimate educational purpose.

Students are responsible for obeying school rules. Students should work through established means, such as student councils and other advisory groups for revising or changing school rules.

School officials may direct student conduct off school grounds and outside of school hours. When students are engaged in a school-sponsored activity, court decisions have recognized the authority of school officials as the same as if the activity took place on school property. In non-school sponsored activity, students may be disciplined when their actions affect the school. School officials may punish a student for offenses occurring off school grounds if it can be established that such offenses are directly related to the orderly operation of the school.

²⁰ 20-A M.R.S.A., Section 1001(2).

2. Student Discipline

Schools and students have the responsibility to foster an atmosphere conducive to learning and to protect the rights of all students involved in the learning process. Disciplinary action may be taken against students for violation of rules adopted by school boards. Written rules cannot govern every specific offense that students may commit. Rules must be reasonable and essential to the efficient functioning of schools and it must be recognized that rules cannot address every specific act that students may commit.

3. Corporal Punishment

A teacher or other person entrusted with the care or supervision of a student, for special or limited purposes, may not use physical force on a student for misconduct. A school official may use "a reasonable degree of force against a student "who creates a disturbance, when and to the extent that the official reasonably believes it is necessary to control the disturbing behavior or to remove a person from the scene of the disturbance."²¹

²¹ 17-A M.R.S.A. Section 106 and 20-A M.R.S.A., Section 4009.

4. Suspension and Expulsion

Maine law²² authorizes school boards to expel any student who is deliberately disobedient or deliberately disorderly or for infractions of violence or possession, furnishing or trafficking of any scheduled drug. A student may be readmitted on satisfactory evidence that the behavior which was the cause of the student being expelled will not likely recur. The school committee may authorize the principal to suspend students up to a maximum of 10 days for infractions of school rules.

Consideration of the suspension or expulsion by a school board of a public school student must occur in executive session. Under the "freedom of access" law²³ parent(s) and legal counsel are permitted to be present at such an executive session, if they so desire.

A 1975 decision of the U.S. Supreme Court²⁴ held that prior to the imposition of a suspension, the following procedures shall be observed:

1. The suspending school official must give the student oral or written notice of the charges and evidence to support the charges, and
2. If the student denies the charges, an opportunity must be given the student to present an explanation in a conference with the suspending school official, who must then inform the student whether or not the suspension is to be imposed.

The Court further stated that students whose presence in school poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school. In such cases, the requirements of notice and hearing must follow as soon as practicable.

Goss v Lopez does not prohibit suspension of 10 days or less without legal representation and formal due process protections. The Court failed to spell out what specific due process protections were necessary when a suspension for a period greater than 10 days is involved, however, the longer the period of suspension the greater the due process protections should be considered, even to the extent of providing alternative education options to the student. A more detailed discussion of the laws governing suspension

and expulsion is available in the publication Student Suspension and Expulsion prepared by the Department of Educational and Cultural Services.

²² 20-A M.R.S.A., Section 1001(9).

²³ 1 M.R.S.A., Section 401.

²⁴ Goss v Lopez U.S., 95 S.Ct. 992 L.Ed 2nd (1975).

5. Use of Alcohol, Drugs, and Tobacco

In the interest of public health and safety the Maine Legislature has enacted several laws relating to the purchase of tobacco and the purchase and consumption of alcohol, drugs, and other controlled substances. The law also requires school boards to provide for the instruction of all public school students in the harmful effects of... "alcoholic drinks, stimulants and narcotics upon the human system."²⁵ Students are obligated to obey school rules pertaining to use in school and at school functions.

²⁵ 20-A M.R.S.A., Section 1001(10).

IV. STUDENT EDUCATIONAL RECORDS

1. Access to Student Records

Recent state²⁶ and federal²⁷ enactments have provided specific safeguards regarding the confidentiality of and access to student records. The state law provides that the dissemination of information on students shall be governed by the Family Educational Rights and Privacy Act, commonly referred to as the "Buckley Amendment." The law gives parents and eligible students the right to inspect and review the contents of all educational records and other files of information directly relating to the student and sets standards for access to such records by persons other than the parent(s) or legal guardian and eligible students. Parent or legal guardian consent is not required when information is given out to school personnel with legitimate educational interests.

School boards are required to have a written policy on student educational records and to notify parents or legal guardians of the policy annually. The policy should address: informing parents of their rights; collection of student data; maintenance of student records; and use and dissemination of student record information. A detailed review of student education records and of the Family Educational Rights and Privacy Act is available from the Department of Educational and Cultural Services.²⁸

²⁶ 20-A M.R.S.A., Section 6001.

²⁷ Family Educational Rights and Privacy Act of 1974 (PL 93-380), Amended by PL 93-568.

²⁸ Student Education Records, Department of Educational and Cultural Services.

2. Confidentiality of Student Records

Under federal and state law, schools cannot release²⁹ files on students except: to other educational agencies with a legitimate educational function; to school officials of other schools when a student transfers; to certain federal agencies and to other agencies in connection with a student's request for financial aid; when the parents or legal guardian authorize the release; or, when the information has been lawfully subpoenaed.

Not everything on paper in a school is considered a confidential "education record." Records kept by school personnel which are in their sole possession may not be made available to any other person.

²⁹ Family Educational Rights and Privacy Act of 1974, Amended by PL 93-568.

3. Amendment of Student Records

Parents or students at age 18 are entitled to a hearing to challenge the content of records and to request correction or deletion of any "inaccurate, misleading, or otherwise inappropriate data."

Rights granted to parent or legal guardian are given to the student at the age of 18 or when the student enrolls in a post-secondary institution. The parent or legal guardian of a student may not be denied access to the records as long as the student is dependent.

V. STUDENT EQUALITY: NON-DISCRIMINATION BY SEX,
RACE, LANGUAGE, AND HANDICAP

In recent years, profound changes have occurred affecting the rights of students through federal and state legislation. Discrimination is prohibited in the following areas:

1. Nondiscrimination by Sex

State Law ³⁰ prohibits discrimination in education on the basis of sex in public schools, colleges and private schools approved for tuition purposes. Regulations have been adopted and complaints may be filed with the Maine Human Rights Commission.

Among the prohibited practices are single sex classes, discrimination in counseling materials, sex-restrictive vocational education courses, or disciplinary rules which discriminate by sex.

Extracurricular activities must also be open to all students. The federal Title IX ³¹ provisions contain similar prohibitions pertaining to educational programs which receive federal funds.

³⁰ 5 M.R.S.A., Sections 4601-4604.

³¹ Title IX of the Education Amendments of 1972, Section 86.40.

2. Nondiscrimination By Race

The United States Supreme Court in *Brown vs. Board of Education* ³² held that separate schools for black and white students are inherently unequal and violate the equal protection clause of the Fourteenth Amendment.

³² *Brown vs. Board of Education*, 347 U.S. 483 (1954).

3. Nondiscrimination by Language

The Equal Education Opportunity Act³³ places the responsibility upon school units to address the language deficiencies of limited English proficiency students, as well as upon the state to inform local school units of this responsibility.

³³ Equal Education, 20 U.S.C., sec. 1703 (1974).

4. Nondiscrimination By Handicap

Regulations implementing the Federal Rehabilitation Act of 1973³⁴ state that students are eligible under Section 3504 to receive "a free appropriate public education" and be educated to "the maximum extent possible" with nonhandicapped students. This is also covered by the Maine Special Education Law.³⁵

³⁴ Civil Rights Act for the Handicapped, Section 504 of Rehabilitation Act (1973).

³⁵ 20-A M.R.S.A., Section 7201.

VI. PERSONAL STUDENT CONSIDERATIONS

1. Counselor Confidentiality

Maine law ³⁶ provides conditional privileged communication to school counselors. One of the unfortunate by products of today's complex society is the tendency for students to be confronted by personal and family problems of such a magnitude that the effect is a serious interference with the student's educational and personal development. Students should accept the responsibility for seeking assistance from the principal, school counselor, or a teacher before a problem affects his/her performance in school.

³⁶ 20-A M.R.S.A., Section 4008.

2. Eighteen Year Old Voting Privilege

The 26th Amendment to the United States Constitution reduced the minimum voting age to eighteen in local, state, and federal elections. While voting rights are only indirectly related to intraschool relations and activities, the 26th Amendment affects the responsibilities of all members of the school community. Students who have become old enough to vote have the same responsibilities as other citizens to exercise their voting rights and to become informed about issues and candidates.

VII. FIRST AMENDMENT RIGHTS

1. Freedom of Expression

The right of public school students to free speech and expression was affirmed by the Supreme Court of the United States in the landmark *Tinker*³⁷ decision, where the Court said:

"It can hardly be argued that students or teachers shed their constitutional right to freedom of speech or expression at the school house date. Students in school or out of school are 'persons' under the Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect the State. In our system, students may not be regarded as closed circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views."

This right of expression is qualified, however, by the Court's conclusion that "a student's conduct in class or out of class, which materially disrupts classwork or involves substantial disorder or invasion of the rights of others, is, of course, not immunized by the constitutional guarantee of freedom of speech." In other words, students have the right to express themselves unless such expression directly interferes with the educational process, threatens immediate harm to the welfare of the school or community, encourages unlawful activity, or interferes with another individual's rights. When a disturbance occurs, school officials may reasonably limit free expression, but may not impose arbitrary restrictions merely out of fear that a disruption may occur.

³⁷ *Tinker v Des Moines Community School District*, 393 U.S. 503 (1969).

Bulletin Boards - School officials may restrict the use of bulletin boards to school announcements and may make designated space on such bulletin boards available for the use of students and student organizations.

School officials may prohibit the posting of student material which is obscene, libelous, or incites students in such a way as to create a real disruption of the orderly operation of the school.

Student Publications - Official school publications such as school newspapers, the yearbook, etc. should reflect the policy and judgment of the student editors. Students have the responsibility to refrain from libel and obscenity, and to observe normal rules for responsible journalism. School officials have a responsibility to oversee and supervise official student publications. In this capacity, the administration may edit material which is obscene, libelous, or could cause a substantial disruption or material interference with school activities (as per Tinker), but may not censor or restrict material simply because it is critical of the school or its administration.

The constitutional right of free speech also guarantees the freedom of public school students to publish newspapers other than those sanctioned by the school. However, the school has no responsibility to assist students in the publishing of such newspapers, nor may the school be held responsible for any statements published in them. The fact that a staff member of such a paper is a student at a given school does not indicate that the paper is representative of that school. The newspaper staff members themselves have sole responsibility for any statements published.

Distribution of Literature - School authorities may regulate the time, manner, place, and duration for distributing literature on school grounds. They may regulate the content of literature to be distributed on school property only to the extent necessary to avoid material and substantial interference with the requirements of appropriate discipline in the operation of the school.³⁸

³⁸ Eisner v. Stamford Board of Education, 314 Fed. Supp. 832; modified, 440 Federal 2d. 803.

Student Speech - As discussed earlier, the First Amendment to the U.S. Constitution guarantees the right of freedom of speech to all Americans, including students. However, this constitutional guarantee does not grant license to interfere with the orderly conduct of classes, to coerce others to participate in a particular mode of expression, or to violate the rights of those who disagree with a given point of view.

Schools, by their very nature, encourage free inquiry and free expression of ideas. Such expression should include allowing students to express their personal opinions relative to the subject matter being taught, to school activities and policies, and to matters of broad social concern and interest. In so expressing themselves, students have a responsibility to refrain from the use of slanderous remarks or obscene language, and to conduct themselves in such a way as to allow others to express themselves freely, and without interruption, if they so desire. Since the law does not protect speech that is slanderous, it is important to have a general understanding of a

legal definition of slander- "... oral defamation; the speaking of false and malicious words concerning another whereby injury results to his or her reputation."³⁹

³⁹ Black's Law Dictionary 1559 (4th ed. 1968).

Symbolic Speech and Expression - The US Supreme Court has, in the Tinker⁴⁰ decision, upheld the right of students to wear or display buttons, armbands, flags, decals, or other badges of symbolic expression when the manner of expression does not materially intrude upon the orderly process of the school or the rights of others. Such badges of symbolic expression may not contain material which is obscene or libelous, or which advocates racial or religious prejudice.

In a number of cases since the Tinker decision, various courts have ruled that symbolic expression could not be restricted merely because the possibility of disruption existed, but have upheld such restrictions where evidence established that actual disruption existed. In the Butts⁴¹ case, the court addressed itself to a definition of an acceptable restriction:

"What more was required at least was a determination, based on fact, not intuition that the expected disruption would probably result from the exercise of the constitutional right and that foregoing such exercise would tend to make the expected disruption substantially less probable or less severe."

⁴⁰ Tinker v Des Moines Community School District, 393 U.S. 503 (1969)

⁴¹ Butts v Dallas Independent School District, 436 F 2nd 728, 731 (5th Circuit 1971).

Appearance - Considerable controversy has arisen in recent years concerning the right of school officials to control the dress and appearance of students. Legal challenges to the reasonableness and constitutionality of dress codes and policies regulating the length of hair regularly appeared on court dockets throughout the nation during the decade of the 1960's. Generally, the courts have held that school officials may not impose limitations on dress in which fashion or taste is the sole consideration even if a majority of students have approved the dress code. The rationale for such decisions is that the right of an adolescent minor to regulate his or her appearance, within the bounds and standards of common decency and modesty, is constitutionally protected.

Students do have a responsibility to refrain from styles of hair or dress which will disrupt the educational process or are a health or safety concern. Courts have been inclined to support reasonable appearance-related rules and policies which relate to a specific educational purpose - i.e. health, safety, or full participation in school activities - or which are designed to prevent interference with, or distractions to, the learning process.

It should be noted that the U.S. Supreme Court has thus far refused to hear any of the student "hair" cases brought to it, even though the decisions of the federal courts of appeal have been evenly divided as to the authority of school officials to govern hair length.

Flag Salute and Pledge of Allegiance - Maine law requires that both the state and national flags be displayed at every school while that school is open for instructional purposes and imposes a duty upon all teachers to "...impress upon the youth by suitable references and observances the significance of the flag..." and to "...teach them to love, honor, and

respect the flag of our country that cost so much and is so dear to every true American citizen."⁴² Thus, school officials are encouraged to and may legally provide for a flag salute and pledge of allegiance as a regular school exercise.

Students may, however, decline to recite the Pledge of Allegiance and may refrain from saluting the flag on the basis of personal belief or religious conviction.⁴³ Students who choose to refrain from such participation have the responsibility to respect the rights and interests of classmates who do wish to participate in this meaningful ceremony. As long as a student is not disruptive he or she cannot be required to participate in the pledge or to stand or leave the room during it.⁴⁴

⁴² 20 M.R.S.A., Section 802.

⁴³ West Virginia State Board of Education v Barnette, 319 U.S. 624 (1943).

⁴⁴ Goetz v Ansell, 477 f 2nd 636 (2nd Circuit 1973).

2. Freedom of Assembly

Along with guaranteeing citizens the right to freedom of speech, the First Amendment also guarantees the right to assemble peacefully. Students, therefore, have the right to assemble, to demonstrate and picket, to petition and to organize meetings on school grounds or in school buildings provided that the exercise of this right does not interfere with the rights and freedoms of other persons.

School officials have the right to restrict the timing and location of such activities, and may require advance notice and scheduling when necessary to avoid conflicts and to insure proper protection of the school community. School committees and school directors are authorized to regulate the use of school buildings and property provided that the use of such buildings "shall not be denied to any person solely because use is required for a political activity."⁴⁵ It is, therefore, recommended that local policies be adopted setting forth the procedures under which school facilities may be used by students and adult citizens.

⁴⁵ 20 M.R.S.A., Section 473.

3. Freedom of Religion

The U. S. Supreme Court has ruled that "general prayer or other religious activities used in public schools for the purpose of fostering religious beliefs is unconstitutional." Such rulings do not mean that the schools should be hostile toward religion, but that schools - as institutions of the State - must be "neutral" toward specific types of religion as well as to religious activity in general. Thus, students have the rights to observe or follow any religious belief,

or none at all, if they wish. Students, in turn, must allow the same freedom and respect to the rights of others.

Maine law allows a school committee to provide for the moral instruction of students and to provide limited "release time" opportunities for students to leave the school for the purpose of receiving such instruction at a place of worship.⁴⁶ Students who choose to remain in school during the period such instruction is given shall not receive any "educational advantage" over children receiving said instruction.

⁴⁶ Engel v Vitale, 370 U.S. 421 (1962); also Abington School District v Schempp, 374 U.S. 203 (1963).

VIII. FOURTH AMENDMENT RIGHTS

1. Search and Seizure

Students, as citizens, are protected by the Fourth Amendment from unreasonable search and seizure. The courts have generally held, however, that school lockers and desks are school property and are, therefore, subject to periodic administrative search. Blanket searches of every locker should not be undertaken except under unusual circumstances such as bomb threats.

The U.S. Supreme Court found in *New Jersey vs. T.L.O.*⁴⁷ that public school officials, acting alone and on their own authority, are not required to obtain a search warrant prior to conducting a search of a student. In addition, the Court reduced "the level of suspicion" required to justify the search of a student. The standard adopted by the Justices in *T.L.O.* allows "a teacher or other school official" to search a student when "there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school." Such a search is permissible when the "measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction. In finding the search "reasonable," the Court then chose to address only the question of the proper standard for assessing the legality of such searches when conducted by public-school officials. The reasonableness standard adopted by the court "should ensure that the interests of students will be invaded no more than is necessary to achieve the legitimate end of preserving order in the schools," the Justices stated in the majority opinion. The Court acknowledged in a foot note to its opinion that it was leaving open the

question, not addressed in this case, of whether a student has a legitimate expectation of privacy in lockers, desks, or other school property provided for the storage of school supplies.

A search of a student's person should be limited to a situation in which a school official has reasonable cause to believe that the student is concealing evidence of an illegal act, contraband or has violated a school rule. Such searches should be conducted in conditions affording some degree of privacy and in the presence of an adult witness. A "pat down" or strip search of a student's person should be done by a school official of the same sex and with an adult witness present.

⁴⁷ New Jersey vs. T.L.O., Case No. 83-712, January 15, 1985.

2. Police In The Schools

In our society, police have the responsibility to protect all citizens by enforcing the laws of the community and of the state. Police officers may visit the schools if a crime has been committed, if they have a warrant for arrest or search or if they have been invited by school officials. The police may search a student, or his locker, if they have a valid warrant to do so, or if they have "probable cause" to believe that the student is in possession of contraband.

Whenever the police are permitted to question a student in school, the student must be afforded the same rights they would have outside of the school including the presence of a parent or legal guardian. They must be informed of their legal rights, may remain silent if they so desire and must be protected from coercion and illegal restraint. Students also have the responsibility to cooperate with the police, within the framework of their legal rights.

APPENDIX

Additional Informational Resources: Maine

1. Local school principal, superintendent of schools, or school board.
2. Commissioner, Educational and Cultural Services, State House Station 23, Augusta, Maine 04333.
3. Department of Attorney General, State House, State House Station 6, Augusta, Maine 04333.
4. Maine School Management Association, 2 Central Plaza, Augusta, Maine 04330.
5. Maine Association of Student Councils, 11 Memorial Drive, Biddeford, Maine 04005.
6. Maine Civil Liberties Union, 97-A Exchange Street, Portland, Maine 04101.
7. Maine Human Rights Commission, Stevens Training Center, Hallowell, State House Station 51, Augusta, Maine 04333.
8. Maine Teachers Association, 35 Community Drive, Augusta, Maine 04330.
9. Maine Secondary School Principals Association, 15 Western Avenue, Augusta, Maine 04330.
10. Private legal counsel.

Additional Informational Resources: National

1. A National Guide for School Discipline Policy

School Discipline Policies and Procedures: A Practical Guide. This booklet was prepared by The National School Boards Association, Council of Attorneys, Copyright 1984. Contents of the brochure include: school discipline policies and procedures; policy development; general procedures for discipline cases; the hearing process; procedures for conducting a due process hearing; appeals to the superintendent and the board; special problems with respect to hearings; sample suspension policy; sample discipline policy; sample drug and alcohol policy; specimen letters, orders, and outlines on conducting hearings. The booklet may be obtained by contacting NSBA, 1055 Thomas Jefferson Street, N.W., Washington, D.C. 20007. Cost: \$10.00

2. National Professional Organizations

American Association of School Administrators
1801 North Moore Street
Arlington, VA 22209

American Federation of Teachers
11 Dupont Circle, N.W.
Washington, D.C. 20036

American Library Association
50 East Huron Street
Chicago, IL 60611

American Association of Counseling Development
5999 Stevenson Avenue
Alexandria, VA 22304

Association for Children with Learning
Disabilities
4156 Library Road
Pittsburgh, PA 15234

Association of Teacher Educators
1701 K Street, N.W.
Washington, D.C. 20006

Council for Exceptional Children
1920 Association Drive
Reston, VA 22091

National Association of Elementary School
Principals
1801 North Moore Street
Arlington, VA 22209

National Association of Pupil Personnel
Administrators
225 North Washington Street
Alexandria, VA 22314

National Association of Secondary School
Principals
1904 Association Drive
Reston, VA 22091

National Education Association
1201 - 16th Street, N.W.
Washington, D.C. 20036

National Middle School Association
Box 986
Fairborn, OH 45324

National School Board Association
1055 Thomas Jefferson Street, N.W.
Washington, D.C. 20009