

# MAINE STATE LEGISLATURE

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**Date:** February 2, 2020

**Source of Report:** LD 1010: Resolve, Directing the Department of Education to Review Existing Disciplinary Laws

**Topic:** Review of Existing Laws Regarding Disciplinary Policies

### **Context**

The Maine Department of Education reviewed existing laws in the context of recent and emerging research regarding discipline policies and developed a model discipline policy that encourages the use of positive, educational, and restorative disciplinary interventions per the Maine Revised Statutes, Title 20-A, section 1001, subsection 15-A. Information in this report was developed with additional input from education leaders and experts in restorative disciplinary interventions. The context is additionally informed by stated concerns from advocacy groups and cross-departmental initiatives and efforts, including the Children’s Cabinet and the Opioid Prevention Task Force, regarding exclusionary discipline practices such as suspension and expulsion. The Department is aware of a variety of publications in recent years articulating concerns around Maine’s very high Pre-K expulsion rate, which was reported to MPBN and Bangor Daily News as being the worst in the nation. (Upon researching this claim, the Department’s team members were able to trace these reports back to an assertion attributed to a Yale study in 2005 that claimed that Maine’s Pre-K programs expelled children at 21 times the rate that Maine’s public K-12 system did. The link to the Yale study is no longer active.)

Private Pre-K programs do not report student discipline data to the Department. As a result, it is impossible to discern which programs may be responsible for Maine’s reputation for expelling Pre-K students at a high rate, but it appears that the public schools are not expelling Pre-K students.

Educators, counselors, and school administrators are observing a dramatic increase in challenging behaviors, emotional dysregulation, and mental illness in students in recent years. During the past year, most requests to the Department for training and technical assistance have been related to this growing challenge. The fact gathering, analysis, and recommendations in this report are therefore further informed by our recent work with stakeholders on topics related to trauma informed practices, as school discipline cannot be appropriately considered in a vacuum – it is an integral component of multitiered systems of support representing the far end of a continuum of supports and interventions beginning with universal preventative measures, targeted interventions, and educational/restorative responses.

## **Actions**

Page Nichols, Chief Innovation Officer; Gayle Erdheim, Team Leader, Integrated School and Student Supports; Richard Meserve, Director, Office of School and Student Support; and Bear Shea, Mental Health and School Counseling Specialist; reviewed The Maine Compilation of School Discipline Laws and Regulations and the 2019-2020 Maine Education and School Statutes, a wide sample of existing School Disciplinary Policies throughout the State, and most recent and historical data on school discipline incidents. The team also reviewed notes and findings from recent stakeholder workgroups on a variety of related topics and identified several themes and priority areas for further research.

The team examined the Department's student data to identify patterns and verify some of the key assertions and concerns that have been expressed by advocacy groups and/or have been covered by the media in recent years. They reviewed research on the developing brain and the cognitive neuroscience to better understand underlying behavior, self-regulation, decision making, motivation, and stage-based change. They compared this information with traditional (punitive) disciplinary practices and examined reports on both short and long-term outcomes. They also used the Civil Rights Data Collection online resource to examine the potential for disparity when it comes to exclusionary discipline and minority student groups, low socioeconomic student groups, and students with disabilities.

The team then drafted a clear, simple model discipline policy that could be customized as necessary for a variety of school settings, recognizing that the diverse demographic, geographic, and socioeconomic conditions and resources vary widely across our state. In other recent workgroups on related topics, findings have demonstrated that too prescriptive or restrictive a policy can have unintended consequences in the actual implementation of programs and services. That said, the team recognizes that additional guidance will be helpful as districts engage in an evolution of their discipline policies, therefore will be compiling a list of best practices (along with links to free resources) and will be offering trainings in Restorative Justice School disciplinary practices with the roll-out of the model policy.

## **Findings**

- Maine laws regarding school discipline policies allow the use of alternative discipline and indicate strong support for positive interventions and restorative practices (including, but not limited to: social emotional programming for the improved development of student self-awareness, self-management, social awareness, and responsible decision making.) (Title 20-A, section 1001, subsection 15-A; Title 20-A, section 6554, subsection G; Title 20-A, section, subsection 2-C and 2-D).
- Educators and school administrators in the Bullying Prevention Task Force reported that the complicated and prescriptive nature of the state's bullying laws (and auxiliary, required, processes and responses) have created unintended consequences of confusion and possible under-reporting due to, what is, an unreasonable burden of redundant procedures and administrative tasks. Recommendations from this work, so far, include a simplification of procedural requirements in order to increase the effectiveness of that policy.
- The findings and recommendations of the Trauma Informed Practices Task Force (LD 1186) support a need for Social/Emotional curricula in all schools, Trauma Informed professional development opportunities (including educator understanding of neuro-

development shifts in brain chemistry during distress, de-escalation strategies with co-regulation and restorative practices specific to building student empathy and compassion for behaviors exhibited) and other positive, preventative disciplinary interventions to reduce the use of exclusionary discipline in schools.

- Substance use policies exist both within and outside of school discipline policies, and, guidance is often in conflict and not reflective of best practices in treatment of substance use disorder.
- In 2018, over 90% of substance use incidents reported resulted in out of school suspension.
- In an examination of nearly 10 years of student data from Maine's SAU's, the team discovered that 0 Pre-K students were expelled from Maine's local, public Pre-K programs in the past decade. The Department recognizes, however, that private Pre-K programs do not enter data into the Department's student information system.
- A total of eight (8) students in Maine's public K-5 classrooms were expelled between 2010 and 2019.
- Research links suspension to failure to graduate.
- Punitive or retributive school disciplinary practices have the following consequences:
  - Research suggests that withholding recess as a punishment for poor behavior in school may be ineffective and likely increases subsequent incidents of poor behavior. However, a structured recess that incorporates outdoor time, fun, and exercise along with educational or restorative components can yield better results. (Children often have vastly different needs in terms of self-regulation, and may benefit from more structure and less unstructured time. This doesn't have to mean staying indoors or staying seated, however).
  - In general, suspensions and other exclusionary discipline practices are ineffective in changing behaviors and usually behavior worsens after suspension.
- Restorative school disciplinary commonly reported difficulties in implementation:
  - Restorative practices require staff training and flexible scheduling.
  - Restorative practices are most successful when embedded in the entire culture of the school.

### **Recommendations**

- Maine should set a statewide goal of reducing exclusionary discipline.
- The Department of Education will provide information, guidance, professional development, and technical support for schools who wish to implement Restorative Disciplinary Practices.
- School Discipline should be considered an educational and restorative part of a continuum that includes universal preventative measures, targeted interventions, and educational responses.
- In order to effectuate the Maine Revised Statutes, Title 20-A, section 1001, subsection 15-A, The Department of Education recommends that school boards review and update their policies to reflect the language in Title 20-A, section 1001, subsection 15-A.
- The Department of Education will develop an open-source Social Emotional Learning (SEL) curriculum and will develop training and technical assistance in implementation for all educators PreK-12<sup>th</sup> grade.

- When possible, schools should build time into the academic day to embed SEL curricula and opportunities for creating safe, connected classroom environments for sustained optimal learning.
- Expand when talking about restorative discipline to include trauma-informed practices including SEL, preventative safety, trauma-informed mental health therapy and intervention and Cultural/Family Engagement.
- Create guidance for School Resource Officer certification training through the Department of Education’s Safety Team.
- Substance use policies should be reviewed and amended to parallel the Maine Revised Statutes, Title 20-A, section 1001, subsection 15-A to include appropriate, restorative aspects of school discipline policies and treatment options.

### **References**

Maine Revised Statutes Title 20-A §1001. Duties of school boards 15-A School Discipline Policies  
<https://www.mainelegislature.org/legis/statutes/20-A/title20-Asec1001.html>

Maine Revised Statutes Title 20-A §6554. Prohibition on bullying in public schools  
<http://www.mainelegislature.org/legis/statutes/20-a/title20-Asec6554.html>

Two Billion Dollars Later: States Begin to Regulate School Resource Officers in the Nation’s Schools A Survey of State Laws, *Strategies for Youth* 2019

United States Department of Education/Safe Supportive Learning. *Maine Compilation of School Discipline Laws and Regulations* 2019

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## STUDENT DISCIPLINE

It is essential for schools to maintain a safe school environment that supports student learning and achievement. Behavioral expectations and school disciplinary practices shall include instructional and environmental supports that teach positive social skills and alternatives to interfering behaviors. Disciplinary action may apply if a student violates policies, rules, or laws, or if student conduct directly interferes with the operations or general welfare of the school.

The Board expects the following principles to guide the development and implementation of school rules and disciplinary procedures:

- A. Behavioral expectations should be clearly communicated and easily accessible to staff, students, and families, and should be positively reinforced through universal (schoolwide) supports.
- B. Teachers are authorized to develop and enforce rules for effective classroom management, and to foster safe, respectful student behavior.
- C. School discipline should have an educational and restorative purpose, providing tiered interventions and consequences that are meaningful, fair, and proportional with respect to the behavior and the developmental capabilities of the students.
- D. Exclusionary consequences that remove a student from the regular learning environment, (out-of-school suspensions) should be used only in extreme cases and only when other available interventions and options have been exhausted. Exclusionary discipline measures shall be overseen by the building administrator (or designee) in accordance with administrative procedures and laws.
- E. In making decisions regarding exclusionary discipline, school administrators should consider and seek to address multiple factors which may be outside of the student's control and which may have contributed to the problem behavior. Examples of such factors include disability, mental illness, current or past trauma, domestic violence, homelessness, substance use disorder, age and/or ability to understand consequences.
- F. Administrators shall have the discretion to tailor disciplinary interventions as warranted by the facts and circumstances of each case.
- G. Physical force and corporal punishment shall not be used as disciplinary measures. Restraints and seclusions, as defined in rule Chapter 33, shall not be used as any part of the discipline protocol and shall not be used as a punitive response to student behavior.
- H. Discipline for students with disabilities is subject to IDEA.
- I. All disciplinary practices shall avoid discriminatory and/or disproportionate consequences of students based on race, gender, sexual orientation, or other characteristics, and schools shall regularly examine discipline data for disproportionate impact on these student groups and to identify practices that have a positive effect on student outcomes.

Legal Reference:     20-A MRSA § 1001 (9-B)  
                          20-A MRSA § 1001(15-A)  
                          Chapter 33: *Rule Governing Restraint and Seclusion*