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A STUDY OF LAWS IN OTHER STATES THAT PERMIT THE DISSEMINATION OF CONFIDENTIAL INFORMATION PERTAINING TO TEACHER CERTIFICATION

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Principal authors:
Phillip D. McCarthy, Ed.D., Legislative Analyst
Carolyn Russo, Esq., Legislative Analyst
Darlene Shores Lynch, Senior Legislative Researcher

Office of Policy and Legal Analysis
Maine State Legislature
215 Cross Office Building
Augusta, ME 04333
13 State House Station
Augusta, ME 04333
Phone: (207) 287-1670
Fax: (207) 287-1275
http://www.legislature.maine.gov.

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Executive Summary

Public Law 2007, chapter 666, "An Act to Amend Teacher Confidentiality Laws," directed the Office of Policy and Legal Analysis, upon the approval of the Legislative Council, to conduct a study to review the laws in Maine and other states that permit the dissemination of confidential information pertaining to teacher certification. The key elements of this review are: (1) summarizing other state laws on the dissemination of confidential information related to disciplinary actions that are contained in teacher certification records; (2) identifying comparable professions and analyzing Maine law on confidentiality of licensure information; and (3) reviewing Maine law on reporting suspected child abuse or neglect to identify any conflict with the confidentiality provisions of teacher certification laws. This report, including the findings and suggested issues for further consideration, is submitted to the Joint Standing Committee on Education and Cultural Affairs as required by the authorizing legislation.

Background

The background section of this report provides an overview of the confidentiality provisions in current Maine law pertaining to teacher certification and teacher employment records, including statutory provisions concerning the use of the criminal history record information obtained to screen applicants for teacher certification and statutes related to the confidentiality of information contained in teachers' employment records. A summary of Maine case law with respect to the confidentiality of information related to teacher certification and employment is also presented.

In order to compare teacher confidentiality laws in other states to Maine law, the office collected data from state certification officials affiliated with the National Association of State Directors of Teacher Certification ("NASDTEC"), from legislative staff in other states affiliated with the National Conference of State Legislatures ("NCSL"), and from the Education Commission of the States ("ECS").

This report includes an analysis of how Maine law treats the confidentiality of licensure information for professional occupations that are comparable to teachers. For the purposes of this study, "comparable professions" were considered to be positions that are subject to state licensure, are subject to criminal history checks, require at least a baccalaureate degree, and that work with children or youth. Although a number of professions fit those criteria to varying degrees, the following categories of professional occupations were found to be most similar to teachers and are therefore reviewed in more detail in this study: (1) professional service providers -- such as psychologists, counselors, and social workers -- who are regulated by licensing boards with the support of the Department of Professional and Financial Regulation ("DPFR"); (2) medical professionals whose licensure is governed by the Maine Health Security Act; and (3) licensed childcare directors or head teachers who are regulated by the Department of Health and Human Services ("DHHS").

This report also reviews Maine law to identify conflicts between the "mandatory reporting" requirements in cases of suspected child abuse or neglect with the statutory provisions established for teacher criminal history record checks.

Findings and Issues for Further Consideration

The office found that states can generally be placed into three categories with respect to the degree to which their state laws permit public access to teacher discipline records: (1) "Restricted Access" States – including Maine, there are a 12 states that impose strict prohibitions on the dissemination of teacher certification information and educator discipline records; (2) "Partial Access" States – 26 states prohibit the dissemination of teacher certification information and educator discipline records under certain conditions, yet provide access to particular records in other circumstances; and (3) "Full Access" States – 12 states have so-called "open records" laws that permit extensive dissemination of teacher certification information and educator discipline records.

Even though the comparable Maine professions were chosen due to similarities with respect to employment prerequisites and duties, the office found there is little uniformity in regulatory practices and review. Rather there is disparity between the means of oversight and the dissemination of disciplinary information.

Our analysis found that the provisions of Maine law pertaining to the protections for children "at school" codified in Title 20-A and those established in Title 22 to provide protection of children "at home" have distinct rationales and appear to be complementary to provisions that are appropriate for the different targeted constituencies and divergent purposes of these laws.

Finally, the office suggests certain policy and legal issues for further consideration by the joint standing committee of the 124th legislature having jurisdiction over education and cultural affairs issues. These issues are referenced below and are discussed in more detail in the body of this report:

1. Whether an appropriate balance currently exists between the interests of public disclosure of teacher employment / certification information and the interests of an individual's rights to privacy;

2. The compilation of teacher certification information that is in the custody of the Maine Department of Education, particularly the practice of combining records that contain information that may be disclosed to the public with records that contain information that may not be disclosed to the public;

3. The efficacy of requiring local school units to report disciplinary actions and dismissals of teachers to the State;

4. The status of the Professional Educator Standards Board, (enacted in 2005), and whether there is an appropriate role for this advisory board in addressing the disclosure of teacher employment and certification information;

5. The efficacy of the national and state criminal history record check requirements for teachers as compared to screening provisions in the state licensure requirements established for other professions in Maine;

6. The advisability of providing a disclosure notice on the teacher certification application to inform applicants that the Maine Department of Education may use their name, social security number, and date of birth to access information from the NASDTEC clearinghouse on teacher discipline;

7. The advisability of using the regulatory structures of comparable professions in further examining the state and local regulatory structures for teacher certification and employment; and

8. The appropriate role of national professional associations, particularly the use of codes of professional ethics and national disciplinary record systems, in regulating the teaching profession.

I. INTRODUCTION

Section 2 of Public Law 2007, chapter 666, "An Act to Amend Teacher Confidentiality Laws," directed the Office of Policy and Legal Analysis ("the office"), upon the approval of the Legislative Council, to conduct a study to review the laws in Maine and other states that permit the dissemination of confidential information pertaining to teacher certification. Section 1 of the law amends Title 20-A, section 13004, subsection 2-A to require the Department of Education ("DOE") to report all disciplinary action taken by the Commissioner of Education -- which is not under appeal or still subject to appeal -- against a holder of a teaching certificate to the National Association of State Directors of Teacher Education and Certification ("NASDTEC") within 30 days of the disciplinary action. Section 1 of the law also reaffirms that complaints, charges or accusations made and investigated pursuant to the revocation or suspension of a teaching certificate are designated as confidential information and prohibits the DOE from reporting anything but the resulting disciplinary action, (i.e., denials, revocations, suspensions, surrenders and reinstatements of teacher certification), to the NASDTEC. A copy of Public Law 2007, chapter 666 is attached as **Appendix A**.

Public Law 2007, chapter 666 ultimately enacted the statutory changes proposed in LD 2291, which was a Governor's Bill that was referred to the Joint Standing Committee on Education and Cultural Affairs ("Education Committee") on April 1, 2008 during the final weeks of the First Special Session of the 123rd Legislature. Legislators proposed several amendments to bill. The minority report of the Education Committee, as well as floor amendments considered in the Senate and the House, proposed to expand the authority of the Commissioner of Education to disseminate (otherwise) confidential teacher certification information. The House and Senate versions of the bill ended up in non-concurrence before the bodies agreed to a Committee of Conference. After consideration of the proposed initiatives in the several amendments to the bill resulted in a series of divided votes, the Committee of Conference finally issued a unanimous report to the Senate in the form of a Committee of Conference amendment.

The Committee of Conference amendment to LD 2291 included the statutory changes that were proposed in the original bill and endorsed by a majority of the Education Committee, (please see Section 1 of the law described above). To permit further consideration of the unresolved policy initiatives that were proposed in the several amendment considered by the Legislature related to the authority of the Commissioner of Education to disseminate (otherwise) confidential teacher certification information, the Committee of Conference amendment also included an unallocated section of law, (please see Section 2 of the law described above), directing that OPLA study the laws in Maine and other states that permit the dissemination of confidential information pertaining to teacher certification.

In testimony before the Education Committee, the DOE Commissioner asserted that the provisions in LD 2291 balanced the need to protect students in other states with the need to protect the privacy of Maine teachers. The DOE noted that all other states provide teacher certification information to the NASDTEC national clearinghouse on teacher discipline and advocated that permitting basic information to be reported to teacher certification officials in other states would provide "reciprocity" for other states and promote our common public policy

interests. The Education Committee considered the following issues during its work sessions on the LD 2291:

- The relative merits of limiting what information can be reported to the NASDTEC clearinghouse related to the "*results*" of a criminal history record check or any disciplinary action, (e.g., revocation, suspension or denial of a teaching certificate), versus specifying the "*reason*" or grounds for the sanction;

- The implications for the educational personnel screening provisions in Title 20-A, section 6103, subsection 3 which provide that any information obtained through the criminal history record check is confidential and may not be disseminated outside of the DOE; and

- The implications for employment records of school personnel in Title 20-A, section 6101 which speak to local school unit requirements for maintaining a "record of directory information" for school employees, including what employee and applicant information is confidential and what information is available for public inspection.

Scope of the OPLA Study

Following its review and approval of the work plan developed by OPLA staff in June 2008, the Legislative Council directed OPLA to undertake this study. The key elements of this review included: (1) summarizing other state laws on the dissemination of confidential teacher certification information related to disciplinary actions that are contained in teacher certification records; (2) identifying comparable professions and analyzing Maine law on confidentiality of licensure information; and (3) reviewing Maine law on reporting suspected child abuse or neglect to identify any conflict with confidentiality provisions of teacher certification laws.

The office made inquiries with the DOE Certification Office, the NASDTEC, the Maine State Police, the Department of Professional and Financial Regulation ("DPFR"), the National Conference of State Legislatures ("NCSL"), the Education Commission of the States ("ECS"), and the Maine State Law & Legislative Reference Library. A full list of individuals and entities that served as resources or provided information for this study is attached as **Appendix B**.

The office also communicated with the DOE Certification Office and the Executive Director of the NASDTEC clearinghouse on teacher discipline to request assistance in identifying and accessing statutes and rules from other states regarding the dissemination of (otherwise) confidential information pertaining to applicants for teacher certification or recertification. The NASDTEC Clearinghouse is a database of disciplinary actions taken by the NASDTEC member states. Member states routinely report disciplinary actions taken against the certificate or license of professional educators; and NASDTEC organizes monthly reports that member states can use to conduct background checks in screening applicants for teacher certification or professional educator licensure in their states.

Maine law designates information received by the Commissioner of Education for the purpose of screening applicants for a teaching certificate as "confidential" and – except for

reporting denials, revocations, suspensions, surrenders and reinstatements of certification to the NASDTEC clearinghouse on teacher discipline – prohibits the further dissemination of this information outside of the department. NASDTEC members, legislative staff, and policy analysts in other states were asked to respond to the following questions regarding the dissemination of such information pertaining to teacher certification:

1. Please indicate the applicant information pertaining to disciplinary actions for initial or renewal of a teaching certificate that is authorized to be disseminated and to whom this information is available; and

2. Please provide the statutory citations or links (if available online) to your state laws, including statutes and related rules, regarding the dissemination of confidential information pertaining to applicants for teacher certification.

The second key element of this study was to analyze the confidentiality provisions established for comparable professions in Maine. The office identified several professions that were reasonably comparable to teachers and considered Maine law related to the confidentiality of licensure information for these professions.

The third key element of our review was to identify any conflicts in the following provisions of Maine law: (1) the Title 22, section 4011-A requirements that certain persons, when acting in a professional capacity, are mandated to report suspected child abuse or neglect to the Department of Health and Human Services ("DHHS"); and (2) the Title 20-A, section 6103 confidentiality requirements placed on criminal history record check information received by the Commissioner of Education.

Three clarifications concerning the methodology used in this study are in order. First, our examination of the confidentiality provisions in Maine law and the laws in other states focused on information and records associated with teacher certification. OPLA staff recognizes that the use of the term "certification" in Maine education statutes pertains not only to the certification of teachers, but also applies to the certification of other professional educational personnel – including school administrators, (such as superintendents and principals), and education specialists, (for example, school counselors, school nurses, and library media specialists). However, in reviewing laws in Maine and other states, the office did not examine whether or not there was any distinction between the confidentiality provisions established for teacher certification as compared to the certification of other professional educational personnel.

Secondly, the primary source of state law used to compare teacher confidentiality statutes in other states to Maine statutes included survey responses from state certification officials affiliated with the NASDTEC, state legislative staff affiliated with the legislative education staff network coordinated by the NCSL and the ECS, and education policy researcher staff at the NCSL and the ECS. We received useful information from respondents for 29 states. For the other 21 states where information was not provided or where the information provided was inconclusive, OPLA staff researched the respective state statutes and compiled the relevant

information. The office also subscribed to the NASDTEC Knowledge Base and downloaded state information that NASDTEC members provide to the clearinghouse on educator discipline.

Finally, once the draft report was completed and reviewed internally by OPLA staff, a "technical review" copy of the draft report was sent to the respondents affiliated with the NASDTEC, the legislative education staff network, the NCSL, and the ECS. We asked respondents to review the information they provided to insure that any information included in the report that was provided by the respondents was presented accurately.

The office submits this report, including the findings, and suggested issues for further consideration to the Joint Standing Committee on Education and Cultural Affairs as required by Section 2 of Public Law 2007, chapter 666. The following sections of the report summarize the background, findings and suggested policy issues for further consideration.

II. BACKGROUND

Maine Teacher Confidentiality Laws

Maine statutes designate certain school employee records as confidential.[1] These statutes are implemented by the Maine DOE and expressed in the department rules.[2] Title 20-A § 6101 of the Maine Revised Statutes addresses school employee records maintained by individual school administrative units. The following employee records are confidential to all but the Commissioner of Education, who may review these records in the context of fulfilling his or her duties with respect to state certification and school approval statutes:

- All information, working papers and examinations used in the examination or evaluation for employment;
- Medical information (including psychological or emotional disorders);
- Performance evaluations, personal references and other reports and evaluations reflecting on the quality or adequacy of employee's work or general character compiled and maintained for employment purposes;
- Credit information;
- Personal history, general character or conduct of employee or member of employee's immediate family;
- Complaints, charges of misconduct, replies to complaints and charges of misconduct and memoranda and other materials pertaining to disciplinary action;
- Social Security number;
- Teacher action plan and support system documents and reports maintained for certification purposes; and
- Criminal history record information.[3]

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[1] *See 20-A M.R.S.A. §§6101, 6103, and 13004.*
[2] *See Me. Dept. of Educ. 05 071 CMR 115.*
[3] *See 20-A M.R.S.A. §6101(2)(B).*

The remaining employee records, open to the public, are as follows:

- Name;
- Dates of employment;
- Extracurricular activities;
- Courses taught;
- Post-secondary education;
- Majors and minors of study and the degrees and dates awarded, and
- Any written record of decisions involving disciplinary action taken by the governing body of the school administrative unit.[4]

Title 20-A M.R.S.A. §13004 explains the Commissioner's duties for certification and registration of teachers. It deals with persons certified, record confidentiality, cost for duplicating records, and rulemaking authority. It states that the following information obtained by the department in the course of the teacher certification process is "confidential":

- Transcripts, recommendations and other documents submitted in support of an application for certification or collected by the department for verification of certification, (these records may only be made available to: (1) school boards and superintendents, (2) authorized personnel of the department, and (3) individuals and their representatives who request to examine their own records);
- Complaints, charges, or accusations made and investigated pursuant to revocation or suspension of a certificate, replies to those complaints, charges or accusations, and any other information or materials that may result in action to deny, revoke or suspend certification; and
- Teacher addresses, (these records may be made available in response to a formal request from a commissioner or other executive officer of a state agency or judiciary or by a formal request by a majority vote of any joint standing committee when access to information is necessary to carrying out an official function).[5]

Information not designated as "confidential" includes:

- The list of certified teachers;
- Any charges or information filed by the Commissioner with the District Court in support of a petition to revoke or suspend certification; and
- Denials, revocations, suspensions, surrenders and reinstatements of certification that are not under appeal or still subject to appeal to national association of state directors of teachers education and certification within 30 days of the action.[6]

A compilation of the confidentiality provisions included in Maine statutes and rules related to the employment and certification of Maine teachers is attached as **Appendix C**.

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[4] *See 20-A M.R.S.A. §1601(1)(A-F) and (2)(C).*
[5] *See 20-A M.R.S.A. §§13004(2), (2-A), and (2-B).*
[6] *See 20-A M.R.S.A. §§ 13004(1) and (2-A).*

Criminal History Record Check

M.R.S.A. Title 20-A §6103 outlines procedures for obtaining and using criminal history background checks for school employees. It gives the Commissioner the authority to obtain both state and national criminal history record information for any person applying for certification, authorization, approval or renewal.[7] This aspect of the certification procedure first became codified in 1995 having an effective date of 1999, (the effective date was later moved to 2000).[8] Since that time it has been revised, edited, and updated many times. Criminal history record information is used by the Commissioner in order to screen educational personnel applicants.[9] The information obtained may not be disseminated outside the Department.[10]

Maine Case Law

The office reviewed Maine case law involving the employment of teachers and confidentiality to assess whether issues have been raised and addressed by the courts that should inform the findings of this study. In the majority of these cases, plaintiffs used the Freedom of Access Act ("FOAA") in their attempt to access otherwise confidential information.[11] The office did not find any cases that appear to raise and address issues critical to this study. There are two cases, however, that deserve brief mention because of their tangential relevance to the issues of this study.

In *Cyr v. Madawaska School Dept.* a majority of the Maine Law Court (4-3) found the information gathered by an attorney hired by the Madawaska School Department to investigate the role the administration, school committee, and others had in a decision not to nominate a probationary teacher for re-employment fell under the confidentiality provisions of 20-A M.R.S. §6101(2)(B)(5). The majority found this information related to "the personal history, general character or conduct of the employee," and thus was not subject to disclosure.[12] The majority noted: "This subsection's directive is clear: to protect school employees from the public disclosure of their or their family's, general character, conduct, or personal history."[13] The minority of the court was not persuaded and felt such information is a matter of public record because it was not the sort of record an agency usually regards as an employee record or is usually kept by an agency as an employee record.[14]

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[7] *See 20-A M.R.S.A. §6103(1) & (5).*
[8] *Laws 1999, c. 35, §1.*
[9] *See 20-A M.R.S.A. §6103(7).*
[10] *See 20-A M.R.S.A. §6103(3).*
[11] The Maine Law Court has heard a number of cases involving the employment of teachers, confidentiality, and FOAA; most of these have involved disputes between an individual and a school board, district, or committee but do not appear to have particular relevance to the topic of this study. *See Cyr v.Madawaska School Dept., 2007 ME 28, 916 A.2d 967; Lewiston Daily Sun v. School Administrative Dist. No. 43, 1999 ME 143, 738 A.2d 1239; Cook v. Lisbon School Committee, 682 A.2d 672 (Me. 1996); Palmer v. Portland School Committee, 652 A.2d 86 (Me. 1995); and Marxsen v. Board of Directors, M.S.A.D. No. 5, 591 A.2d 867 (Me. 1991).*
[12] *20-A M.R.S.A. §6101(2)(B)(5).*
[13] *Cyr v. Madawaska School Dept. 2007 ME 28, ¶10, 916 A.2d 967 at 970.*
[14] *Id., ¶17, 916 A.2d 967 at 972.*

In other words, the Court is in agreement that employee records used for employment or continuing employment practices are protected. Although this case did not deal directly with the certification process, a correlation can be drawn. Information obtained for certification, authorization, and approval is for initial and continuing employment purposes. The information may be held outside the employee's workplace personnel file, can come from an outside source, is gathered by the agency that determines the employee's employment status, and is generally regarded as an employment record.

In *Littlefield v. Walsh,* the Maine Superior Court held that a teacher's constitutional due process rights were violated when the DHHS conducted only a "paper review" of its determination that the teacher was an abuser of her child, since that determination directly put at risk the teacher's certification.[15] The Maine Department of Health and Human Services maintains a database called MACWIS, or Maine Automated Child Welfare Information System, which lists persons whom the DHHS has "substantiated" as abusers of children. Substantiation of child abuse or neglect gives the DHHS the authority and duty to intervene in a family in order to protect the child(ren), provide services to reduce and/or eliminate the abuse and neglect, and to request that a court remove the child from the home when it believes there may be immediate risk of serious harm.[16] Maine's Department of Education has mandatory access to the DHHS list of substantiated persons[17] and uses this information in determining a person's eligibility to be certified as a teacher. Grounds for revocation, suspension, denial, and nonrenewal of teacher certificates, authorizations, and approvals include evidence "that a holder has injured the health or welfare of a child through physical, or sexual abuse or exploitation" and for "[C]onduct evidencing a negligent disregard for the mental or physical health, safety, or welfare of children or that creates a substantial risk of injury as a result of physical or sexual abuse or exploitation."[18]

The court found that the plaintiff's due process protections were violated because the plaintiff was told she had no further recourse or appeal after the DHHS held an internal "paper review" and upheld the substantiation. (These procedures have since been amended and create a right to a full hearing upon a timely request.)[19] The court held that the plaintiff's risk of loss or denial of employment and/or government license through the substantiation process required that that process provide the plaintiff adequate due process; the internal "paper review" of its determination was insufficient.

It is interesting to note in the context of this study that the disclosure of information in the DHHS' records to the Commission of Education is mandatory. This disclosure of information is used in the certification process in order to protect children from potential harm and to protect the integrity of the certification process. The plaintiff did not have a protected interest in this

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[15] See *Littlefield v. Walsh*, 2005 WL 2723338 (Me.Super.).
[16] *See 22 MRSA § 4003.*
[17] *See 22 MRSA §4008(3)(F).*
[18] *See Me. Dept. of Educ. 05 071 CMR 115, §§14.1(A) and 14.1(D)(2).*
[19] *See Me. Dep't of Hum. Serv., 10 148 CMR 20.1.*

disclosure, per se, but because of it, the plaintiff did have a protected interest in the process and decision of substantiation by the DHHS.

III. FINDINGS

This section of the report presents findings related to the key elements of the OPLA review included in Section 2 of Public Law 2007, chapter 666. These duties were to: (1) summarizing other state laws on the dissemination of confidential information related to disciplinary actions that are contained in teacher certification records; (2) analyze the Maine law on the confidentiality of licensure information for comparable professions; and (3) review of the Maine law on reporting suspected child abuse or neglect.

Summary of Other State Laws on Dissemination of Teacher Certification Information

Public Law 2007, chapter 666 directed the OPLA to conduct an analysis and provide a summary of other state laws pertaining to the dissemination of (otherwise) confidential information maintained by state education certification officials regarding teacher certification. The primary focus of this review involves information that is in the custody of state officials, including records related to any disciplinary action taken against a teacher following an investigation of a complaint or allegation filed against an applicant for an initial teacher certificate or for renewal of a teaching certificate.

As described earlier in this report, the office contacted the NASDTEC clearinghouse on teacher discipline, the National Conference of State Legislatures (NCSL), and the Education Commission of the States (ECS) to request assistance in identifying and accessing statutes and rules from other states. NASDTEC maintains a national database of disciplinary actions taken by state certification officials in all 50 states and other jurisdictions. Member states routinely report disciplinary actions taken against the holders of teaching certificates and NASDTEC organizes monthly reports that states can use to conduct background checks in screening applicants for teacher certification in their states. The NCSL and the ECS also maintain databases related to state education laws and policies issues.

With the enactment of Public Law 2007, chapter 666, Maine law now authorizes the Commissioner of Education to report denials, revocations, suspensions, surrenders and reinstatements of certification to the NASDTEC Clearinghouse on teacher discipline. The Commissioner may only report the disciplinary action taken against a certificate holder, but not the grounds for that action or any other "confidential" information received by the DOE for the purpose of screening applicants for a teaching certificate. In order to compare other states laws to Maine law, our analysis is limited to: (1) the extent to which other states permit public access to the discipline records of certified teachers; and (2) if public access is limited in some way, who has access to (otherwise) confidential information pertaining to teacher certification. The following sections summarize our analysis of other the laws in other state. A table containing the responses from our research of the 50 states is attached as **Appendix D**.

The following analysis lists the states that fall into one of three categories, depending on the extent to which their state laws permit public access to teacher discipline records: (1) "Restricted Access" States; (2) "Partial Access" States; and (3) "Full Access" States. This summary includes examples of state requirements related to public inspection or disclosure.

"Restricted Access" States. Including Maine, there are 12 states that impose strict prohibitions on the dissemination of teacher certification information and educator discipline records. These states restrict access to certification information and discipline records maintained by a state agency. The statutory restrictions in the bulk of these states – Delaware, Hawaii, Mississippi, New Jersey, North Carolina, North Dakota, Utah, Virginia, and Wisconsin – strictly prohibit public disclosure or inspection of certification information and discipline records. The remaining states -- including Alaska and Illinois -- have similar provisions to the recently enacted Maine law, which permits dissemination of the disciplinary action taken against a certificate holder, but not the grounds for that action. These 12 "Restricted Access" States do not disseminate allegations or complaints filed against the holder of a teacher certificate, regardless of whether or not a formal investigation was conducted as a result of the allegation or complaint.

It should be noted that national criminal history record information obtained from the Federal Bureau of Investigation (FBI) as part of a request from a so-called "non-criminal justice agency" is designated as confidential information by federal law. States that use national criminal history record information, pursuant to the federal-interstate National Crime Prevention and Privacy Compact, are limited to using these records only for the purpose for which they were received – in the case of teacher certification, to screen applicants for state certification. The statutes in these 13 "Restricted Access" States contain provisions that designate which state education agency officials, (and in some cases, local school officials), have an official duty related to teacher certification and, therefore, are authorized to receive the criminal history record information obtained from the FBI. A number of states also require a state criminal history record check and state laws also permit the dissemination of conviction information obtained from a state public safety agency to authorized state and local education officials.

"Partial Access" States. Statutes in 26 states prohibit the dissemination of teacher certification information and educator discipline records under certain conditions, yet provide access to particular records in other circumstances. Within this category of 25 "Partial Access" States, the following distinctions were found:

- Fifteen states -- Arkansas, Connecticut, Georgia, Idaho, Indiana, Iowa, Minnesota, Missouri, Nevada, New Hampshire, New Mexico, New York, Oklahoma, Oregon, and Rhode Island -- provide that investigative records are confidential and are not open to the public, yet permit dissemination of the written decisions of investigations conducted by a state certification agency or board to the public. New York law provides that records pertaining to a state disciplinary proceeding are accessible when the state action is final and results in an adverse action against the teacher. While Oregon and Nevada law declare that only the final orders of the commission are accessible by the public or the educator, the records of investigations that resulted in a dismissal of the complaint or no further action, (i.e., suspension or revocation),

against a certificate holder are deemed to be privileged records and may not be disclosed to the public. Connecticut law specifies that teacher performance and evaluation records are confidential, but that records of teacher personal misconduct are not confidential.

- South Dakota law stipulates that hearing records of the state commission are not available if the respondent to a complaint has requested a private hearing. However, in a default hearing and public hearing, all records can be released via subpoena or upon a written request.

- Four states -- Florida, Pennsylvania, Maryland, and Montana -- establish that revocations, suspensions, surrenders and reprimands are considered public records, but designate a state official who has custody of the record to review requests for public information to determine if the public's right to know outweighs the certificate holder's right to privacy.

- Six states -- California, Colorado, Florida, South Carolina, Texas, and Vermont -- provide public access to state disciplinary actions to revoke or suspend a teaching certificate, including the grounds for the certification action, on their state agency website. While California provides disciplinary actions on its state website, state law also requires that all disciplinary decisions of the Commission on Teacher Credentialing are published and distributed to all school districts, county offices of education, private schools, deans of education and other interested parties in the state.

"Full Access" States. There are 12 states that have so-called "open records" laws that permit extensive dissemination of teacher certification information and educator discipline records. These states -- Alabama, Arizona, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Nebraska, Ohio, Tennessee, Washington, and Wyoming -- allow full access to certification information and discipline records to the public once an investigation is closed or once a state agency arrives at a final disposition on a certification action. While the laws in most of these states provide that the "full record" is available for public inspection, the following distinctions were found:

- Alabama law specifies that the public has access to findings of fact, settlement agreements, hearings, and final decisions.

- Nebraska law provides that the following records may not be made public: a complaint, a consent agreement, and an investigator's report.

- While Massachusetts law provides that any information, documents or evidence gathered during a disciplinary investigation is available to the public upon final disposition of the certification action, Ohio statutes specifies that all disciplinary records are public documents, but provides that investigative records are confidential.

- Michigan law requires a written request under the Freedom of Information Act for public access to certification information and discipline records.

What is unclear from our analysis is the extent to which most of these 12 "Full Access" States permit the dissemination of allegations or complaints filed against the holder of a teaching certificate, regardless of whether or not a formal investigation was conducted as a result of the allegation or complaint.

Summary of Maine Law for Licensure of Comparable Professions

During planning, OPLA staff reviewed relevant provisions of state law pertaining to Maine teacher certification and agreed that the following criteria should be used in the selection of comparable professions:

1. Professions subject to state licensure requirements that are reasonably comparable to those established for certified teachers;

2. Professions subject to criminal history check requirements that are reasonably comparable to those established for certified teachers;

3. Professions subject to educational qualifications, (e.g., a bachelor's degree), that are reasonably comparable to those established for certified teachers; and

4. Professions that work with children or youth.[20]

There are a number of professions that fit the criteria to various degrees. They are regulated by an assortment of entities. In order to keep this study from becoming unwieldy, but to guarantee a comprehensive review, professions that are under the same regulatory structure are grouped together. Thus, psychologists, counselors, and social workers, who are governed by the Department of Professional and Financial Regulations ("DPFR"), are under the heading of "Professional Service Providers." Those in the medical field governed by the Maine Health Security Act are viewed in the same fashion. The following table encapsulates the professions reviewed by this study:

[20] The criteria was shared with and approved by the Education Committee on September 17, 2008.

	Subject to State Licensure	Subject to Criminal History Check	Educational Qualifications (Baccalaureate)	Works with Children or Youth
Teachers	Yes	Yes (State & Federal)	Yes (or more)	Yes
Professional Service Providers (Counselors, Social Workers, Psychologists)	Yes	Yes (State)	Yes	Yes (Individually)
Medical Professionals (Physicians, Dentists)	Yes	Yes (State)	Yes (or more)	Yes (Individually)
Licensed Day Care Director or Head Teacher	Yes	Yes (State)	Yes (or less)	Yes

The DPFR, Office of Licensing and Registration, requires all applicants to pay for a state criminal background check as part of their initial application. Title 5, chapter 341, authorizes the appropriate state licensing agency to take criminal history record information into consideration. A licensing agency may refuse to grant or renew, suspend or revoke on the basis of one's criminal history record if the agency determines that the individual is not sufficiently rehabilitated to warrant the public trust. Such information may not act as an automatic bar.[21] This applies to professionals listed above in the Professional Service Providers and Medical Professionals categories. Consideration of prior criminal convictions applies for ten years from the applicant's discharge, after which applicants with no additional convictions are considered in the same manner as those with no prior criminal records.[22] In order to operate a child care facility one must have a license, and each applicant and director must authorize the DHHS to review the records of licensing boards or registers, any criminal record, child protective record, institutional abuse record, or adult protective record.[23] This is true for each paid, unpaid, temporary, or regular staff member or volunteer.[24]

There are, of course, differences between the comparable professions and the teaching profession. It is interesting to note that two of the groups, Medical Professionals and Professional Service Providers, have professional review committees or boards who oversee their certification/licensing requirements. Licensed Day Care Directors are under the auspices of the

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[21] *See 5 M.R.S.A. §5301.*

[22] *See 5 M.R.S.A. §5303.* It should be noted that 16 of the 36 boards which oversee occupational licensing consider prior criminal convictions for 3 years. This is consistent with prior criminal convictions of teachers unless the conviction involved child abuse or exploitation, which requires a 5 year period before a certificate may be granted or reinstated. In addition, if a teacher's certificate is revoked or suspended due to fraud or gross incompetence, a 3 year period is required before reconsideration of a certificate.

[23] *See Me. Dept. of Health and Human Services, 10 148 CMR 32, §2.4.1.*

[24] *See Me. Dept. of Health and Human Services, 10 148 CMR 32, §2.21.*

DHHS. Also, the setting in which these professionals interact with children are dissimilar. Medical Professionals and Professional Service Providers see children occasionally in a one-to-one environment while day care providers and teachers predominantly work with children daily in large groups.

Additionally, educational requirements vary. As with teachers, those in the Professional Service Providers and Medical Professionals categories are required to have at least a bachelor's degree and some must have post-graduate experience. The educational/experience requirements for a Licensed Day Care Director or Head Teacher, (for a childcare facility licensed for 50 or more children), may include a bachelor's degree and work in the field or may require less education and more experience in the field.[25]

Finally, other professions were considered as part of this study. They are not included because they did not meet the designated criteria. For example, a Juvenile Community Corrections Officer works with children, undergoes a criminal background check, and needs a four year degree from a college or university for employment. Yet, although they are state employees working for the Department of Corrections, they are not licensed or certified by the state. The dissemination of a final written decision imposing disciplinary action on state employees is not confidential, but the complaints, charges or accusations of misconduct, and replies to them are.[26]

The DOE teacher certification requirements have been delineated previously in this report. The provisions of Maine law with respect to the dissemination of confidential licensure information related to these comparable professions are presented forthwith.

Professional Service Providers

As stated, the group entitled Professional Service Providers includes counselors, psychologists, social workers, and a host of other professions and occupations.[27] The licensing of these professions is administered by individual boards or commissions made up of knowledgeable and experienced professionals and lay people. Title 10, section 8003-B of the Maine Revised Statutes, governs the DPFR's duty to keep the investigative records of the licensing boards and commissions confidential and describes when these records become public records.

Section 8003-B states, unless otherwise provided by Title 24, chapter 21 (the Maine Health Security Act), that all complaints and investigative records of the licensing boards and commissions within or affiliated with the DPFR are confidential during the pendency of an investigation and those records become public records upon the conclusion of an investigation unless confidentiality is required by some other provision of law (i.e., certain client records). An investigation is concluded when: (1) notice of an adjudicatory hearing under Title 5, chapter 375, subchapter IV has been issued; (2) a consent agreement has been executed; (3) a letter of

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[25] *See Me. Dept. of Health and Human Services,* 10 148 CMR 32, §27.4.
[26] *See 5 M.R.S.A. §7070(2)(E).*
[27] For an updated list see *Sec .C-1 of PL 2007, c. 402 §38.*

dismissal has been issued; or (4) the investigation has otherwise been closed.[28] There are some exceptions for the dissemination of confidential information during an investigation. For example, information may be disclosed:

- To department employees designated by the commissioner;
- To designated complaint officers of the appropriate board or commission;
- When necessary to facilitate the investigation;
- To other state or federal agencies when the files contain possible violations of laws enforced by those agencies;
- To avoid imminent and serious harm as the commissioner deems necessary;
- When there is general public knowledge of the circumstances surrounding the investigation; and
- To the person being investigated.[29]

The designated bureau, office, board, or commission may issue letters of guidance or concern to a licensee or registrant. These do not constitute an adverse disciplinary action and are not confidential. These may be placed in the licensee's file and accessed for up to ten years.[30] Nonconsensual disciplinary action taken under §8003 may be imposed only after a hearing as specified in Title 5, chapter 375, subchapter 4, and, except for revocation actions, is subjected to judicial review in the Superior Court as specified in Title 5, chapter 375, subchapter 7. Nonconsensual revocation is subject to appeal as provided in Title 5, section 11002, subsection 3, de novo judicial review exclusively in District Court.[31]

Offices, boards, or commissions may impose various forms of discipline, all of which are public upon conclusion of an investigation. They include:

- Denial or refusal to renew a license;
- Issuance of warning, censure or reprimand;
- Suspension of a license for up to 90 days;
- Revocation of a license;
- Imposition of civil penalties;
- Imposition of conditions of probation;[32] or
- The execution of a consent agreement.[33]

Consent agreements, which may include a long-term suspension and permanent revocation of a professional or occupational license, are not subject to review or appeal, and may be modified only by agreement of both parties to the original consent agreement.

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[28] *See 10 M.R.S.A. §8003-B(1).*
[29] *See 10 M.R.S.A. §8003-B(2).*
[30] *See 10 M.R.S.A. §8003(5)(E).*
[31] *See 10 M.R.S.A §8003(5).*
[32] *See 10 M.R.S.A. §8003(5-A)(B).*
[33] *See 10 M.R.S.A. §8003(5-A) (C).*

The DPFR provides information about disciplinary actions taken against licensees. This information is found on the department's web page. For the years 2000-2006, the discipline pages for the individual programs contain brief summaries of the action taken. Beginning in 2007 the discipline pages contain a list of the action taken and links to the full text of Consent Agreements or Decisions.[34]

Medical Professionals

Title 24, chapter 21 (the Maine Health Security Act) provides a slightly different process for maintaining the confidentiality of information by the three boards affiliated with health care practitioners working in hospitals or other facilities that provide medical care. The boards include the Board of Licensure in Medicine, Board of Dental Examiners, and the Board of Osteopathic Licensure. Each of these boards creates and maintains a permanent record of licensed physicians lawfully practicing in the state along with an individual historical record for each.[35] Included in the record are disciplinary reports from professional societies and health care providers and entities.[36] Upon the reception of these reports or requests from other outside resources, the boards may review and investigate the practitioner. Reports dismissed without disciplinary action must be removed from the physician's individual historical record and destroyed.[37]

Information received and maintained by the boards in this manner is confidential with a few exceptions. Those exceptions include:

- Disclosure in a disciplinary hearing before the boards and any subsequent action in front of the boards;
- Disclosure to governmental licensing or disciplinary authorities, health care providers, and health care entities if the information has been substantiated by the boards;
- Disclosure to the physician or his or her authorized representative;
- Disclosure pursuant to a court order; and
- Disclosure to qualified personnel for research or educational purposes if identifiable information is deleted.[38]

The confidential reports received and maintained from outside sources or created and maintained by the boards are not available for discovery, court subpoena, or introduction into evidence in any medical malpractice suit or other action for damages.[39]

Information and data developed by the boards from outside reports or by the boards during an investigation, which does not identify or permit identification of any patient or

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[34] *See* http://www.maine.gov/pfr/professionallicensing/discipline.htm
[35] *See 24 M.R.S.A. §2509(1).*
[36] *See 24 M.R.S.A. §§ 2505, 2506 & 2507.*
[37] *See 24 M.R.S.A. § 2509(2).*
[38] *See 24 M.R.S.A. § 2510(1).*
[39] *See 24 M.R.S.A. §2510(3).*

physician, is not confidential.[40] Neither are orders of the boards relating to disciplinary actions against a physician nor letters of guidance or concern issued by boards.[41]

Licensed Day Care Director or Head Teacher

Personnel records must be kept for each paid or unpaid, temporary or regular staff member, director, owner or administrator employed in a child care facility.[42] These records include, among other things, the State Bureau of Identification ("SBI") criminal history report, out of home abuse investigation reports, and child protection reports.[43] All records must be available for licensing purposes and child protective services.[44] Licensed Day Care Directors or Head Teachers must report the following information to the DHHS about themselves or those employed in the facility: convictions; crimes involving children; substance abuse; hospitalization; allegations of child abuse; license suspension; removal of children from care; and other information that is relevant to licensing.[45]

All personnel records are confidential but shall be provided to the DHHS upon request.[46] In the case of suspected abuse or neglect, the following is considered confidential and may not be released by the DHHS without a court order or a written release from the person about whom it applies:

> "A. Any information which identifies, directly or indirectly, a recipient of services of the facility, a client of the facility or his family or custodian, except where the family member or custodian is an owner or operator of the facility;
>
> B. Notwithstanding sections 3474 and 4008, any information gathered in the course of an investigation of neglect or abuse, except a statement indicating whether or not a report of abuse or neglect has been received, the nature of the alleged abuse or neglect and the conclusion reached by the department, if any;
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> C. Any information that identifies, directly or indirectly, a reference, complainant or reporter of suspected abuse or neglect;
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> D. Any information pertaining to the adoption of an individual;

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[40] *See 24 M.R.S.A. §2510(1).*
[41] *See 24 M.R.S.A. §2510 (2) & (2-A).*
[42] *Me. Dept. of Health & Human Services 10 148 CMR 32, §1.5* – "'**Child Care Facility**' means a house or other place in which a person maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for three (3) or more children under thirteen (13) years of age. Any program for children under 5 years of age that is located in a private school and programs that contract with one or more Child Development Services System sites are required to be licensed as a Child Care Facility."
[43] See *Me. Dept of Health & Human Services 10 148 CMR 32, §2.21.*
[44] *Me. Dept. of Health & Human Services 10 148 CMR 32, §11.2.*
[45] See *Me. Dept. of Health & Human Services 10 148 CMR 32 §12.1.6.*
[46] *Me. Dept. of Health & Human Services 10 148 CMR 32, §9.14.3.*

E. Any information about the private life of any person, other than an owner, operator or employee of a facility, in which there is no legitimate public interest and which would be offensive to a reasonable person, if disclosed, except as provided in paragraph F; and

F. Any information about the private life of any person who has applied for a license or approval or is or has been licensed or approved as an adult foster home, licensed pursuant to chapter 1663, and family foster home as defined in section 8101, subsection 3, which there is no legitimate public interest and which would be offensive to a reasonable person, if disclosed."[47]

Such confidential information may be disseminated for certain purposes, but if so, it must be used solely for the purposes for which the information was provided and no further.[48] The groups and individuals that are privy to this information are broken into two categories – those who may receive this information and those who must.

The first category, optional disclosure of confidential information, can be broken into two subsets. The first has no restrictions, the second is limited. Optional disclosure may be given to an agency investigating a report of child or adult abuse or neglect and to a physician treating a child or adult whom he or she reasonably suspects may be abused or neglected.[49] Optional disclosure, as long as the identity of the complainant or reporter of suspected abuse or neglect is protected, may also be revealed to:

- A parent or guardian;
- A person having the legal responsibility or authorization to educate, care for, evaluate, treat or supervise the person who may be abused or neglected;
- Any person engaged in bona fide research;
- Agencies involved in approving homes for placement of children;
- Individuals seeking to place a child or adult in a facility;
- Owners or operators of facilities; and
- Hearing officers in adjudicatory proceedings and personnel and licensure actions.[50]

The DHHS must disclose confidential information, to be used solely for the purposes for which it is disclosed, to:

- The guardian ad litem of a suspected abused or neglected child or adult;
- Law enforcement agencies investigating a report of abuse or neglect or the commission of a crime against a person by an owner, operator, employee of a facility;
- A court in camera, unless public disclosure is necessary to resolve the pending issue;
- A grand jury;

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[47] *22 M.R.S.A. §7703(2) (A-F).*
[48] *See 22 M.R.S.A. §7703(5).*
[49] *See 22 M.R.S.A. §7703(3)(A-B).*
[50] *See 22 M.R.S.A. §7703(3)(C-I).*

- An appropriate state executive or legislative official carrying out official duties as necessary to protect an adult or child;
- Investigators for the Protection and Advocacy Agency for the Developmentally Disabled, as relevant to the investigation; and
- The Commissioner of Education when the information concerns educators issued certificates under Title 20-A.[51]

A Summary and Comparison of the Maine Law on Reporting Suspected Child Abuse or Neglect and Provisions for Teacher Criminal History Record Checks

The Protection of Children in the Home

The Maine Child and Family Services and Child Protection Act ("**Act**") is codified in Maine Revised Statutes Annotated, Title 22. The analysis of the reporting aspects of this Act can be broken into two sections. The first includes those persons required to report child abuse or neglect to the Department of Health and Human Services. The second encompasses the confidentiality and dissemination of those reports.

Information on the reporting of abuse or neglect can be found in §4011-A. Included in the section is a list of adult persons (while acting in their professional capacity) who "shall immediately report or cause a report to be made to the department (Health and Human Services) when the person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected."[52] The intent is to include any person who has a direct relationship with a child and would be privy to signs of neglect or abuse. (One exception is chairs of professional licensing boards that have jurisdiction over mandated reporters.)[53] This list includes teachers, guidance counselors, and school officials.

The mandatory reporting list does not include the Commissioner of Education in his or her professional capacity. The omission is presumably because he or she does not work directly with children. This, of course, does not preclude the Commissioner, or any person, from reporting signs of neglect or abuse observed in their daily lives. The mandatory reporting list strives for completeness, yet keeps in mind the sensitivity of the information and the welfare of the child and family.

The Act's purpose, and the definitions of "abuse or neglect" and "person responsible for the child" included in the Act, highlights this intent:[54]

> The purpose of the Act is to protect custodial children while keeping in mind the integrity of family. In doing so, DHHS is:

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[51] *See 22 M.R.S.A. §7703(4)(A-G).*
[52] *22 M.R.S.A.§4011-A(1).*
[53] *See 22 M.R.S.A. §4011-A(1)(A)(28).*
[54] *See 22 M.R.S.A. §4002(1) and (9).*

(1) "Authorize[d]…to protect and assist abused and neglected children, children in circumstances which present a substantial risk of abuse and neglect, and their families;

(2) Provide that children will be taken from the custody of their parents only where failure to do so would jeopardize their health or welfare;

(3) Give family rehabilitation and reunification priority as a means for protecting the welfare of children, but prevent needless delay for permanent plans for children when rehabilitation and reunification is not possible;

(3-A) Place children who are taken from the custody of their parents with an adult relative when possible;

(4) Promote the early establishment of permanent plans for the care and custody of children who cannot be returned to their family…; and

(5) Require the department to report monthly to the joint standing committees of Legislature having jurisdiction over appropriations and financial affairs and health and human services matters."[55]

Abuse or neglect "means a threat to a child's health or welfare by physical, mental or emotional injury or impairment, sexual abuse or exploitation, deprivation of essential needs or lack of protection from these or failure to ensure compliance with school attendance requirements … by a *person responsible for the child*"[56] (*emphasis* added). A person responsible for a child "means a person with responsibility for a child's health or welfare, whether in the child's home or another home or a facility which, as part of its function, provides for care of the child. It includes the child's custodian."[57] In other words, the Act attempts to protect children who live in unsafe circumstances. Once the DHHS receives this information, it begins its investigation and pursues steps to intervene and protect the child as necessary.

The dissemination of information obtained by the DHHS in its investigation of a report of abuse or neglect is carefully protected. Section 4008 of the Act states that "Any person who receives department records or information from the department may use the records or information only for the purposes for which that release was intended and may not further disseminate that information."[58] If the information concerns teachers or other professional personnel certified, approved, or otherwise employed under Title 20-A, the DHHS must disclose relevant information to the Commissioner of Education.[59] The release of this information to the Commissioner of Education is critical in the Commissioner's certification duties as detailed in *20-A M.R.S.A. §13020* and *05-071 Chapter 115 Part I, Section 14 of the Maine Department of Education Rules.* The information may be grounds for revocation or suspension of a certificate, authorization, or approval. If the conditions warrant, such as the health or safety of an individual is in jeopardy, the Commissioner may immediately suspend or revoke a certificate.[60] Thus the child's welfare is protected in the home and at school.

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[55] *22 M.R.S.A. §4003 (1)-(5).*
[56] *22 M.R.S.A. §4002(1).*
[57] *22 M.R.S.A. §4002(9).*
[58] *22 M.R.S.A. §4008(1).*
[59] See *22 M.R.S.A. §4008(3)(F).*
[60] See *Me. Dept. of Educ. 05 071 CMR 115, §14.2(G) and 5 M.R.S.A. §10004.*

The confidentiality of information received by the DOE from the DHHS is not only protected by the Child and Family Services and Child Protection Act but by Title 20-A. The list of confidential information includes complaints, charges or accusations made and investigated, replies to complaints, charges or accusations, and other information that may lead to a denial, revocation, or suspension of a certificate.[61]

The Protection of Children at School

The rights and responsibilities set forth in Title 22, section 4011-A are distinct and unrelated to Title 20-A, section 6103; there is no conflict between the two. As outlined earlier, 20-A M.R.S.A. §6103 deals with criminal history record information used for screening educational personnel applicants to determine certification status. The Commissioner obtains criminal history record information containing a record of conviction data from the Maine Criminal Justice Information System and from the Federal Bureau of Investigation ("**FBI**"). Subsection 3 of section 6103 states: "**Confidentiality**. Any information obtained pursuant to this section is confidential. The results of criminal history record checks received by the commissioner are for official use only and may not be disseminated outside the department."[62]

This restriction of dissemination of a criminal history record is also mandated federally. Pursuant to Federal Public Law 92-544, the FBI may exchange identification records with officials of state and local governments for purposes of licensing and employment if authorized by a state statute which has been approved by the Attorney General of the United States.[63] The standard used to approve state statutes for access to criminal history information and Title 20, Code of Federal Regulations (CFR), Section 20.33 provides that dissemination of FBI criminal history record information outside the receiving governmental department or related agency is prohibited. In addition, the exchange of this information is subject to cancellation if unauthorized dissemination is made.[64]

Information obtained through a criminal history check by the FBI includes conviction data from the 50 states and tracks the progress of such convictions. Information obtained through a criminal history check done by the Maine Criminal Justice Information System includes Maine conviction data and charges without disposition under a year old. Neither gives the Commissioner of Education personal knowledge of ongoing abuse or neglect. If there is conviction data that indicates evidence that a person has injured the health or welfare of a child in the five previous years, the Commissioner has grounds for revocation or suspension.[65] Additionally, frontline educators must report any suspicions to the DHHS,[66] who in turn must report it to the Commissioner, who can then revoke or suspend a certificate if the person under

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[61] *20-A M.R.S.A. §13004(2-A).*
[62] *20-A M.R.S.A. §6103.*
[63] "*Guidelines for Implementing the National Child Protection Act of 1993 (P.L. 103-209) as Amended by the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322)*," Appendix B: Criminal Justice Information Services (CJIS) Information Letter 95-3, pp. 5-6.
[64] *Id.*
[65] *See 20-A M.R.S.A. §13020(A)).*
[66] *See 22 M.R.S.A. §4011-A.*

suspicion happens to be an educator.[67] The laws have been carefully crafted to protect the welfare of children, protect schools from convicted felons, and at the same time protect the privacy of families and individuals.

Although on the surface Title 20-A, section 6103 and Title 22, section 4011-A may appear to be contradictory, the distinct rationale of each section emphasizes the different targeted constituencies and divergent purposes. In other words, the criminal history record information obtained by the DOE is gathered for teacher employment/certification purposes, while the mandatory reporting of suspected abuse or neglect to the DHHS is for any person with personal knowledge or suspicion of active abuse or neglect of a child by his or her custodian. Title 20-A, section 6103 protects children while in school; Title 22, section 4011-A protects children while at home.

Furthermore, Superintendents have ten days to file any certificate of dismissal issued by a school board for any certified, authorized, or approved personnel to the DOE.[68] The charges, complaints, and accusations, along with replies to such, may be used by the Commissioner of Education in his or her duty to deny, revoke, or suspend certification, authorization, or approval and are confidential unless already public records as a matter of law.[69] "Certificates of dismissal, records of other disciplinary actions taken by a school board, transcripts of public hearings held by school boards, and court records and transcripts not under seal are public records when in possession of the Department (Education)."[70] Since dismissals are based upon workplace misconduct, not suspected misconduct at home, these issues are not reported to the DHHS by the DOE. If there is evidence of a "negligent disregard for the safety of children,"[71] the Commissioner has grounds for revocation or suspension of a certificate, authorization, or approval thereby removing the individual from the school. If there is evidence that this misconduct rises to the level of abuse, the person making such a charge, if not mandated by law, has the option of reporting it to the DHHS.

IV. SUGGESTED ISSUES FOR FURTHER CONSIDERATION

The final section of the report suggests certain policy and legal issues for further consideration by the Legislature. These suggestions are presented in the context of the three duties included in Section 2 of Public Law 2007, chapter 666. These duties were to: (1) summarize other state laws on the dissemination of confidential information related to disciplinary actions that are contained in teacher certification records; (2) analyze the Maine law on the confidentiality of licensure information for comparable professions; and (3) review of the Maine law on reporting suspected child abuse or neglect.

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[67] *See Me. Dept. of Educ. 05 071 CMR 115, §14.2(G).*
[68] *See Me. Dept. of Educ. 05 071 CMR 115 §16.2.*
[69] *See Me. Dept. of Educ. 05 071 CMR 115 §16.4(A).*
[70] *Me. Dept. of Educ. 05 071 CMR 115 §16.4(B).*
[71] *See 20-A M.R.S.A. § 13020(D).*

The office notes that, as this report is transmitted to the 123rd Legislature's Joint Standing Committee on Education and Cultural Affairs, the Right To Know Advisory Group is contemplating a recommendation to the Joint Standing Committee on the Judiciary to review the Title 20-A, section 13004, subsection 2-A provisions -- that designates as "confidential" those records pertaining to complaints, charges, and accusations made and investigated in the teacher certification process, as well as other information that may result in action to deny, revoke, or suspend teacher certification -- in 2009. At this point in time, it appears that the Education Committee will have ample opportunity for further review of these policy and legal issues during the 2009-2010 legislative sessions.

Our analysis has revealed that there are ambiguities and inconsistencies in the separate statutory provisions that deal with the confidentiality of teachers' employment records maintained by local school unit officials and the confidentiality of teacher certification records that are in the custody of State education certification officials. The models for regulating teacher certification in other states, as well as the structure for other professions regulated by the State of Maine, offer potential alternatives to address these ambiguities and inconsistencies. Should legislation be proposed to address the dissemination of confidential information pertaining to disciplinary actions contained in teacher certification records, the office respectfully proposes that the following issues pertaining to Maine law on dissemination of confidential teacher certification information and teacher discipline records warrant further consideration by the 124th Legislature.

Issues for Further Consideration on the Dissemination of Confidential Information Related to Disciplinary Actions Contained in Teacher Certification Records

1. Balancing the Legitimate Public Interests of the Public's Right to Know and the Individual's Right to Privacy. A 2008 report on education law included some useful insights into the complexities of the right to inspect public records and the privacy rights of educators and public officials. The evolution of case law and the enactment of state laws reflect the perspective that "public business is indeed the public's business ... [and] people have a right to know."[72] Clearly, citizens have a legitimate public interest in seeing how government agencies are operating, how public officials are performing, and how public funds are expended. However, state law has also provided limits to the public's right to know in order to protect an individual's right of privacy. This right has been referred to as "an individual's right to be protected against the disclosure of information that is of such a personal and private nature that it fails to constitute a proper concern to others [and] ... which might result in actual harm or damage ... or which might otherwise constitute a violation of one's interest in keeping his or her personal background and interests private."[73] While the balance point between these two competing interests is not easily found, one court suggests that five factors be considered in finding the proper balance: "(1) whether disclosure would result in a substantial invasion of privacy; and if so, how serious; (2) the extent or value of the public interest, and the purpose or object of the individuals seeking disclosure; (3) whether the information is available from other sources; (4) whether the

[72] *Education Law, Volume 5; James A. Rapp, Lexis Nexis, p. 13-11, (2008).*
[73] *Id. p. 13-54.*

information was given with the expectation of confidentiality; and (5) whether it is possible to mold relief so as to limit the invasion of individual privacy."[74]

2. Compilation of Public Records That Contain Information That May Be Disclosed With Information That May Not Be Disclosed. It bears repeating that pursuant to the federal-interstate National Crime Prevention and Privacy Compact, the national criminal history record information obtained from the Federal Bureau of Investigation (FBI) as part of a request from a so-called "non-criminal justice agency" is designated as "confidential" information. State certification officials that use national criminal history record information are limited to using this information only for the purpose for which it was received – to screen applicants for state teacher certification. Further dissemination of the FBI criminal history record information is prohibited. Public officials who are required to maintain public records are often faced with the dilemma of compiling records that include information that is privileged with information that may be disseminated to the public.

State teacher certification officials face this dilemma and are forced to make determinations regarding how to compile public records and how to respond to state requirements related to the public's right to inspect those records. Case law suggests that the custodians of public records have an implied duty to delete or redact information which may not be disseminated to the public from information that state law provides is open to public inspection.[75] Maine certification officials have asserted that the criminal history record check provisions in federal and state law prohibit them from disseminating any information from teacher certification records that may include information that may be disclosed with information that may not be disclosed. However, two provisions of Maine law appear to challenge this assertion: (1) if the DOE is restricted from disseminating criminal history record information outside of the department, it appears unnecessary to have the Title 20-A, section 6101, subsection 2, paragraph B, subparagraph 9 provision that provides that local school units should keep confidential the "criminal history record information obtained pursuant to section 6103"; and (2) with respect to the question of whether or not the DOE can disseminate statistics related to the results of the criminal history check information obtained as part of the teacher certification process, Maine DOE rules provide that "non-identifiable aggregate data relating to the criminal history record checks may be released, but only after consultation with the Attorney General.[76]

3. Mandatory Reporting of School District Disciplinary Actions and Dismissals. A number of states require that local school districts report formal disciplinary actions or dismissals taken against a teacher to the state agency responsible for teacher certification. Maine statutes do not include a similar mandate that local school units report such disciplinary actions, yet DOE rules contain a provision that requires superintendents to file with the department, within 10 days of issuance, a "certificate of dismissal" issued by the school board for any certified personnel.[77] In light of this apparent inconsistency, it should be noted that Maine statutes do permit the Commissioner of Education to request from a local school unit the (otherwise) confidential

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[74] *Id. pp. 13-55 to 13-56.*
[75] Education Law, Volume 5; James A. Rapp, Lexis Nexis, pp. 13-62 to 13-63, (2008).
[76] *See Me. Dept. of Educ. 05 71 CMR 115, § 16.4, ¶ F.*
[77] See *Me. Dept. of Educ. 05 071 CMR 115, §16.2.*

employment records for a teacher when the Commissioner, in carrying out her certification duties, opens an investigation of a certificate holder that may result in the suspension or revocation of a teaching certificate.[78] The same provision also requires that the teacher, who is the subject of such an investigation, shall receive a copy of the employee records provided to the Commissioner.

4. Role of Professional Educator Standards Board. The regulatory structure for teacher certification and licensure in a number of states includes a professional educator standards board, some of which have the authority to investigate and render decisions to approve, sanction or reinstate a teaching certificate. While the Maine Legislature established a 24-member Professional Standards Board in 2005 to advise the State Board of Education regarding professional growth, certification, and the governance of the education profession, appointments have not been made and this advisory board has yet to be established.[79]

Issues for Further Consideration on the Confidentiality of Licensure Information for Comparable Professions

5. National Criminal History Record Check. Teachers are subjected to both national and state criminal history record checks, (with the national screening based on fingerprinting teachers in order to obtain FBI criminal history record information). While Maine statutes require only a state criminal history record check for other professions and occupations that are regulated by the State, statutes pertaining to occupational and professional licensing boards also encourage these licensing boards to participate in a national disciplinary record system maintained by a relevant national professional association.

6. Disclosure Notice for Certification Applications. In researching the licensure requirements for comparable professions in Maine, the office noted that applications for professional licensure include a disclosure notice in the applicant information guide that clearly indicates to applicants that information provided by the applicant as part of his/her application is considered to be a public record in accordance with state law. Applications for an initial or a renewal of a Maine teaching certificate do not contain such a disclosure notice.

Written testimony provided by the Commissioner of Education to the Legislature during the public hearing on LD 2291 described the procedures that Maine and other NASDTEC member state officials must use to upload or download information contained in the NASDTEC clearinghouse on teacher discipline. When reporting a formal action involving the denial, suspension, revocation, surrender, or reinstatement of a certificate to the NASDTEC clearinghouse, the DOE must provide basic information to identify the reported person, including the person's name, social security number, and date of birth. This personally identifiable information may then be downloaded by NASDTEC member states in order to conduct background checks of applicants for teacher certification in their respective states.

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[78] See *20-A M.R.S.A. § 6101 (3).*
[79] See *20-A M.R.S.A. Chapter 502-B.*

The Legislature may want to consider if teacher certification application packets should provide a disclosure notice to applicants regarding how information they provide as part of their certification application is treated under the Freedom of Access laws. For example, the disclosure notice could indicate that the applicant's name, social security number, and date of birth may be used to exchange information with other state certification officials who use the NASDTEC clearinghouse on teacher discipline.

7. Regulatory Structure. The regulatory structure established for the certification and employment of teachers is split between state and local government entities. Certification involves oversight by public officials in an agency of state government, (i.e., Department of Education) and employment is overseen by elected officials serving on the governing body of a local education agency (e.g., Regional School Unit #1 Board of Directors). State and local education agency officials have distinctive duties and responsibilities with respect to the treatment of confidential employment records and certification records. Teachers are subject to disciplinary action at the local education agency (employment) level and at the state education agency (certification) level. Both state and local agencies are required to keep records in their custody confidential unless a formal disciplinary action has been taken. The DOE is authorized to provide a directory of certified teachers upon request, but does not currently provide such information on the DOE website. As noted above, Maine does not currently have a professional educator standards board in place.

Occupational and Professional Licensing Boards. In contrast, the licensing agencies for comparable professions in Maine involve occupational and professional licensing boards, (e.g., State Board of Social Worker Licensure or Board of Medical Examiners). These licensing boards are comprised of occupational or professional peers and public members who receive administrative supported from state agencies (i.e., the Office of Licensing and Registration, Department of Professional and Financial Regulation (DPFR) and, in some instances, the Department of the Attorney General). Once a person in a regulated occupation or profession is licensed to practice in the state, his/her employment is almost entirely a matter between the license holder and his/her employer. Depending on the occupation or profession, the license holder may be self-employed or employed in the private or public sector. Complaints and allegations may be filed with a state licensing board and the board has the authority to open an investigation and sanction the license holder. Information received or records maintained by a board during an investigation are confidential and may not be disclosed to the public, except that orders of a board relating to disciplinary action are not confidential. Boards provide licensing information on licensees, including consent agreements and disciplinary action ordered by the board, on the DPFR website.

Director or Head Teacher of a Licensed Daycare Center. For a Director or Head Teacher of a Licensed Daycare, the licensure of the childcare center is overseen by an agency of state government, (i.e., Department of Health & Human Services or DHHS), and the director or head teacher of the childcare center, with oversight from the DHHS, is responsible for the conduct and performance of childcare center personnel. All personnel records must be made available to the DHHS for licensing purposes and child protective services, but are confidential and may not be disclosed to the public. Allegations of suspected abuse or neglect of a child by childcare

personnel are subject to investigation by the DHHS. Investigation records are confidential and may not be released by the DHHS without a court order or a written release from the subject of the investigation, except that the DHHS may release a statement indicating whether or not a report of abuse or neglect has been received, the nature of the alleged abuse or neglect, and any conclusion reached by the department. The DHHS website includes a directory of licensed childcare providers, but does not provide any disciplinary action taken against licensed childcare providers.

8. National Disciplinary Record Systems, Roles of National Professional Associations, and Codes of Professional Ethics. The laws in Maine and a number of other states specifically authorize state education certification officials to report disciplinary actions taken against holders of teaching certificates to the NASDTEC clearinghouse for teacher discipline. Member states participate in this national clearinghouse to assist state officials in screening applicants for teacher certification and facilitating the transmittal of disciplinary records for teachers who have been the subject of professional discipline. Maine law pertaining to occupational and professional licensing boards typically contain provisions that authorize such boards to adopt a code of ethics generally in keeping with the standards of occupational or professional practice established by national associations concerned with the particular area of licensure. Maine law also encourages the bureaus, offices, boards and commissions that are affiliated with the DPFR to subscribe to professional associations and related national disciplinary record systems in order to track interstate movement of regulated professionals who have been the subject of disciplinary action in other states and to report disciplinary actions taken in this state to such systems.[80]

Issues for Further Consideration on Reporting Suspected Child Abuse or Neglect

From our review of the provisions of Maine law pertaining to the protections for children at school codified in Title 20-A, and those established in Title 22 to provide protection of children at home, the office did not find that there are any conflicts, but rather conclude that there is a distinct rationale for each section. They appear to be complementary provisions appropriate for the different targeted constituencies and divergent purposes of the law. Regardless, it should be noted that mandated reporters, while acting in their professional capacity, are obligated to report suspected child abuse or neglect. These reporters, with the exception of a chair of a professional licensing board having jurisdiction over mandated reporters, are professionals who have contact with a child that may need protection. The Commissioner of Education is further removed than the aforementioned chairs because he or she neither works directly with children nor reviews or evaluates teachers in person, rather the Commissioner compiles and reviews applications for certification purposes.

[80] See *10 M.R.S.A. § 8003 (10).*

APPENDIX A

Authorizing Public Law

An Act To Amend Teacher Confidentiality Laws

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

Sec. 1. 20-A MRSA §13004, sub-§2-A, as enacted by PL 1983, c. 470, §11 and amended by PL 1999, c. 547, Pt. B, §78 and affected by §80, is further amended to read:

2-A. Complaints confidential. Complaints, charges or accusations made and investigated pursuant to section ~~13001~~13020, replies to those complaints, charges or accusations, and any other information or materials that may result in action to deny, revoke or suspend certification ~~shall be~~are confidential. Any charges or information filed by the commissioner with the District Court in support of a petition to revoke or suspend certification and any decision of the court ~~shall be~~are public records. The department shall report all denials, revocations, suspensions, surrenders and reinstatements of certification that are not under appeal or still subject to appeal to a national association of state directors of teacher education and certification within 30 days of the action. In reports to the national association of state directors of teacher education and certification, the department may not disclose any information designated in this subsection as confidential.

Sec. 2. Study by Office of Policy and Legal Analysis. Upon approval of the Legislative Council, the Office of Policy and Legal Analysis shall review and summarize the extent to which laws in other states and jurisdictions permit the dissemination of confidential information pertaining to denials, revocations, suspensions, surrenders and reinstatements of teaching certificates to applicants for teacher certification or recertification and for professional licenses or credentials for other comparable professions. In conducting this analysis, the Office of Policy and Legal Analysis shall review the apparent conflict between the confidentiality requirements placed on information received by the Commissioner of Education as set forth in the criminal history record check provisions of the Maine Revised Statutes, Title 20-A, section 6103 and the provisions set forth in Title 22, section 4011-A that require persons, when acting in a professional capacity, to report their knowledge or reasonable suspicions of the abuse or neglect of a child to the Department of Health and Human Services. The Office of Policy and Legal Analysis shall submit a report with findings to the Joint Standing Committee on Education and Cultural Affairs by November 5, 2008.

Effective 90 days following adjournment of the 123rd Legislature, First Special Session, unless otherwise indicated.

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APPENDIX B

Acknowledgement of Key Resource People and Organizations

Acknowledgement of Key Resource People and Organizations

The Office of Policy & Legal Analysis wishes to recognize and thank the key resource people and organizations for assisting us in conducting this study.

- Arthur Keenan, Legal Consultant, Certification Office, Maine Department of Education

- Greg Scott, Legislative Liaison, Maine Department of Education

- Roy Einreinhofer, Executive Director, National Association of State Directors of Teacher Education and Certification, (NASDTEC)

- Michelle Exstrom, Senior Policy Specialist, Education Program, and Alexander Berger, Researcher, Education Program, National Association of State Legislatures

- Kathy Christie, Chief of Staff and Co-Director of the ECS Clearinghouse, and Melodye Bush, Researcher, Education Commission of the States

- Matthew Ruel, Director, State Bureau of Identification, Maine State Police

- Lieutenant Colonel Robert Williams, Deputy Chief, Maine State Police

- John R. Barden, Director, Maine Legislature, The Maine State Law and Legislative Reference Library

- Bob Michaud, Law Librarian, Maine Legislature, The Maine State Law and Legislative Reference Library

- Anne Head, Acting Commissioner, Maine Department of Professional and Financial Regulation

- Natalie Haynes, Legislative Analyst, Office of Policy & Legal Analysis

APPENDIX C

A Compilation of Confidentiality Provisions Related to Employment and Certification of Maine Teachers

A Compilation of Confidentiality Provisions Related to Employment and Certification of Maine Teachers

Title 20-A §6101
School Employee Records

Nonconfidential

- Name
- Dates of Employment
- Extracurricular Activities
- Courses Taught
- Post-Secondary Education
- Majors & Minors of Study
- Degrees and dates awarded
- Any written record of decision involving disciplinary action taken by the governing body of the school admin unit

Confidential Employee Records*

- All information, working papers and examinations used in the examination or evaluation for employment
- Medical information (including mental or emotional disorders)
- Performance evaluations, personal references and other reports and evaluations reflecting on the quality or adequacy of employee's work or general character compiled & maintained for employment purposes
- Credit information
- Personal history, general character or conduct of employee or member of employee's immediate family
- Complaints, charges of misconduct, replies to complaints and charges of misconduct and memoranda and other materials pertaining to disciplinary action
- Social Security number
- Teacher action plan and support system documents and reports maintained for certification purposes
- Criminal history record pursuant to §6103

*Commissioner has access to these documents for carrying out his/her duties w/ regard to certification

Title 20-A §6103
Criminal History Record Information

- Commissioner obtains criminal history record from Maine Criminal Justice Information System for any person applying for certification, authorization, approval or renewal.
- Approval or renewal is subject to Title 5, chapter 341 (Occup. Lic.) & § 13020
- Information obtained is confidential and may not be disseminated outside the department
- Commissioner obtains other state and national criminal history record information from FBI
- Criminal history record used for screening educational personnel applicants by commissioner in order to determine certification status

Title 20-A §13004
Certification & Registration of Teachers

Nonconfidential

- List of certified teachers
- Any charges or information filed by the commissioner w/ the District Court in support of a petition to revoke or suspend certification.
- Denials, revocations, suspensions, surrenders and reinstatements of certification that are not under appeal or still subject to appeal to national association of state directors of teachers education and certification w/in 30 days of the action. Dept. cannot disclose confidential material

Confidential

- Transcripts, recommendations and other documents submitted in support of an application for certification or collected by the department for verification of certification may only be made available to (1)School Boards and Superintendents, (2)Authorized personnel of the department, (3)Individuals and their representatives who request to examine their own records
- Complaints: complaints, charges or accusations made and investigated pursuant to revocation or suspension of a certificate (§13020), replies to those complaints, charges or accusations, and any other information or materials that may result in action to deny, revoke or suspend certification.
- Teacher addresses except in response to a formal request from commissioner or other executive officer of state agency or judiciary and a formal request by a majority vote of any joint standing committee

A Compilation of Confidentiality Provisions Related to Employment and Certification of Maine Teachers

Title 20-A §13020
Revocation or Suspension of Certificate

Grounds for Revocation or Suspension

- 2(A) Evidence that a person has injured the health or welfare of a child through physical or sexual abuse or exploitation. (A certified court record that a person certified under Title 20-A was convicted in any state or federal court of a criminal offense against a child w/in the 5 previous years is grounds for revocation or suspension)

Other grounds as established in the rules of the state board: (05-071, c 115 p.1 §14)

- 2(B) Evidence of criminal conviction pursuant to 5 MRSA §§ 5301-5303 may be taken into consideration as well as fraud or gross incompetence

➢ §5301 including convictions involving dishonesty or false statement that may impose less than a year incarceration; convictions directly related to the trade or occupation that may impose less than a year incarceration; convictions imposing more than a year incarceration

➢ §5302 upon belief that applicant has not been sufficiently rehabilitated to warrant public trust (burden on applicant)

➢ §5303 there is a three year limit on this if there have been no additional convictions

(Rule 05-071, c 115 p.1 §14.1)

➢ (C) The practice of fraud, deceit, or misrepresentation in obtaining certification (this includes an answer of "no" to the question of whether you have been convicted of any crime other than a minor traffic offense?)

➢ (D) Gross Incompetence (lack of knowledge, ability or fitness to perform; evidence of a negligent disregard for the safety of children; negligent or fraudulent completion of school reports; physical or mental condition that interferes w/ safety of children or satisfactory performance of duties; refusal to perform, or repeated negligent disregard of duties; habitual intemperance; harassment on the basis of sex)

➢ (E) Suspension or revocation of a certificate in another jurisdiction

Denial of certificate for prior immoral conduct

- (3) Evidence that applicant has injured the health or welfare of a child through physical or sexual abuse or exploitation. Every person, who, w/in 5 years of application has been convicted of a criminal offense involving a child, may be presumed to lack good moral character. The commissioner may consider all records of prior criminal convictions involving child abuse or exploitation.

Rule 05-071, c 115, p. I, §3.2(C)
Confidentiality of Criminal History Record

- The Dept shall observe 20-A MRSA §6103(3) - Information obtained is confidential and may not be disseminated outside the department
- Conviction information provided to the Dept from the State Bureau of Identification **shall not be shared w/ school personnel**, whether or not it results in denial of an applicant's certificate, authorization, or approval
- An applicant may access his or her own criminal history records check

Rule 05-071, c 115, p. I, §16
Records and Reports

Nonconfidential

- Information concerning the certification status of any individual
- Certificates of dismissal, records of other disciplinary actions taken by a school board, transcripts of public hearings, and court records and transcripts
- Charges or information filed by Commissioner w/ Crt in support of petition not to renew, etc. and the Courts decision
- Any action taken by Commissioner w/ regard to certification adjudicatory licensing proceedings

Confidential

- Transcripts, recommendations and other documents submitted for certification purposes
  Exceptions: information may be released to school boards and superintendents who are considering employing the individual (except for criminal history records check); authorized personnel of the Dept.; individuals and representatives of individuals examining own files)
- Home addresses (except to commissioner or chief exec of state agency or by majority request of joint standing committee of the Legislature
- Complaints, charges, or accusations and replies and reports pertaining to such unless already a public record as a matter of law
- Information obtained through fingerprint-based criminal history check
- Non-identifiable aggregate data relating to Crim History Checks Program may be releases only after consultation w/ AG

APPENDIX D

50-State Comparison of Public Access to State Educator Discipline Records

50-State Comparison of Public Access to State Educator Discipline Records
Adapted from NASDTEC Knowledge Base

State	What is the Extent of Public Access to Educator Discipline Records?	Who Has Access to State Educator Discipline Records?
"RESTRICTED ACCESS" STATES		
Alaska	The Professional Teaching Practices Commission publishes actions taken against certificate holders.	There is only access to the final disposition when a certificate is sanctioned.
Delaware	Criminal history record information is confidential and is only disclosed to the chief school officer, chief personnel officer and a person designated to assist in the processing of criminal background checks in the hiring school. Records obtained in a disciplinary action are confidential.	Chief school officers, chief personnel officers, a person designated in each school to help with the processing of criminal background checks. The Secretary of the Standards Board has access to disciplinary records.
Hawaii	Criminal history information obtained from the FBI is confidential; criminal history information concerning criminal convictions obtained from other sources is public information; arrest records are confidential. Personnel records, including disciplinary action, are confidential records and may not be disclosed to the public.	Department of Education.
Illinois	The act of suspension or revocation is public information.	State Board of Education.
Maine	Only the certification status of a teacher is a public record. Commissioner of Education may only report the disciplinary action taken against a certificate holder, but not the grounds for that action. School employee records and teacher certification files are confidential, except for records of disciplinary actions taken by a school board, including a certificate of dismissal.	Public does not have access to discipline records unless Commissioner of Education files a petition with the court to revoke or suspend a certificate. Only the Commissioner of Education and hearing officers or legal counsel acting for the Department have access to all documents in fulfilling their assigned duties related to teacher certification and educator discipline.
Mississippi	Criminal history record information is confidential. Records maintained by the State Board in relation to a disciplinary action are confidential.	State Board, local school superintendent, and school board members have access to criminal history record information. A superintendent or school board where teacher is employed is notified of any disciplinary actions taken by the State Board.
New Jersey	Documents submitted by a candidate and all criminal history record information shall be maintained by the Commissioner of Education in a confidential manner.	Commissioner of Education can share records with State Board of Examiners and with courts as necessary
North Carolina	All criminal history information received by the local Board of Education is privileged and is not a public record.	Local Board of Education can share criminal history records with the State Board of Education.
North Dakota	All criminal history record information received by the Education Standards & Practices Board is confidential and closed to the public.	Criminal history record information is provided to Bureau of Criminal of Investigation and the bureau, upon request of the Education Standards & Practices Board, may provide records to the board. The board may only use records to determine eligibility for licensure or to obtain documentation to support denial of licensure.
Utah	No public access.	Utah Professional Practices Advisory Commission
Virginia	No public access to criminal history record information. State Board of Education may disclose investigation records pertaining to a school employee to a local school board/superintendent when a complaint filed results in an investigation related to the denial, suspension or revocation of a teaching license. Records of completed investigations shall include the school involved, the identity of the subject of the complaint (unless the complaint was unsubstantiated), the nature of the	Central Criminal Records Exchange reports FBI conviction information to local school boards. If an applicant is denied employment or if a teacher is suspended or dismissed due to a conviction appearing on a criminal history record, then the school board must provide a copy of the record to the applicant or teacher.

State	What is the Extent of Public Access to Educator Discipline Records?	Who Has Access to State Educator Discipline Records?
	complaint, and any action taken to resolve the complaint.	
Wisconsin	No public access.	No public access.
"PARTIAL ACCESS" STATES		
Arkansas	All criminal history information received by the state Department of Education is privileged information and is not a public record. Investigative records are confidential and are not open to the public. Written decisions of investigations conducted by the Professional Licensure Standards Board are public information.	Results of the criminal history records check are shared by DOE with board of directors of local school districts. The applicant and their attorney may examine any information received by the Department of Education pertaining to a criminal history background check; an employee under investigation by the Professional Licensure Standards Board may examine any documents related to an investigation. Written decisions of the Professional Standards Licensure Board are public records.
California	All information received pertaining to criminal background checks is confidential and must be destroyed upon completion of the hiring decision.	All misconduct decisions are published in a document that is sent to all California school districts, county offices of education, private schools, deans of education and other interested parties. In addition, current disciplinary actions of revocations and suspensions are available to the public on a website maintained by the Commission of Teacher Credentialing.
Colorado	Criminal history record information is not available to the public. When an applicant or license holder's license is denied, annulled, suspended or revoked, the Department of Education posts the name of the person and basis for the disciplinary action on the department's website.	The department may share disciplinary actions taken against prospective employees to local boards of education. Criminal history record information may be shared by the Department of Education with local boards of education.
Connecticut	Criminal history record information is confidential. Teacher performance and evaluation records are confidential. Records of teacher personal misconduct are not confidential.	Local Boards of Education, the Commissioner of Education and the State Board of Education.
Florida	Investigative findings and outcome become public record upon the finding of Probable Cause or No Probable Cause, or otherwise administratively closed. Certain information remains exempt from disclosure under public records; some examples include sealed/expunged records, FBI/FDLE records, minor names, social security numbers, standardized test materials and medical records.	General public within the guidelines of public records law.
Georgia	Open Records Act allows access to results after final adjudication.	General public, within guidelines of the Open Records Act.
Idaho	Criminal history record check information is confidential and is only disclosed to the applicant upon request. Disciplinary records are confidential. Written decisions by the Professional Standards Commission are public.	Professional Standards Commission.
Indiana	The public has access to State Board determinations in all disciplinary matters.	Anyone who submits a written request for the information.
Iowa	Criminal history record information is confidential. Disciplinary records are confidential. Written decisions by the Board of Educational Examiners are public.	Investigative information relating to disciplinary action may be shared with appropriate Iowa licensing authorities and to states where a licensee is licensed or has applied for a license.

State	What is the Extent of Public Access to Educator Discipline Records?	Who Has Access to State Educator Discipline Records?
Maryland	Upon request, any orders and findings that result from formal disciplinary actions may be disclosed to the public. A custodian may permit inspection of other information about a licensee if the custodian finds a compelling public purpose; and the rules of the official custodian permit the inspection.	Rules on public access to professional licensure records, including teachers, are currently being promulgated. Public information requests are considered on a case by case basis. General Assembly members may acquire the names and addresses of, and statistical information about, individuals who are licensed by the State.
Minnesota	All final actions taken by Board of Teaching and Board of School Administrators are public.	If final action is taken by Board, copy of the final action is public. Otherwise, records are not public.
Missouri	Criminal history record information is confidential. Disciplinary records are confidential. Written decisions by the State Board of Education are public.	School districts, Department of Education and the State Board of Education
Montana	Criminal history record information is confidential, except that an applicant may receive a copy of their background check report. Written reports of the State Board of Education concerning disciplinary matters are not public records. Written letters of reprimand may be accessed by the public if the board determines that the public's right to know outweighs the person's right to privacy.	Superintendents of public instruction have access to all material considered by or available to a school that may be relevant to a disciplinary investigation. The State Board of Education may notify a local board of a teacher reprimand, if the local board requests that information.
Nevada	National and state criminal history record information is confidential. If evidence is insufficient to suspend or revoke a license, the file created to monitor the incident must not be made a part of the licensee's permanent employment file.	Department of Public Safety investigates the national and state criminal history of applicants for educational licensure and is required to notify county school superintendents when an applicant has a disqualifying conviction or offense. Department of Education is required to adopt rules establishing procedures for the notification, tracking, and monitoring of criminal cases involving licensed educational personnel. Superintendent of Public Instruction notifies state education agencies in other states of any revocation or suspension ordered by State Board of Education.
New Hampshire	Records pertaining to revocation and suspension are considered public information.	Director, Division of Program Support and the Investigator, Educator Misconduct.
New Mexico	Criminal history record information is confidential, except that it can be given to the applicant and the hiring school board. The public has access to final written decisions by the Secretary of Education on a licensure action.	Disciplinary records can be accessed by the Licensure Bureau, hearing officers and the Secretary of Education. Criminal history record information can be accessed by the hiring school board and the applicant.
New York	Records pertaining to a state disciplinary proceeding are accessible when the state action is final and has resulted in an adverse action against the educator.	Public record if decision favors the State's position as to questionable moral character.
Oklahoma	Local school boards must adopt a policy regarding search of state or federal felony conviction records. Federal criminal records are confidential pursuant to the federal-interstate National Crime Prevention & Privacy Compact.	Local school boards may request state or federal felony conviction information from the State Board of Education.
Oregon	Public may access records of the Teacher Standards and Practices Commission final orders upon request.	Only final orders of the commission are accessible by the public or the educator. Records of investigations that resulted in dismissal or no further action by the commission are protected and not available to the public or the educator investigated.
Pennsylvania	Revocations, suspensions, surrenders, and public letters of reprimand are considered public records.	Decision of the Chief Counsel's office.
Rhode Island	Public has access to record of final disciplinary action.	Staff of the Office of Teacher Certification.

State	What is the Extent of Public Access to Educator Discipline Records?	Who Has Access to State Educator Discipline Records?
South Carolina	State Board of Education orders relative to denials, suspensions, revocations, public reprimands, and voluntary surrenders are public records and are listed on the state website. Investigation notes, court records and other documents collected during an investigation are not public records.	Public has access to State Board of Education orders related to disciplinary action. A list of all disciplinary actions by the State Board is disseminated each month to all school districts and to NASDTEC.
South Dakota	Commission hearing records are not available if the respondent has requested a private hearing. However, in a default hearing and public hearing, all records can be released via subpoena or written request.	Access to records is limited to legal counsel and selected Department of Education personnel.
Texas	State Board for Educator Certification website contains a list of educators who have been sanctioned. Educators' "virtual certificates" include the following sanctions: revocation, suspension, and inscribed reprimand (non-inscribed reprimand is non-disclosable). All other information in an educator discipline investigative file is confidential, except for the final order entered by the State Board, (which is not posted on the website, but is available through a public information request).	Public has access to educators' "virtual certificates," including sanctions, on the State Board for Educator Certification website. Public can access final order entered by the State Board through a public information request.
Vermont	Commissioner of Education is required to maintain a registry of complaints that resulted in formal charges and disciplinary action taken against licensees, which is a public record. For formal investigations conducted by the Standards Board for Professional Educators of complaints that do not result in a formal charge, only the following information is open to the public: the date and nature of the complaint and a summary of the completed investigation (but not the identity of the licensee or information that could be used to identify the licensee).	Department of Education investigators maintain internal records. Suspensions and revocations, including grounds, posted on state website. Information from formal investigation may be disclosed to state or federal law enforcement in the course of an investigation or as necessary to investigate a complaint, to the school superintendent where licensee is employed when the commissioner determines the alleged professional misconduct or incompetence places students in immediate physical or emotional jeopardy. Suspensions, revocations, denials, and reinstatements of licenses are reported to NASDTEC.
West Virginia	Criminal history record information is confidential. Disclosure of criminal history record information in a statistical publication that does not identify the individuals involved is public. Disciplinary records related to a license revocation hearing are confidential.	The State Superintendent, county superintendents and Professional Teaching Standards Commission have access to disciplinary records related to a license revocation hearing.
"FULL ACCESS" STATES		
Alabama	Findings of fact, settlement agreement, hearing, and final decision.	Public has access.
Arizona	The full record is available to the public.	Public has full access to records.
Kansas	Open records law allows public access.	Public has access to discipline records.
Kentucky	Open records law allows public access to discipline records. Criminal history information obtained from the FBI is confidential.	Public has access to discipline records.
Louisiana	Opens records law. The only items excluded from public access are an employee's home telephone, home address, name and account information of a financial institution to which an employee's wages are directly deposited, medical, insurance and health information.	Public has access to discipline records.

State	What is the Extent of Public Access to Educator Discipline Records?	Who Has Access to State Educator Discipline Records?
Massachusetts	Any information, documents or evidence gathered during a disciplinary investigation are available to the public upon final disposition of the action.	Commissioner of Education must notify all school superintendents and licensure offices of other states of a license suspension, revocation, limitation or surrender. Records are available to the public upon final disposition of a license action.
Michigan	The information is accessible through a written request under the Freedom of Information Act.	The information is available through a written request under the Freedom of Information Act.
Nebraska	Discipline records are public records.	Public has access to discipline records.
Ohio	All disciplinary records are public documents. Investigative records are confidential.	All disciplinary records are public documents.
Tennessee	Only revoked licenses are considered public records.	State Board of Education and Department of Education.
Washington	Website contains lists of actions taken. Closed cases are public records.	Closed cases are subject to public disclosure.
Wyoming	Open access following Board action.	Open access following Board action.