

TESTIMONY IN SUPPORT OF

L.D. 1399

AN ACT TO ALLOW ACTION AGAINST A PERSON VIOLATING THE CONFIDENTIALITY OF AN EXECUTIVE SESSION OF A PUBLIC BODY OR AGENCY

April 11, 2025

Senator Carney, Representative Kuhn, and members of the Judiciary Committee, I am Steven Bailey, the Executive Director of the Maine School Management Association, testifying on behalf of the legislative committees of the Maine School Boards Association and Maine School Superintendents Association in support of L.D. 1399.

Our associations thank Rep. Carlow for seeking a solution to this issue, which unfortunately has become more and more common on school boards across our state. When we performed an informal survey of our legislative committees, nearly all members recalled situations in which information from an executive session – which is supposed to remain confidential – was leaked to outside personnel and/or organizations. This is a worrisome trend, and we believe it is part of the reason behind acrimony and distrust in some school boards throughout Maine.

School boards may only consider very specific topics within an executive session:

1. Specific personnel matters (when public discussion could reasonably be expected to cause damage to the individual's reputation or right to privacy);
2. Suspension/expulsion of a student;
3. Condition, acquisition, or use of real or personal property if premature disclosure would prejudice the school unit;
4. Discussion of labor contracts or negotiations;
5. Consultations with legal counsel regarding legal rights, pending litigation, and settlement offers; and
6. Discussions of records that are considered confidential by law.

It is largely self-explanatory why these topics must remain confidential. These issues concern delicate matters: student and staff records, potentially damaging information to an employee's reputation, or confidential legal matters. Any leaks can cause substantial harm to personnel, students, families, or the school district as a whole.

More than nearly any other body, a school board relies on trust, collaboration and unified vision. Without those factors, it is nearly impossible to achieve the goal of improving education for students and the wider community. When one or more board members shares confidential information, that trust breaks down. Board members cannot rely on each other, and the community itself may lose trust in the board and school district as a whole.

Our associations view L.D. 1399 as a reasonable policy that will allow for due process of any potential violations, while also serving as a meaningful deterrent against these leaks in the future. L.D. 1399 would create an investigation and hearing process, and a board member could only be found in violation of executive session by a 2/3 vote of the body – an appropriately high bar. We also appreciate that it would not remove that member from the board but simply bar them from certain future discussions in executive session. We feel this is an appropriate response that would allow the board member to continue to participate in most future discussions, while imposing a penalty in line with their violation.

We also think it is crucial that this process may be used by a board, but it is not required. This simply gives boards another tool, if they wish to use it.

Some board members did express some concerns about this bill. They feel that this process would be too lengthy and drawn-out and ultimately would only create more division amongst board members. Others feel school boards are dealing with far larger challenges at the moment, and the solution to these leaks of executive sessions should be to help board members better understand their oath of office – not to punish them. Other board members also expressed interest in exploring other solutions, such as a simple fine for a violation instead, which they feel could also serve as an effective deterrent.

Nonetheless, we believe L.D. 1399 would be an important step forward that would help improve the effectiveness and operation of school boards throughout our state, and we urge you to support this measure.

Thank you very much for your consideration, and I am happy to take any questions you might have.