



March 2, 2026

Electronically Submitted

Senator Joseph Rafferty, Chair
Representative Kelly Murphy, Chair
Joint Standing Committee on Education and Cultural Affairs
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

Re: *Testimony in Opposition to LD 2204 – “An Act to Allow Schools to Expel Students for Committing Sexual Assault”*

Dear Senator Rafferty, Representative Murphy, and members of the Joint Standing Committee on Education and Cultural Affairs:

My name is Atlee Reilly and I am a Managing Attorney at Disability Rights Maine, Maine’s protection and advocacy agency for individuals with disabilities. I am providing written testimony to follow up on my testimony at the public hearing in opposition to LD 2204 – “An Act to Allow Schools to Expel Students for Committing Sexual Assault”.

I will not address the policy rationale for limiting the use of suspension and expulsion of pre-k to 5th grade students because that was addressed in detail by this Committee as recently as last session. Instead, I attach and incorporate prior testimony on the issue, including DRM’s March 2025 testimony on LD 165 “An Act to Allow School Boards to Expel or Suspend Students Regardless of Grade Level”. I also attach DRM’s April 2021 testimony in support of LD 474 - “An Act Regarding School Discipline for Maine’s Youngest Students”, which this proposal is clearly designed to roll back, as well as DRM’s February 2020 testimony regarding LD 2016, which did not advance due to impacts of COVID-19.

As an initial matter, we want to make clear that schools can already expel students in Grade 6 and above for committing sexual assault. Maine law regarding expulsion is very broad and specifically includes “infractions of violence”. See 20-A M.R.S. § 1001(9)(B). This would of course include sexual assault. The only children who are protected from expulsion under current

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law are students in Grade 5 and below. Or, put another way, the Students protected from expulsion under current law are students who are generally 5-10 years old. So those are the children you should keep in mind when thinking about this bill. They are the only ones it will impact in any significant way.

In addition to establishing what amounts to a legal presumption for the expulsion of young children determined (by a school administrator) to have committed sexual assault as defined in Maine criminal statute, LD 2204 would also require the creation of policies to refer these children to an “appropriate law enforcement agency”. But in 2025, through L.D. 1849, Maine joined many other jurisdictions by enacting a minimum age for juvenile court jurisdiction. The age Maine set is 11. See: 15 M.R.S. § 3003 (defining juvenile for purposes of the juvenile code and juvenile court jurisdiction as “A person who has attained 11 years of age but had not attained 18 years of age at the time the person allegedly committed any juvenile crime...”). There are many reasons for this, including that a 5,6,7,8,9, or 10 year old would be almost certainly not be deemed competent to stand trial.

It is concerning that school principals and school boards would be tasked with applying a criminal statute, especially this one, to children ages 5-10. The existing statutory language referenced in the bill, Title 17-A Chapter 11, covers a wide range of behaviors. The way this is written means that the same disciplinary measure would be required for all students for any form of sexual assault - from gross sexual assault to unlawful sexual touching. The crimes under this chapter range from felony to misdemeanor. Here, children who exhibit any of the conduct described in the chapter would be subject to the same harsh outcome and loss of access to education. The outcome for gross sexual assault (Class A felony) is the same as that of touching of buttocks over clothing (Class D misdemeanor assuming intent criteria met).

Addressing problem sexual behavior in schools is an extremely important goal. But expelling students as young as 5 is not the appropriate response. While we think that the Committee should reject this proposal, if the Committee is inclined to consider it, it should first seek input from experts in problem sexual behavior of children as well as experts in juvenile law who can discuss the implications of using this particular criminal statute in the context of school discipline for very young children. The Committee should also seek input from individuals and organizations with expertise in addressing problem sexual behavior in schools if it intends to legislate in this space, to ensure that the most effective methods are used and to avoid unintended consequences. In addition, individuals with expertise in the already existing obligations of schools under Title IX could also help shed light on the fact that schools already have a responsibility to take effective action to prevent and/or appropriately respond to and address the harms from problem sexual behavior and other forms of sexual harassment in schools.¹

¹ Here is a link to an FAQ document maintained by the USDOE: <https://www.ed.gov/laws-and-policy/civil-rights-laws/frequently-asked-questions-sex-discrimination>. Additional information maintained by USDOE is available here: <https://www.ed.gov/laws-and-policy/civil-rights-laws/title-ix-and-sex-discrimination/sex-discrimination-overview-of-law>.

With regard to the proposal to require the expulsion and referral to law enforcement of pre-K to 5th grade students, we submit this is not the right approach. This population is unique as indicated in a guide titled *Know Your Child's Rights (K-5): K-5 Sexual Harassment and Assault* from Equal Rights Advocates:

In the context of peer-on-peer sexual harassment or assault, a key difference at the K-5 level is the purpose of the discipline or response. Given the likely young age of the child exhibiting the problematic behavior, *the school's focus should center on taking a caring and deliberate stance toward both protecting the victim and addressing the harmer's behavior. In these instances, the school is positioned to both facilitate the harmer's learning of proper behavior and explore whether any harm or other alarming stressors are instigating the behavior.* Early intervention helps to ensure that the school sufficiently addresses improper behavior before it escalates and has the power to prevent further harm to your child, the harmer's current classmates, and future peers as the child ages. Ideally, intervening when the harmer is so young will also help them avoid future negative life consequences from escalating harmful behavior.²

In our view, the primary impact of this bill will be that many children, ages 5-10, will be identified by their schools as having committed a sexual assault as defined in Maine's criminal code when they could not even be charged with that crime. Schools who may not have the resources to address the needs of a child engaging in problem sexual behavior or who may otherwise want to rid themselves of a student, will be incentivized to label the behavior of very young children as criminal sexual conduct in order to expel them as this law would require.

We would be happy to provide additional information if needed. And we urge you to vote ought not to pass on LD 2204.

Respectfully Submitted,



Atlee Reilly
Managing Attorney
Disability Rights Maine

² Equal Rights Advocates, *Know Your Child's Rights (K-5): K-5 Sexual Harassment and Assault*, available at: <https://www.equalrights.org/issue/equality-in-schools-universities/k-5-sexual-harassment-assault/> (emphasis added)



April 26, 2021

Senator Joseph Rafferty, Chair
Representative Michael Brennan, Chair
Joint Standing Committee on Education and Cultural Affairs
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

Re: LD 474 - "*An Act Regarding School Discipline for Maine's Youngest Students*"

Dear Senator Rafferty, Representative Brennan and Members of the Committee on Education and Cultural Affairs:

My name is Atlee Reilly and I am a managing attorney at Disability Rights Maine, Maine's protection and advocacy agency for people with disabilities, testifying in support of LD 474 - "*An Act Regarding School Discipline for Maine's Youngest Students*". LD 474 would limit the use of out of school suspensions and expulsions for students in grade 5 and below. LD 474 would also ensure that any student in Maine facing an expulsion from school be provided information about how to obtain legal representation.¹ And LD 474 would end the counterproductive practice of withholding recess from elementary school students as a form of punishment.²

¹ Over the past two years, DRM has worked with other partners, including Kids Legal at Pine Tree Legal Assistance, the Maine ACLU, and the Cumberland Legal Aid Clinic to try and increase access to counsel for children facing school discipline. One aspect of this effort was the creation of a pro bono project, Every Student, All Day, Every Day, to connect students with pro bono attorneys in school removal cases. LD 474 would require schools to provide notice of the availability of this and other resources prior to proceeding with an expulsion. No student should have to face expulsion from school without access to counsel.

² Although the bulk of DRM's testimony focuses on the limitations LD 474 would place on suspension and expulsion, we also support this provision. So does the research. See: American Academy of Pediatrics "Policy Statement: The Crucial Role of Recess", *Pediatrics*. 2013;131(1):183.188. <http://pediatrics.aappublications.org/content/131/1/183>. (Reaffirmed August 2016)("On the basis of an abundance of scientific studies, withholding recess for punitive or academic reasons would seem to be counterproductive to the intended outcomes and may have unintended consequences in relation to a child's acquisition of important life skills.")

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MAINE'S PROTECTION AND ADVOCACY AGENCY FOR PEOPLE WITH DISABILITIES

Simply put, suspensions are harmful and do not make schools safer.³ There is no evidence that the use of suspensions improves school safety and climate or student behavior, and in fact, there is evidence that elementary school suspensions are the best predictor of suspensions later in school.⁴ School attendance is, not surprisingly, linked to school achievement. One recent analysis found that fourth grade students who missed three or more days of school had reading scores more than a full grade level below their peers.⁵ Recent research indicates students may have lower academic achievement just by attending schools with high suspension rates, even if they themselves are not suspended.⁶ Disciplinary removals also increase the risk of a range of educational, economic, and social problems, including dropout and involvement with the juvenile justice system.⁷ And students of color and students with disabilities are disproportionately subjected to and impacted by suspensions and other removals.⁸ Suspensions, especially for younger children, also increase the stress on families that are already struggling. Parents lose wages and sometimes even their jobs when elementary school students are repeatedly sent home.

³ See: Losen, D. J., & Martinez, P. (2020). “Lost Opportunities: How Disparate School Discipline Continues to Drive Differences in the Opportunity to Learn” available at: <https://www.civilrightsproject.ucla.edu/research/k-12-education/school-discipline/lost-opportunities-how-disparate-school-discipline-continues-to-drive-differences-in-the-opportunity-to-learn/Lost-Opportunities-REPORT-v17.pdf>

⁴ Russell Skiba and M. Karega Rausch, “School Disciplinary Systems: Alternatives to Suspension and Expulsion,” in G.G. Bear and K. M. Minke (eds), *Children’s Needs III: Development, prevention, and intervention* (pp. 87-102). See also: Skiba, Arredondo and Rausch, “New and Developing Research on Disparities in Discipline” (March 2014) available at: https://indrc.indiana.edu/tools-resources/pdf-disciplineseries/disparity_newresearch_full_040414.pdf

⁵ See: Ginsburg, Jordan and Chang, “Absences Add Up: How School Attendance Influences Student Success”, *Attendance Works* (August 2014) (“A new state-by-state analysis of national testing data demonstrates that students who miss more school than their peers score lower on the National Assessment for Educational Progress (NAEP). This is true at every age, in every racial and ethnic group and in every state and city examined. In many cases, the students with more absences have skill levels one to two years below their peers.”) Available at: https://www.attendanceworks.org/wp-content/uploads/2017/05/Absences-Add-Up_September-3rd-2014.pdf

⁶ Perry, Brea and Norris, Edward, *Suspending Progress: Collateral Consequences of Exclusionary Punishment in Public Schools*, *American Sociological Review*, vol. 79, 6: pp. 1067-1087. (November 5, 2014).

⁷ Commission on Civil Rights, “Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities” (July 2019), available at: <https://www.usccr.gov/pubs/2019/07-23-Beyond-Suspensions.pdf>

⁸ *Id.* See also: Pfister, Theresa, “Racial Disproportionality in School Discipline” Division 15, American Psychological Association (Jan. 2021) available at: <https://apadiv15.org/wp-content/uploads/2021/01/Racial-Disproportionality-in-School-Discipline-Division-15-Policy-Brief.pdf>; and Losen, Martinez, Hae Rim Shin, “Disabling Inequity: The Urgent Need for Race-Conscious Resource Remedies” The Civil Rights Project (March 2021) (“Due to out-of-school suspensions, across all grade levels nationally, students without disabilities lost 19 days per 100 students enrolled while students with disabilities (IDEA) lost 41 days per 100 students enrolled.”) available at: <https://www.civilrightsproject.ucla.edu/research/k-12-education/special-education/disabling-inequity-the-urgent-need-for-race-conscious-resource-remedies>

Fortunately, there are effective practices for teachers and parents working with students experiencing challenging behaviors - trauma informed mental health supports, restorative/transformational justice, positive behavioral interventions and supports, restorative practices, and social-emotional learning. These alternatives to suspension use proactive, preventative approaches that address the root cause of the behavior and reinforce positive behaviors instead. These approaches have been associated with increases in academic engagement and achievement, and reductions in suspensions and dropouts.⁹

Because suspensions don't work, and because they hurt children and families, a growing number of states have acted to limit their use.¹⁰ LD 474 would do just that. Hopefully, this change would simply accelerate and standardize the work many schools are already doing in these areas. According to the last 10 years of data submitted by Maine schools to the Maine Department of Education, schools are already limiting the use of out of school suspension for elementary students.¹¹

**Elementary School Suspensions Reported to the Maine Department of Education
2010-2019**

Grade	Average Out of School Suspensions per year – <i>Statewide</i>
Pre-K	3.1
K	68.9
1	92.7
2	96.2
3	122.8
4	148.7
5	204.2

⁹ See: USDOE, School Climate and Discipline, “Rethinking Discipline”, <https://www2.ed.gov/policy/gen/guid/school-discipline/index.html>

¹⁰ “Policy Snapshot: Suspension and Expulsion”, Education Commission of the States (January 2018), available at: https://www.ecs.org/wp-content/uploads/Suspension_and_Expulsion.pdf. See also: “The Status of School Discipline in State Policy”, Education Commission of the States (January 2019), *available at:* <https://www.ecs.org/wp-content/uploads/The-Status-of-School-Discipline-in-State-Policy.pdf> This trend has continued, with additional states moving to limit exclusionary discipline for elementary school students.

¹¹ To be clear, we have significant concerns about whether the numbers reported by schools to MDOE capture the full scope of exclusionary discipline practices in Maine.

These average annual suspension numbers, when considered in the context of annual enrollments of between 12,000 and 15,000 per grade level and over 200 school administrative units, make clear that ending these harmful practices for our youngest students is within our reach.

And the American Rescue Plan Elementary and Secondary School Emergency Relief (ARP ESSA) provides an excellent opportunity to make additional positive change in this area. Through ARP ESSA, Maine schools will share \$411,303,282.¹² These funds can be used for several purposes, including for implementing strategies to meet the social, emotional and behavioral needs of students impacted by the pandemic. In the wake of significant pandemic related educational disruptions, we must ensure that we take steps to address student needs and keep children connected to school – and schools will have additional resources to support those efforts.

We commend Commissioner Makin and her team at the Maine Department of Education for the commitment to supporting schools in meeting the needs of all students. But while we support schools in doing what works, we must also assist them in abandoning policies and practices that don't. LD 474 would do just that by limiting the use of an ineffective and counterproductive response to student behavior.

We should stop giving good people bad tools – Maine's youngest children belong in school.

Respectfully Submitted,



Atlee Reilly
Managing Attorney
Disability Rights Maine

¹² See: <https://www.ed.gov/news/press-releases/department-education-announces-american-rescue-plan-funds-all-50-states-puerto-rico-and-district-columbia-help-schools-reopen>



February 12, 2020

HAND DELIVERED

Senator Rebecca Millett, Chair
Representative Victoria Kornfield, Chair
Joint Standing Committee on Education and Cultural Affairs
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

Re: LD 2016 - "*An Act Regarding School Discipline for Maine's Youngest Students*"

Dear Senator Millett, Representative Kornfield and Members of the Committee on Education and Cultural Affairs:

My name is Atlee Reilly and I am a managing attorney at Disability Rights Maine, Maine's protection and advocacy agency for people with disabilities, testifying in support of LD 2016 - "*An Act Regarding School Discipline for Maine's Youngest Students*". LD 2016 would limit the use of out of school suspensions and the withholding of recess for students in grade 5 and below. LD 2016 would also provide access to an attorney for students facing expulsion and eligible for free or reduced price lunch.

Simply put, suspensions are harmful and do not make schools safer. There is no evidence that the use of suspensions improves school safety and climate or student behavior, and in fact, there is evidence that elementary school suspensions are the best predictor of suspensions later in school.¹ School attendance is, not surprisingly, linked to school achievement. One recent analysis found that fourth grade students who missed three or more days of school had reading scores more than a full grade level below their peers.² Recent research indicates students may have lower academic achievement just by attending

¹ Russell Skiba and M. Karega Rausch, "School Disciplinary Systems: Alternatives to Suspension and Expulsion," in G.G. Bear and K. M. Minke (eds), *Children's Needs III: Development, prevention, and intervention* (pp. 87-102), http://www.indiana.edu/~equity/docs/Alternatives_to_Expulsion.pdf

² See: Ginsburg, Jordan and Chang, "Absences Add Up: How School Attendance Influences Student Success", *Attendance Works* (August 2014) ("A new state-by-state analysis of national testing data demonstrates that students who miss more school than their peers score lower on the National Assessment for Educational Progress (NAEP). This is true at every age, in every racial and ethnic group and in every state and city examined. In many cases, the students with more absences have skill levels one to two years below their peers.") Available at: https://www.attendanceworks.org/wp-content/uploads/2017/05/Absenses-Add-Up_September-3rd-2014.pdf

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schools with high suspension rates, even if they themselves are not suspended.³ Disciplinary removals also increase the risk of a range of educational, economic, and social problems, including dropout and involvement with the juvenile justice system.⁴ And Students of color and students with disabilities are disproportionately subjected to and impacted by suspensions and other removals.⁵ Suspensions, especially for younger children, also increase the stress on families that are already struggling. Parents lose wages and sometimes even their jobs when elementary school students are repeatedly sent home.

Fortunately, there are effective practices for teachers and parents working with students experiencing challenging behaviors. These alternatives to suspension use proactive, preventative approaches that address the root cause of the behavior and reinforce positive behaviors instead. These approaches have been associated with increases in academic engagement and achievement, and reductions in suspensions and dropouts.⁶ For students with disabilities, schools are already required to consider the use of positive behavior interventions and supports to address any concerns with behavior.⁷ These practices are most effective when applied school wide.

Because suspensions don't work, and because they hurt children and families, a growing number of states have acted to limit their use.⁸ LD 2016 would do just that. Hopefully, this change would simply accelerate and standardize the work many schools are already doing in these areas. According to the last 10 years of data submitted by Maine schools to the Maine Department of Education, schools are already limiting the use of out of school suspension for elementary students.⁹

³ Perry, Brea and Norris, Edward, *Suspending Progress: Collateral Consequences of Exclusionary Punishment in Public Schools*, American Sociological Review, vol. 79, 6: pp. 1067-1087. (November 5, 2014).

⁴ Commission on Civil Rights, *Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities* (July 2019), available at: <https://www.usccr.gov/pubs/2019/07-23-Beyond-Suspensions.pdf>

⁵ Id.

⁶ See: USDOE, School Climate and Discipline, "Rethinking Discipline", <https://www2.ed.gov/policy/gen/guid/school-discipline/index.html>

⁷ OSEP, *Dear Colleague Letter on Ensuring Equity and Providing Behavioral Supports to Students with Disabilities*, pp. 5-8 (August 2016)(This letter is excellent in describing the broad universe of supports, interventions and strategies that should be used instead of restraint and seclusion and exclusionary discipline to address challenging behavior, including: "instruction and reinforcement of school expectations, violence prevention programs, anger management groups, counseling for mental health issues, life skills training, or social skills instruction" and "behavioral supports might include meetings with a behavioral coach, social skills instruction, counselor, or other approaches" and "personnel may need training, coaching, and tools to appropriately address the behavioral needs of a particular child".)

⁸ Rafa, Alyssa, "Policy Snapshot: Suspension and Expulsion", Education Commission of the States (January 2018), available at: https://www.ecs.org/wp-content/uploads/Suspension_and_Expulsion.pdf This document, which has not yet been updated to include legislative actions for 2018 and 2019, indicates that the following states have already enacted legislation placing restrictions on the use of suspension and expulsion by grade level, including: Arkansas (K-5), Maryland (pre-K -2), Tennessee (pre-K – K), New Jersey (K-2), Connecticut (pre-K – 2), Oregon (pre-K - 5). Other states, including Texas (k-3) are moving on this as well. California recently extended its K-3 limitations to K-8. See: <https://www.latimes.com/california/story/2019-09-10/school-suspension-willful-defiance-california>

⁹ To be clear, we have very significant concerns about whether the numbers reported are accurate and whether this captures the full scope of exclusionary discipline. Many parents are told to come pick up their child early repeatedly, or asked to keep them home until a meeting can be held, and these practices are often not recorded as a suspension. These concerns are amplified when looking at the available federal data through the Office for Civil Rights data collection (2015-2016). A preliminary analysis of this data by our office calls into further

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These average annual suspension numbers, when considered in the context of annual enrollments of between 12,000 and 15,000 per grade level and over 200 school administrative units, make clear that ending these harmful practices for our youngest students is within our reach.

We commend Commissioner Makin and her team at the Maine Department of Education for the commitment to supporting schools in meeting the needs of all students. And we recognize schools need more resources to effectively address the needs of all children. But while we support schools in doing what works, we must also assist them in abandoning policies and practices that don't. LD 2016 would do just that by limiting the use of an ineffective and counterproductive response to student behavior.

In closing, I want to briefly describe the following picture:



question the data reported to Maine DOE. For example, in 2015, one elementary school, with an enrollment of just over 400 students, reported 487 days of suspension. When you add three other elementary schools from that same district, the total days of suspension reported to the federal government for 2015 exceeds 700. Although we understand different things are being measured (days of suspension vs. numbers of suspensions), it is very difficult to reconcile this information with the statewide data reported to MDOE.

I included this picture at the request of the mother of a former client, a Kindergarten student who was suspended from school. About 7 days into his suspension, the student and his sister drew a self-portrait for their mother to hang on the wall. He drew himself as “a monster”. She asked me to present this as a reminder of the message that is sent to young children when they are told they are not welcome in their schools.

LD 2016 will help ensure we send a unified message to Maine’s youngest students – they belong in school.

Respectfully Submitted,

s/ Atlee Reilly /

Atlee Reilly
Managing Attorney