



Maine Education Association

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Maine Education Association testimony in opposition to LD2192

My name is Ben Grant and I am the General Counsel for the Maine Education Association. The MEA represents nearly 24,000 educators, including teachers, school counselors, custodians, nutrition staff, transportation staff, other school personnel, and retirees from nearly every public school and in Maine. One of my primary roles as the General Counsel is to handle the most difficult employment disputes.

I want to start by acknowledging the laudable intentions of the sponsor and the advocates for LD2192. Everyone involved in education wants students and staff to be safe. I would also remind the Committee that the MEA has been a leading advocate to reduce the current number of school staff working without a completed background check. Our commitment to safety in schools is unwavering.

However, the MEA urges the Committee to vote LD2192 ought not to pass. There are profound unintended consequences contained in this bill that should give you all grave concerns. "Safe schools" is an important value that drives our work – but I want to impress upon you that there are other vital, competing values at stake here, as well.

Specifically, this bill puts the due process rights of school employees at significant risk – and at a time when we are facing difficult morale, recruiting, and retainment issues across the education system.

And when I say "due process" I want you to have the bedrock American virtue of "innocent until proven guilty" in your minds as you consider several portions of this bill:

First, this bill mandates that all information obtained in an investigation by a school must be made available to all future school employers. This must be done regardless of the result of the investigation, with no time limit. In practice this means an educator can be the subject of a completely frivolous complaint, is fully exonerated, and that file still follows your career forever. Let that sink in for a minute, and think about how you would feel if that happened to you in your own career.

I want to also focus your attention on one small piece of the bill to further illustrate the point: currently, the duty of the Department is to destroy records of findings that are reversed on appeal – meaning they are proven NOT to be true. Under the bill before you, that requirement is flipped on its head – and now the Department would be required to maintain these records. You have to ask for what purpose? If a final determination is made to exonerate someone, what purpose is there to keep the records lying around – other than to provide an opportunity for someone in the future to reach a different conclusion OR to condemn someone based only on

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insinuation. Our system of laws highly values the principle of finality – and it is a core aspect of due process. If we undo these principles, school employees are going to have to relitigate issues forever – even when the system we have clears them of any improprieties.

This bill turns “innocent until proven guilty” into “guilty even when proven innocent.”

Second, this bill will substantially remove any incentive for a school employee and her/his district to compromise over disputed issues covered in this statutory section. It does so by requiring every investigation to be completed, AND assuring that the investigation will follow the employee for her/his entire career.

The uncomfortable truth here is that few cases that people like me handle are clear-cut and very often the best course of action is for the parties to simply part ways. This saves districts the cost and burden of completing investigations, and it saves the employee the disruption and potential public scrutiny. I assure you that this can often be the best result for everyone involved, especially when the facts of a situation are unclear. But, this bill will have the practical impact of forcing employees to pursue every complaint to a final adjudication – so that at minimum they can point to exoneration in the future.

These are the problems with the bill at hand – but I do want to assure the Committee that we are always willing to try to work out issues through further discussion. I believe the laudable goal here can be accomplished, but it will require a different design – for which I do have some ideas. We can have greater protections in this area without trampling the rights of employees, but if nothing changes the Committee should reject the current draft.

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