

TESTIMONY NEITHER FOR NOR AGAINST

L.D. 2204

AN ACT TO ALLOW SCHOOLS TO EXPEL STUDENTS FOR COMMITTING SEXUAL ASSAULT

February 26, 2026

Senator Rafferty, Representative Murphy, and members of the Education and Cultural Affairs Committee, I am Eric Waddell, Executive Director for Maine School Management Association, testifying on behalf of the legislative committees of the Maine School Boards Association and Maine School Superintendents Association neither for nor against L.D. 2204. We appreciate the serious nature of the conduct this bill seeks to address and the need to ensure a safe environment for all students.

20-A M.R.S.A. §1001(9) outlines situations that could prompt expulsion, including deliberate disobedience, infractions of violence, and possession of weapons or drugs “if found necessary for the peace and usefulness of the school.” The statute also prohibits expulsion of students enrolled in grades pre-K through five, with the only exception being for violations of the federal Gun-Free Schools Act. This provision mandates a one-year expulsion for any student who brings a firearm to school, regardless of grade level but provides for the same flexibility this bill does, which authorizes the superintendent to modify in writing the requirement for expulsion of a student on a case-by-case basis.

L.D. 2204 would create a new mandate for school boards to also adopt policies to expel students of any grade who are found to have committed sexual assault “on school grounds or other school property and for referring the matter to the appropriate local law enforcement agency.”

We appreciate the language in the bill that provides that a school board “*may authorize the superintendent to modify in writing the requirement for expulsion of a student on a case-by-case basis.*” This flexibility is essential. It allows school leaders, who are closest to the situation, to make decisions based on the specific facts of an incident, the age and developmental maturity of the student, and any other related circumstances. This provision ensures that expulsion is not an automatic mandate but a measure of last resort.

It is important to note that school boards already have the authority to expel a student for sexual assault, as well as the authority not to expel. This bill would not appear to change that authority but instead add more specificity in statute.

We do have some concerns that this mandate would apply to every child – regardless of grade level. Developmental and psychological research makes clear that elementary-aged children are still building the cognitive and emotional skills needed to fully understand the consequences of their actions. Their brains are developing, and they are learning how to manage behavior and navigate complex social situations. Expelling a young child removes the opportunity for the district to design and implement targeted interventions that address the root causes of the behavior and prevent it from recurring. This is a critical time to provide

guidance, instruction, and support—not to remove children from the very systems designed to help them grow and succeed.

Expulsion, as the most severe form of school discipline, can have a profoundly negative and lasting impact on a young child’s educational trajectory and social-emotional development.

Other interventions—such as counseling, restorative justice practices, and intensive behavioral support—are often more effective in addressing the root causes of behavior and promoting a safe and positive school climate for everyone. Considering all of these factors, we urge your committee to amend this bill to allow for expulsions only for students in 6th grade or older.

In addition, the definition of sexual assault in L.D. 2204 includes any actions “*as described in Title 17-A, chapter 11.*” This is a broad definition and could conceivably encompass a wide array of circumstances. Administrators and board members would likely need additional training to understand the full extent of this language and what situations it does – and does not – apply to.

Our Associations also would suggest that you strike Part C of the bill, which would allow a principal to “suspend” a student “immediately for good cause.” Under Title IX, schools are required to maintain a presumption of innocence until the full investigation is completed. L.D. 2204 would appear to conflict with Title IX regulations and could lead to confusion among school districts.

Thank you for your time and consideration – I am happy to answer any questions you may have.

EXPULSION OF STUDENTS

No student shall be expelled from school except by action of the Board.

Following a proper investigation of a student's behavior and in accordance with the Board's districtwide disciplinary policies, the Board shall expel the student, if found necessary for the peace and usefulness of the school, as provided in 20-A MRSA § 1001(9) and (9-A).

Students in grade five or below cannot be expelled, except for violations of the Gun-Free Schools Act, as provided in 20-A MRSA 20-A MRSA § 1001(9-A).

The Superintendent has the discretion under Maine law to provide an alternative to expulsion on a case-by-case basis. Such determination must be made in writing.

The Board also has the authority to readmit an expelled student on satisfactory evidence that the behavior which was the cause of the student being expelled will not likely recur.

NOTICE OF EXPULSION HEARING

Before any expulsion hearing, the Superintendent shall:

- A. Provide written notice, by regular and certified mail, to the parents/guardians and the student that:
 1. Informs them of the date, time and location of the hearing;
 2. Provides a description of the incident(s) that resulted in the expulsion hearing;
 3. Informs them of their right to review the school's records prior to the hearing;
 4. Includes a copy of the Board's expulsion guidelines(JKE-R);
 5. Informs them of the student's right to an attorney or other representation, and the right to be present and cross-examine witnesses; and

6. Includes a list of available free and low-cost legal services, which must be created and updated annually by the Maine Department of Education.
- B. Invite the parents/guardians and the student to a meeting prior to the expulsion hearing to discuss the procedures of the hearing.

EXPULSION HEARING AND REENTRY

The hearing shall be in a properly called executive session and may also be attended by persons designated by the Superintendent to present information in the case.

Upon making a decision to expel a student, the Board may:

- A. Expel the student for a specific period of time not to exceed the total number of instructional days approved by the Board for the current year; or
- B. Expel the student for an unspecified period of time and authorize the Superintendent to provide the expelled student with a reentry plan, to be developed in accordance with 20-A MRSA § 1001(9-C), specifying the conditions that must be met in order for the student to be readmitted to school after the expulsion.

[NOTE: 20-A MRSA § 1001(8-A)(C) states, “The notice of the school board’s written decision may include a reentry plan developed in accordance with subsection 9-C,” which lists requirements associated with the development of the plan. The plan is to be developed by the Superintendent/designee in consultation with the student and his/her parents/ guardians as guidance to help the student understand what he/she must do to establish satisfactory evidence that the behavior resulting in the expulsion will not likely recur (see 20-A MRSA § 1001(9-C)(B)(1)). The law provides that if the student or parents do not attend the meeting to develop a reentry plan, the reentry plan must be developed by school staff and provided to the parents and student in writing (see 20-A MRSA § 1001(9-C)(B)(2-4)).]

The Board has adopted guideless (JKE-R) that outline the procedure for conducting an expulsion hearing and for developing a reentry plan, if applicable.

After the expulsion hearing, the Board shall provide written notice of its decision to the parents/guardians and the student by certified mail.

Nothing in this policy shall prevent the Board from providing educational services in an alternative setting to a student who has been expelled.

Legal Reference: 20-A MRSA § 1001(8-A), (9), (9A-9D)
1 MRSA § 405(6)(B)

Cross Reference: JKE-R – Expulsion of Students—Guidelines
JIC – Student Code of Conduct
JICIA – Weapons, Violence and School Safety
JICK – Bullying
JK – Student Discipline
JKD – Suspension of Students
JKF – Disciplinary Removal of Students with Disabilities

Adopted: _____

PLEASE NOTE MSMA sample policies and other resource materials do not necessarily reflect official Association policy. They are not intended for verbatim replication. Sample policies should be used as a starting point for a board's policy development on specific topics. Rarely does one board's policy serve exactly to address the concerns and needs of all other school units. MSMA recommends a careful analysis of the need and purpose of any policy and a thorough consideration of the application and suitability to the individual school system.
MSMA sample policies and other resource materials may not be considered as legal advice and are not intended as a substitute for the advice of a board's own legal counsel.

EXPULSION GUIDELINES

I. EXPULSION HEARING AND REENTRY GUIDELINES

The following steps constitute general guidelines for the conduct of an expulsion hearing. The guidelines may be adjusted to meet the flexible requirements of due process on a case-by-case basis, consistent with applicable laws.

A. Procedures for Conduct of Board Hearing to Expel

1. Any discussion, consideration or hearing by the School Board of suspension or expulsion of a student shall be in executive session.
2. The Board shall be in a public meeting and vote to enter executive session. Executive session requires a 3/5 affirmative vote of the members present and voting, and the vote must be recorded.
3. The parents/legal guardians, the student and legal counsel or other representative (if any) must be present for the hearing, except that the hearing may go forward if the parents/guardians and student have been provided prior written notice and failed to appear for the hearing.

B. Executive Session

1. General Rules of Conduct
 - A. The hearing officer (Board Chair/designee or Board attorney) will conduct the hearing.
 - B. Witnesses shall be sequestered in response to a request by either party.
 - C. The hearing officer will state “no irrelevant or repetitious evidence will be allowed and no debate between the parties will be allowed.”
 - D. The hearing officer will state that “all parties are expected to maintain the confidentiality of the proceeding.”

- E. The Board and student (at his/her own expense) may be represented by legal counsel through each stage of the process.

II. PROCEDURES

- A. The hearing officer will state for the record:

- Date of this hearing;
- Place of hearing;
- Time of hearing;
- Name of student;
- Those in attendance for the administration;
- Those in attendance for the student; and
- Those in attendance for the School Board.

- B. The hearing officer will request from the Superintendent a copy of the hearing notice, read the hearing notice to the Board and include the notice in the record. If no person appears at the hearing on behalf of the parents/legal guardians or student, the hearing officer will request that the Superintendent confirm that the parents/guardians and student were provided notice of the hearing.

- C. The Superintendent/designee, hereafter called "the administration," will make an opening statement that includes an overview of the evidence, his/her recommendation, the reason(s) for the recommendation, and the legal basis for the recommended expulsion.

- D. The hearing officer will inform the student and parents/legal guardians of their rights:

- To hear the evidence;
- To cross examine witnesses; and
- To present witnesses and offer other relevant evidence.

- E. The hearing officer will ask if any member of the Board finds him/herself in a possible conflict of interest situation because he/she knows the student or parents/guardians to such an extent, or has knowledge of the facts to such an extent, that he/she could not impartially hear the facts and decide the issue on its merits.

- F. All witnesses shall be sworn in by the hearing officer. Each witness raises his/her right hand and is asked, "Do you solemnly affirm to tell the truth, the whole truth and nothing but the truth?"
- G. The administration calls its witnesses.
- H. After each witness has answered all questions put by the administration, then the student/designee (hereinafter, the student) may cross-examine. This should be limited to questions and not arguments with the witness.
- I. The administration may ask rebuttal questions after the student finishes questioning.
- J. Members of the Board may ask questions at the conclusion of the rebuttal.
- K. The student may then call his/her own witnesses to testify, and the student may testify. All witnesses will be sworn. The administration may cross-examine witnesses. The student may ask rebuttal questions. After the rebuttal questions, the Board may ask questions.
- L. When all the student's witnesses have completed testimony (including the student), the administration may call additional rebuttal witnesses who may be cross-examined.
- M. At the end of the testimony, the administration shall make a statement which should include its recommendations. The same may then be done by/for the student.
- N. The Board should then deliberate in executive session. The Superintendent, Board attorney, administration, the student charged, his/her parents/legal guardians, and the student's legal counsel may remain for deliberations. If the student and representatives elect not to be present during deliberations, the administration will also be excluded from deliberations, except that the Superintendent may remain to provide guidance to the Board if he/she was not directly involved in the investigation/presentation of evidence.
- O. The Board shall discuss whether the charges are more likely than not supported by the evidence presented. The Board may discuss and/or draft proposed finding of fact(s) concerning the charges prior to leaving the executive session.

- P. If the charges are more likely than not supported, the Board shall discuss whether an expulsion shall be for a specified period of time or for an indefinite period.
- Q. The Board shall then leave executive session.

III. PUBLIC SESSIONS

- A. In public session, a member of the Board may make a motion to “expel a student and direct the Superintendent to provide the student and his/her parents/guardians with the Board’s findings of fact(s).” Following a second, the Board Chair should state the motion and the Board should vote. If no motion is made to expel, the student will return to school at the conclusion of the previously-imposed administrative suspension.

If the student is expelled, a member of the Board shall make a motion as to whether the expulsion shall be for a specified period of time or for an indefinite period. If the expulsion is for an indefinite period, the Board may authorize the Superintendent to develop a reentry plan for the student as described in Section IV below.

- B. The Superintendent is responsible for notifying the parents/legal guardians (and the student) of the Board’s decision.

IV. REENTRY PLAN GUIDELINES

If the Board expels a student for an indefinite period of time and authorizes the Superintendent to develop a reentry plan, the following steps are required by law.

- A. The Superintendent/designee shall develop the reentry plan in consultation with the student and his/her parents/legal guardians to provide guidance that helps the student understand what he/she must do to establish satisfactory evidence that the behavior that resulted in the expulsion will not likely recur.
- B. The Superintendent/designee shall send a certified letter or hand-deliver a letter to the parents/legal guardians of the student, giving the date, time and location of a meeting to develop a reentry plan.
- C. If the student and the student’s parents/legal guardians do not attend the meeting, the reentry plan must be developed by the Superintendent/designee.

- D. The reentry plan may require the student to take reasonable measures determined by the Superintendent that will help establish the student's readiness to return to school. Professional services determined to be necessary by the Superintendent must be provided at the expense of the student's parent/legal guardians and/or the student. (See policy JKF for requirements related to students with disabilities.)
- E. The reentry plan must be provided to the parents/legal guardians and the student.
- F. The Superintendent shall designate an appropriate school employee to review the student's progress with the reentry plan at one month, three months and six months after the initial reentry plan meeting, and at other times as determined necessary by the designated employee, in consultation with the Superintendent.

Legal Reference: 20-A MRSA §§ 1001 (8A), (9C)

Cross Reference: JKF – Disciplinary Removals of Students with Disabilities

Adopted: _____

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