

## OFFICE OF POLICY AND LEGAL ANALYSIS

To: Members, Joint Standing Committee on Education and Cultural Affairs  
From: Samuel Senft, Esq., MPH, Legislative Analyst  
Date: 5/5/21  
Subj: **LD 474, “An Act Regarding School Discipline for Maine’s Youngest Children” (Morales)**

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### SUMMARY

This bill requires the following:

1. The Department of Education to create a list of available free and low-cost legal services and update it annually.
2. That school superintendents include, as part of the written notice provided to students and parents prior to expulsion hearings, the list of available free and low-cost legal services;
3. That a student code of conduct may not prescribe suspension, expulsion or the withholding of recess as a consequence of a violation of the student code of conduct by any student enrolled in grade 5 or below except as provided under the federal Gun-Free Schools Act.

### TESTIMONY

- **Proponents: Rep Morales (sponsor); Alberto Morales, South Portland; Ange Ishimwe, Portland; Pedro Vasquez, S. Portland Human Rights Commission; Joshua Ottow; Atlee Reilly, Disability Rights Maine; Doris Santoro, Bowdoin; Megan Sway, ACLU; Tucker Goddu, Cumberland; Heather Goddu, Cumberland; Claire Schroeder, Portland; April Fournier, Portland; Jan Collins, Maine Prisoner Advocacy Coalition; Rita Furlow, Maine Children’s Alliance; Zubeyda Shute, Westbrook; Janet Drew, York; Ami Newell, Albion; Grace Leavitt, Maine Education Association; Mary Bonauto, GLAD; Flynn Ross, Westbrook; Connor Cory, Pine Tree Legal Assistance; Heather Marden, Maine AEYC; Liz Blackwell-Moore, Portland; Matt Bernstein, Portland; Maureen Clancy, Cape Elizabeth; Mary Royal, Winterport; Roberto Rodriguez; John Sharbeck, Cumberland County; Leigh Ashley Milne**
  - Goal is to keep children in school, connected to their learning and communities, on track to graduate from high school and pursue their professional dreams, and out of the corrections system.
  - Out of school suspensions are harmful
  - The one thing every incarcerated or formerly incarcerated person has in common is that they were suspended from school.
  - Almost 800 suspensions for students ages 3-11 in Maine in 2019.

- Kids' social and emotional challenges will only be more challenging and complex as we come back fully from the pandemic in the fall.
- There will be funds available as part of Recovery Act; we should use them wisely.
- The Maine Department of Education, together with the Maine School Boards Association, Maine School Superintendents Association, Maine Administrators of Services for Children with Disabilities, Maine Education Association, Maine Principals Association, and Maine Curriculum Leaders Association, have made a commitment to equity.
- Approximately 14,000 young people in Maine between the ages of 16 and 24 are not in school and not working.
- 22% of the children in Maine's youth prison today are Black and brown - despite the fact that Black and brown people make up less than 2% of our population.
- 80-88% of the children incarcerated in Maine have learning disabilities.
- LGBTQI+ children are disproportionately represented at Long Creek.
- 100% of the children incarcerated in Maine have 4 or more ACES.
- Children who are suspended or expelled from school may be unsupervised during daytime hours; cannot benefit from great teaching, positive peer interactions, and adult mentorship offered in class and in school; are unable to develop the skills and strategies they need to improve their behavior and avoid future problems; are less likely to graduate on time and more likely to be suspended again, repeat a grade, be pushed out of school, and become involved in the juvenile justice system; and, are disproportionately students of color, LGBTQ students, students with disabilities, and economically disadvantaged students,
- Schools with higher suspension rates have lower school-wide academic achievement and standardized test scores for all students.
- It costs \$13,000 - \$14,000 a year for the State of Maine to educate a child. Taxpayers lose out when students suspended.
- It costs us more than \$660,000 a year to incarcerate a child here in Maine today, and 53% of the children incarcerated in Maine today are there for the sole reason to provide "care," not because they are a public safety risk.
- Best practices in "classroom management" almost never require the "nuclear option" of suspension or expulsion.
- Even detention is outdated and ineffective.
- These are effective approaches to student misconduct that minimize exclusion of children from school. Many of these approaches already used in Maine schools.
- No significant costs to moving away from suspension.
- Using more effective approaches to problem behaviors can reduce the likelihood of unemployment, court involvement and other negative outcomes with high societal price.
- Frequent use of suspension has many undesirable and unintended outcomes, including a less healthy school environment, lower academic achievement, higher levels of disruptive or antisocial behavior, and higher school dropout rates.

- Examples of alternative interventions include: PBIS, Safe and Responsive Schools, professional development for teachers, reducing the role of SROs, objective threat assessment, restorative justice, community service programs, community school partnerships, substance abuse interventions and alternative schools.
- PBIS is a set of strategies and techniques based in behavioral psychology and implemented by all staff throughout a school. A positive approach is taken to create specific behavioral expectations for all students, and desired behaviors are explicitly taught. More intensive strategies are used for the children who need the most support. Data are kept and monitored to allow for more effective and targeted implementation. The Maine Department of Education continues to partner with the University of Maine system to provide Positive Behavioral Intervention and Supports (PBIS) training and coaching.
- Personally witnessed peers go down the wrong path due to them being expelled
- Young kids do not grasp the consequences of their actions and often mirror behavior seen at home.
- Expelling kids labels them as bad kids.
- Minority students are expelled at higher rates than white students, making racist systems easier to maintain. United States treats black and brown people as threats.
- Majority of school administrators are white and cannot put aside prejudices.
- Zero tolerance and other exclusionary school discipline policies are pushing kids out of the classroom and eventually into the criminal justice system at unprecedented rates
- Neighborhood public schools are supposed to be a place where all children can learn, grow, and thrive
- American Psychological Association report finds that zero tolerance policies do not work to deter future behavioral problems
- The Center on Youth Justice at the Vera Institute of Justice found that “for similar students attending similar schools, a single suspension or expulsion doubles the risk that a student will repeat a grade. Being retained a grade, especially while in middle or high school, is one of the strongest predictors of dropping out.”
- According to a comprehensive study conducted by Texas A&M University’s Public Policy Research Institute and the Council of State Governments Justice Center, students who are suspended or expelled are nearly three times more likely to come into contact with the justice system the next year
- Children who struggle most in school need a thorough and comprehensive response to help them improve
- It is the responsibility of those working closely with the child (parent, teachers, counselors, administrators) to first identify why the child is struggling with their behavior in school and engaged in a collaborative problem-solving process towards addressing the underlying root causes of misbehavior.

- We would never kick a kid out of school if they were struggling with math or literacy at school, but yet we seem to be ok with punishing and shaming students who are struggling with emotional and stimulus regulation.
- 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.
- Recent research indicates students may have lower academic achievement just by attending schools with high suspension rates, even if they themselves are not suspended.
- Parents lose wages and sometimes even their jobs when elementary school students are repeatedly sent home.
- 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
- Suspending a six-year-old, regardless of the circumstances, is traumatizing and cruel.
- In the current Maine law, the first reason listed for potential suspension or expulsion pertains to a student “Who is deliberately disobedient or deliberately disorderly.” With substantial cultural differences between students and their teachers, the potential for misinterpretation regarding whether a behavior is deliberate, disobedient, or disorderly is great.
- In Maine, according to the Office of Civil Rights Data show that in 2017, 57 percent of Black boys, 27 percent of Hispanic boys and 25 percent of native students with disabilities in Bangor, and 40 percent of Black boys and 50 percent of Asian girls with disabilities in Lewiston all had one or more out-of-school suspensions
- In 2018, Virginia banned the use of most suspensions or expulsions longer than three days for children in kindergarten through the third grade, and the District of Columbia banned out-of-school suspensions for children in kindergarten through the eighth grade. In 2015, Oregon limited the use of out-of-school suspensions and expulsions for students in fifth grade or lower to three serious circumstances.
- As a kid, has had a hard time at school due to disability.
- Taking away recess makes kids feel excluded.
- All students will benefit from this bill.
- School is a safe haven for many children and it should be that for all children
- If we ensure families have safe housing, sustainable food sources, supportive and nurturing parenting and access to educational opportunities we reduce the likelihood of maladaptive behaviors happening.

- We need to have a trauma informed lens, engage in positive behavior intervention and supports and recognize that the external school environment can have significant impacts in the classroom.
- As regards local control, the legislature has and should set baseline guidance on school district treatment of students. We do just that with seclusion and restraint policies. This bill is an example of baseline guidance needed by schools in the area of discipline. It is a starting point for districts to develop a positive discipline policy that creates healing, not hurt.
- Children are not inherently violent or dangerous
- Ideally there would be no age limit to preventing suspensions and expulsion
- Withholding recess may at first glance seem like a suitable type of response to some inappropriate student behaviors, yet especially for our younger students, the break from the classroom and the chance for physical movement may be exactly what is needed for a student to cope in some situations and thus return to the classroom, once again ready to learn.
- The definition of suspension should be clarified. The example of a student who has behaved inappropriately who is not able, despite appropriate steps having been taken, to come back to the classroom who thus needs to leave school for the remainder of the day is deemed a suspension. MEA believes that this action to be taken if it should be necessary would be an appropriate modification
- When expulsion hearings do occur, it is critical that students have access to legal representation. School board hearings can be extremely intimidating and confusing to a student.
- The power dynamics are very significant, and students without attorneys are unlikely to know their rights to cross-examine witnesses, provide their own testimony and evidence, or even to ask for a recess to collect themselves.
- Maine has funded an early childhood mental health consultation program that has expanded this year.
- We now know the frontal lobe isn't fully developed until age 25
- When young people experience toxic stress, stress that is prolonged, like abuse, neglect, food or housing insecurity, when they are being discriminated against, or the child lacks caring adults to support them, they can stay in extended periods of fight, flight, or freeze
- From the 2019 Maine Integrated Youth Health Survey we know that more than 1 in 5 high school students in Maine have experienced 4 or more Adverse Childhood Experiences.
- Maine LGBT students and Black, Indigenous, and students of color report high rates of discrimination and violence at school There is no research
- that shows they are helpful for the student. There is only research showing the harms of suspensions and expulsions on the children that receive them, on the other children that attend schools that use them regularly, and on long-term state economies and not feeling safe

- Developmentally 5-10 year olds are concrete thinkers. As they continue to grow in this period they only begin to think about how other people might think and feel
- **Opponents: Eileen King, MSBA, MSSA; Holly Couturier, MPA**
  - An increasing number of students in pre-K through first grade are coming to school with behavioral problems caused by their home situations.
  - Not all children are getting the socialization and early learning skills needed to easily integrate into a classroom.
  - Agree that since the home environment is part of the problem, children who are acting out should not receive suspension or expulsion from school as a remedy.
  - Opposed to this bill because it would appear to prohibit even in-school suspension. There are times when removal of the child from the classroom either as a consequence of their actions or a way to limit disruption to other children's learning is appropriate, at least in the short-term.
  - Withholding recess could be effective for some of the older children in the cohort created in the bill.
  - Need flexibility to address behavior issues.
  - There are programs, policies and procedures in place for teachers and administrators to use to support students who need additional help, including Positive Behavior Interventions.
  - There are times when a child's behavior is so dangerous they could harm themselves or others and requires the removal of the child from the classroom
  - If the student is unable to return to the classroom this bill would stop them from going to another classroom for the day or from being sent home until a safety plan is put into place
  - This creates a safety risk of the school and other kids in the classroom.
  - Any removal, in school or out of school, is a suspension
- **Neither For Nor Against: None**
- **Information Only: Bear Shea, Maine DOE**
  - Under Title 20-A MRS §1001, sub-§9 following an investigation and due process proceedings, a school board shall expel any student if found necessary to maintain the peace and usefulness of the school. §1001, sub-§15-A was amended in 2019 to include the expanded use of positive and restorative interventions in place of traditional, punitive consequences for maladaptive behavior. Given the recent changes, there is currently not enough data to determine whether §1001, sub-§15-A have impacted the rate of suspension and/or expulsion for students in grade 5 or below.
  - Data shows a total of eight expulsions in PK-5 in Maine public schools between 2010- 2019.

- The Department of Education established the Office of School and Student Supports (OSSS) in 2019. The OSSS is focused on providing support to schools to increase their use of trauma-informed practices; social, emotional, behavioral learning, and restorative disciplinary practices as part of a larger effort to effectuate §1001, sub-§15-A.
- The Department of Education established the Maine School Safety Center (MSSC) in 2020. The MSSC is committed to developing a safe school infrastructure that will deliver high quality, up-to-date best practices, procedures, training, technical assistance, and ongoing targeted support to Maine schools.
- Over the past 16 months, MSCC staff have worked to equip district and school leaders with the training and support required to implement multi-disciplinary school-based teams.
- The MSSC has provided proper training to use a problem-solving approach to violence prevention by identifying underlying causes to misbehavior and providing students with timely and effective intervention and ongoing support
- This bill will restrict the ability of local Behavioral Threat Assessment (BTA) teams to have a positive finding for a serious substantive threat for a student in grades K-5, which may require removal from school until the threat has been managed.
- This bill would significantly change how schools use suspensions and expulsions in their primary school safety and discipline practices. Best practice research indicates the implementation of these approaches in primary schools isn't an effective deterrent or way to change behavior and leads to children receiving less care and resources.
- If schools do not have the resources and training to handle disciplinary infractions in a restorative or transformative manner, mandating the removal of suspensions and expulsions may not have the successful outcome that the bill intends.

### **COMMITTEE REQUESTS FOR ADDITIONAL INFORMATION:**

- It was asked how suspension was defined.

Suspension is not specifically defined in state statute. However, the US Department of Education defines in-school and out of school suspension as follows:<sup>1</sup>

- In School Suspension: Instances in which a child is temporarily removed from his or her regular classroom(s) for at least half a day but remains under the direct

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<sup>1</sup> U.S. Department of Education Office for Civil Rights. Civil Rights Data Collection: Data Snapshot (School Discipline) March 21, 2014. Available online at: <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>

supervision of school personnel. Direct supervision means school personnel are physically in the same location as students under their supervision

- Out of School Suspension: The U.S. Department of Education's Office of Civil Rights distinguishes between two types of out of school suspension:
  - *For students without disabilities and students with disabilities served solely under Section 504:* Out-of-school suspension means excluding a student from school for disciplinary reasons for one school day or longer. This does not include students who served their suspension in the school.
  - *For students with disabilities (IDEA):* Instances in which a child is temporarily removed from his/her regular school for disciplinary purposes to another setting (e.g., home, behavior center). This includes both removals in which no IEP services are provided because the removal is 10 days or less as well as removals in which the child continues to receive services according to his/her IEP.
- The following information was requested from DOE:
  1. Data on number of suspensions and expulsions (by district, if possible) over past several years for grades PK-5.
  2. Percentage of kids disciplined with suspension or expulsion who had IEPs
  3. Any information DOE has on use of positive behavior interventions.

## CURRENT LAW AND PROPOSED CHANGES

- **Current law at 20-A MRSA §1001, sub-§8-A:**

**8-A. Due process standards for expulsion proceedings.** Following a proper investigation of a student's behavior, a school board that intends to consider expulsion shall ensure proceedings include the following due process provisions.

A. Before a hearing on the expulsion, the superintendent shall:

(1) Provide written notice to the parents and the student of:

- (a) The date, time and location of the hearing;
- (b) A description of the incident or incidents that occasioned the expulsion hearing;
- (c) The student's and parents' right to review the school records prior to the hearing;
- (d) A description of the hearing process; and
- (e) An explanation of the consequences of an expulsion; and



(2) Invite the parents and student to a meeting prior to the expulsion hearing to discuss the procedures of the hearing.

B. At a hearing on the expulsion:

- (1) The student has the right to present and cross-examine witnesses;
- (2) The student has the right to an attorney or other representation; and
- (3) Witnesses must be sworn in and the chair of the hearing has the authority to swear in witnesses.

C. After a hearing on the expulsion, the school board shall provide written notice of its decision to the parents and the student by certified mail. The notice of the school board's written decision may include a reentry plan developed in accordance with subsection 9-C

- **Proposed changes to 20-A MRS §1001, sub-§8-A:**

**8-A. Due process standards for expulsion proceedings.** Following a proper investigation of a student's behavior, a school board that intends to consider expulsion shall ensure proceedings include the following due process provisions.

A. Before a hearing on the expulsion, the superintendent shall:

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- (b) A description of the incident or incidents that occasioned the expulsion hearing;
- (c) The student's and parents' right to review the school records prior to the hearing;
- (d) A description of the hearing process; and
- (e) An explanation of the consequences of an expulsion; ~~and~~

(f) A list of available free and low-cost legal services, which must be created and updated annually by the department; and

(2) Invite the parents and student to a meeting prior to the expulsion hearing to discuss the procedures of the hearing.

B. At a hearing on the expulsion:

- (1) The student has the right to present and cross-examine witnesses;
- (2) The student has the right to an attorney or other representation; and
- (3) Witnesses must be sworn in and the chair of the hearing has the authority to swear in witnesses.

C. After a hearing on the expulsion, the school board shall provide written notice of its decision to the parents and the student by certified mail. The notice of the school board's written decision may include a reentry plan developed in accordance with subsection 9-C

- **Current law at 20-A MRSA §1001, sub-§9**

**9. Students expelled or suspended.** Following a proper investigation of a student's behavior and due process proceedings pursuant to subsection 8-A, if found necessary for the peace and usefulness of the school, a school board shall expel any student:

- A. Who is deliberately disobedient or deliberately disorderly;
- B. For infractions of violence;
- C. Who possesses on school property a firearm as defined in [Title 17-A, section 2, subsection 12-A](#) or a dangerous weapon as defined in [Title 17-A, section 2, subsection 9](#) without permission of a school official;
- D. Who, with use of any other dangerous weapon as defined in [Title 17-A, section 2, subsection 9, paragraph A](#), intentionally or knowingly causes injury or accompanies use of a weapon with a threat to cause injury; or
- E. Who possesses, furnishes or trafficks in any scheduled drug as defined in [Title 17-A, chapter 45](#).

A student may be readmitted on satisfactory evidence that the behavior that was the cause of the student being expelled will not likely recur. The school board may authorize the principal to suspend students up to a maximum of 10 days for infractions of school rules. In addition to other powers and duties under this subsection, the school board may develop a policy requiring a student who is in violation of school substance use or possession rules to participate in substance use disorder services as provided in section 6606. Nothing in this subsection or subsection 9-C prevents a school board from providing educational services in an alternative setting to a student who has been expelled.

- **Proposed changes to 20-A MRSA §1001, sub-§9**

**9. Students expelled or suspended.** Following a proper investigation of a student's behavior and due process proceedings pursuant to subsection 8-A, if found necessary for the peace and usefulness of the school, a school board shall expel any student, **except a student who is enrolled in grade 5 or below**:

- A. Who is deliberately disobedient or deliberately disorderly;
- B. For infractions of violence;
- C. Who possesses on school property a firearm as defined in [Title 17-A, section 2, subsection 12-A](#) or a dangerous weapon as defined in [Title 17-A, section 2, subsection 9](#) without permission of a school official;
- D. Who, with use of any other dangerous weapon as defined in [Title 17-A, section 2, subsection 9, paragraph A](#), intentionally or knowingly causes injury or accompanies use of a weapon with a threat to cause injury; or
- E. Who possesses, furnishes or trafficks in any scheduled drug as defined in [Title 17-A, chapter 45](#).

A student may be readmitted on satisfactory evidence that the behavior that was the cause of the student being expelled will not likely recur. The school board may authorize the principal to suspend students up to a maximum of 10 days for infractions of school rules, **except that the school board may not authorize the principal to suspend a student who is enrolled in grade 5 or below except as provided under subsection 9-A.** In addition to other powers and duties under this subsection, the school board may develop a policy requiring a student who is in violation of school substance use or possession rules to participate in substance use disorder services as provided in section 6606. Nothing in this subsection or subsection 9-C prevents a school board from providing educational services in an alternative setting to a student who has been expelled.

- **Current law at 20-A MRS §1001, sub-§15**

**15. Adoption of student code of conduct.** With input from educators, administrators, parents, students and community members, they shall adopt a district-wide student code of conduct consistent with the statewide standards for student behavior developed under [section 254, subsection 11](#). The student code of conduct must:

- A. Define unacceptable student behavior;
- B. Establish standards of student responsibility for behavior;
- C. Prescribe consequences for violation of the student code of conduct, including first-time violations, when appropriate;
- D. Describe appropriate procedures for referring students in need of special services to those services; [
- E. Establish criteria to determine when further assessment of a current individual education plan is necessary, based on removal of the student from class;
- F. Establish policies and procedures concerning the removal of disruptive or violent students or students threatening death or bodily harm to others from a classroom or a school bus, as well as student disciplinary and placement decisions, when appropriate;
- G. Establish guidelines and criteria concerning the appropriate circumstances when the superintendent or the superintendent's designee may provide information to the local police or other appropriate law enforcement authorities regarding an offense that involves violence committed by any person on school grounds or other school property; and
- H. Establish policies and procedures to address bullying, harassment and sexual harassment as set forth in [section 6554](#).

The school board is responsible for ensuring that school officials inform students, parents and community members of the student code of conduct.

- **Proposed changes to 20-A MRSA §1001, sub-§15**

**15. Adoption of student code of conduct.** With input from educators, administrators, parents, students and community members, they shall adopt a district-wide student code of conduct consistent with the statewide standards for student behavior developed under [section 254, subsection 11](#). Adoption of a districtwide student code of 41 conduct is required in order to receive funding under chapter 606-B. **Except as provided under subsection 9-A, a student code of conduct may not prescribe suspension, expulsion or the withholding of recess as a consequence of a violation of the student code of conduct by any student enrolled in grade 5 or below.** The student code of conduct must:

- A. Define unacceptable student behavior; [
- B. Establish standards of student responsibility for behavior;
- C. Prescribe consequences for violation of the student code of conduct, including first-time violations, when appropriate;
- D. Describe appropriate procedures for referring students in need of special services to those services;
- E. Establish criteria to determine when further assessment of a current individual education plan is necessary, based on removal of the student from class;
- F. Establish policies and procedures concerning the removal of disruptive or violent students or students threatening death or bodily harm to others from a classroom or a school bus, as well as student disciplinary and placement decisions, when appropriate;
- G. Establish guidelines and criteria concerning the appropriate circumstances when the superintendent or the superintendent's designee may provide information to the local police or other appropriate law enforcement authorities regarding an offense that involves violence committed by any person on school grounds or other school property; and
- H. Establish policies and procedures to address bullying, harassment and sexual harassment as set forth in [section 6554](#).

The school board is responsible for ensuring that school officials inform students, parents and community members of the student code of conduct.

**POTENTIAL ISSUES/TECHNICAL PROBLEMS/ISSUES FOR CONSIDERATION:**

- The proposed changes to 20-A MRSA §1001, sub-§9 include, in the blocked language at the end of the subsection, an exception for subsection 9-A (Students expelled or suspended under the requirements of the federal Gun-Free Schools Act). However, the language proposed in the first paragraph of the subsection lacks this exception.

## ADDITIONAL INFORMATION

- **Prior Legislation.**
  - A similar bill was heard by the Education Committee in the 129<sup>th</sup>. [LD 2016, An Act Regarding School Discipline for Maine's Youngest Students](#), provided that a student code of conduct may not prescribe suspension, expulsion or the withholding of recess as a consequence of a violation of the student code of conduct by any student enrolled in grade 5 or below except as provided under the 30 federal Gun-Free Schools Act. The bill also provides that any student enrolled in grade 6 or above who is eligible for free or reduced-price school meals is entitled to representation at state expense during an expulsion proceeding. The bill received an Ought Not to Pass report out of committee.
  - LD [1010](#) (129<sup>th</sup>) required DOE to develop a model disciplinary policy focusing on positive interventions and designed to close economic, disability-related, gender and racial gaps. The bill was [enacted](#). The 2020 report back and model policy from DOE are provided separately.
- **IDEA Requirements.** The federal Individuals with Disabilities Education Act provides certain safeguards for the discipline of children with IEPs. See the regulations at [34 CFR §§300.530 – 300.536](#). Here is a [link](#) to a US Dept of Education Question and Answer sheet on discipline of students with disabilities. At the state level, [20-A MRSA §1001, sub-§9-A](#) describes disciplinary sanctions for students with disabilities.

**9-B. Disciplinary sanctions for children with disabilities.** They retain the authority to sanction a child with a disability as defined in [section 7001, subsection 1-A](#) for misconduct that violates school rules. Notwithstanding the duties of school administrative units as described in [section 7202](#), the school board may authorize the superintendent, principal or assistant principal to enforce this subsection by allowing the superintendent, principal or assistant principal to suspend a child with a disability up to a maximum of 10 days individually or cumulatively for infractions of school rules. When a child with a disability is suspended for 10 days or less individually or cumulatively within a school year for a violation of school rules, the school board is not required to provide a tutor, transportation or any other aspect of the student's special education program. Discipline of children with disabilities must be consistent with the requirements of the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1415(k).

- **Other Jurisdictions.** The analyst conducted a review of legislation enacted or currently being considered by other jurisdictions regarding school suspension and expulsion since 2015 and found the following<sup>2</sup>:
  - **Arkansas, 2019 (Enacted):** [H 1790](#) requires school districts to make available to expelled students a digital learning course or other alternative educational services.
  - **Arkansas, 2017 (Enacted):** [S 609](#) prohibits out of school suspension or expulsion for students in grades K-5.
  - **California, 2020 (Enacted):** [S 419](#) prohibits the suspension of students in kindergarten and grades 4-8 (grades 1-3 were already covered in existing law) for disruption or defiance and clarified that the legislature favored the Multi-Tiered System of Supports, which includes restorative justice practices, trauma-informed practices, social and emotional learning, and school-wide positive behavior interventions and support, may be used to help pupils gain critical social and emotional skills, receive support to help transform trauma-related responses, understand the impact of their actions, and develop meaningful methods for repairing harm to the school community.
  - **California, 2020 (Enacted):** [S 982](#) requires teachers to provide to suspended students homework that the student misses due to suspension, at the request of a parent or guardian.
  - **Colorado, 2019 (Enacted):** [H 1194](#) limits out of school suspensions and expulsion for grades PK-2 to possession of a dangerous weapon or the use, possession or sale of a drug.
  - **California, 2018 (Enacted):** [A 667](#) requires that the informal conference conducted by a principal upon suspension of a student include information regarding previous attempts at correcting the student's behavior.
  - **California, 2018 (Enacted):** [A 1360](#) requires that a charter school petition include a description of disciplinary procedures.
  - **Connecticut, 2015 (Enacted):** [S 1053](#) prohibits out of school suspensions and expulsions for students PK-2 except for violent or sexual offenses.

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<sup>2</sup> Review conducted using through the National Council of State Legislatures database at <https://www.ncsl.org/research/education/education-bill-tracking-database.aspx>

- **Delaware**, 2017 (Enacted): [H 176](#) gives schools boards additional discretion to suspend students for possession of certain deadly weapons.
- **Georgia**, 2020 (Enacted): [H 740](#) requires districts to implement disciplinary alternative prior to out of school suspension or expulsion of a student in grades PK-3.
- **Georgia**, 2016 (Enacted): [S 164](#) promotes use of positive behavior interventions.
- **Hawaii**, 2020 (Enacted): [H 1346](#) prohibits, with limited exceptions, the suspension or expulsion of children participating in the Public Prekindergarten Program
- **Illinois**, 2021 (Enacted): [S 1941](#) establishes the Safe Schools and Healthy Learning Environments Grant Program. It authorizes the state board of education to award grants to promote school safety and healthy learning environments and to promote alternatives to suspension and expulsion.
- **Illinois**, 2018 (Enacted): [H 223](#) prohibits expulsion from state funded preschool programs
- **Illinois**, 2018 (Enacted): [H 5786](#) requires that in school suspension programs focus on promotion of nonviolent conflict resolution
- **Indiana**, 2018 (Enacted): [H 1421](#) establishes an evidence based plan to reduce out of school suspensions and focus on positive discipline
- **Iowa**, 2020 (Enacted): [S 2360](#) establishes a grant program to promote therapeutic classrooms.
- **Louisiana**, 2020 (Enacted): [H 83](#) provides for judicial review of certain disciplinary actions
- **Louisiana**, 2015 (Enacted): [S 54](#) prohibits suspension or expulsion of students in grades PK-5 from school or school buses
- **Maryland**, 2019 (Enacted): [H 725](#) requires the State Board of Education to provide technical assistance and training to districts regarding restorative approaches to discipline.
- **Maryland**, 2017 (Enacted): [H 425](#) prohibits the long term suspension or expulsion of students in grades PK-2, except as required by federal law.

- **Michigan**, 2018 (Enacted): [H 5531](#) limits suspension and expulsion to certain serious behaviors or incidents.
- **Mississippi**, 2017 (Enacted): [H 1413](#) provides the right to a due process hearing in disciplinary proceedings.
- **Missouri**, 2021, (Pending in Committee): [H 120](#) prohibits suspension in grades K-3.
- **Missouri**, 2021 (Pending in House): [H 256](#) reduces to 90 days from 120 the maximum period of suspension imposed by a superintendent.
- **Nevada** 2015 (Enacted): [A 178](#) revises provides related to habitual disciplinary issues and establishes minimum suspensions for certain students.
- **New Hampshire**, 2020 (Enacted): [H 1558](#) establishes additional procedures related to school discipline and requires that school safety programs include a plan for responding to violent acts by students
- **New Hampshire**, 2018 (Enacted): [H 216](#) requires that suspended students be provided with schoolwork.
- **New Hampshire**, 2016 (Enacted): [H 1145](#) establishes a study of suspension and expulsions in preschools and grades K-3.
- **New Jersey**, 2017 (Enacted): [S 2081](#) limits expulsions and suspensions for students in grades PK -2.
- **Oregon**, 2015 (Enacted): [S 553](#) requires school boards to adopt policies that consider the age of a student and the students history prior to suspension or expulsion and limits suspensions and expulsions for students in 5<sup>th</sup> grade and below.
- **Tennessee**, 2020 (Enacted): [H 405](#) requires school boards to perform an adverse childhood experiences assessment on a student prior to suspension, expulsion, or alternative placement
- **Tennessee**, 2020 (Enacted): [H 664](#) requires expelled students in grades 7-12 to attend an alternative school
- **Tennessee**, 2018 (Enacted): [H 872](#) prohibits the suspension or expulsion of PK and K students unless the student endangers the safety of others.



- **Texas, 2017** (Enacted): [H 674](#) provides that districts may develop a program of alternative discipline for students below grade 3.
  - **Virginia, 2021** (Enacted): [H 415](#) requires school boards to adopt policies to ensure suspended students are provided with access to school work during the suspension period.
  - **Virginia, 2021**(Enacted): [H 894](#) requires teacher education programs in public institutions of higher education to require coursework positive behavior interventions and supports, crisis prevention and deescalation, and the proper use of physical restraint
  - **Virginia, 2019** (Enacted): [S 170](#) prohibits suspension or expulsion of students grades PK-3 except as required by federal law
  - **Virginia, 2019** (Enacted) [H 1600](#) limits long term suspensions to 45 school days
  - **Virginia, 2018** (Enacted): [S 170](#) prohibits the suspension or expulsion of students in grades PK-3 from being suspended or expelled except in cases of firearm offenses, drugs offenses, or other specified acts.
  - **Washington DC, 2018** (Enacted): [B 594](#) limits the use of suspensions and expulsions
  - **Washington DC, 2016** (Enacted): [B 1](#) prohibits suspension or expulsion of students in publicly funded PK programs,
  - **West Virginia, 2020** (Enacted): [S 842](#) requires the State Superintendent of Schools to establish a behavior interventionist pilot program.
  - **Wyoming, 2019** (Enacted): [S 120](#) establishes hearing timeframes for students subject to suspension and expulsion and modifies the grounds for suspension and expulsion
- Resources:
    - [Center on Positive Behavior Intervention & Supports](#) – Provides extensive information on PBIS
    - [Maine School Safety Center](#)

- [Joint Statement of Commitment and Support for Diversity, Equity and Inclusion in Maine Schools](#)
- [2019 Maine Kids Count](#) report.
- American Academy of Pediatrics Policy Statement: [The Crucial Role of Recess](#).<sup>3</sup>
- American Academy of Pediatrics council on School Health: [The Link Between School Attendance and Good Health](#)<sup>4</sup>
- US Department of Health and Human Services and US Department of Education: [Policy Statement on Expulsion and Suspension Policies in Early Childhood Settings](#).<sup>5</sup>
- US Commission on Civil Rights: [Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities](#).<sup>6</sup>
- Education Commission of the States: [Policy Snapshot: Suspension and Expulsion](#)
- Education Commission of the States: [The Status of School Discipline in State Policy](#)
- US Office of Civil Rights Data Collection Tool: <https://ocrdata.ed.gov/search/school>
- National Center for Children in Poverty. Columbia University Mailman School of Public Health. [The Voices of Maine’s Early Care and Education Teachers: Children with Challenging Behavior in Classrooms and Home-based Child Care](#)<sup>7</sup>

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<sup>3</sup> American Academy of Pediatrics “Policy Statement: The Crucial Role of Recess”, Pediatrics. 2013;131(1):183.188. Available at: <http://pediatrics.aappublications.org/content/131/1/183>

<sup>4</sup> Allison MA, Attisha E, AAP COUNCIL ON SCHOOL HEALTH. The Link Between School Attendance and Good Health. Pediatrics. 2019;143(2):e20183648 at 5, available online at: <https://pediatrics.aappublications.org/content/143/2/e20183648>.

<sup>5</sup> US Department of Health and Human Services and US Department of Education: “Policy Statement on Expulsion and Suspension Policies in Early Childhood Settings”. November 7, 2016. Available online at: [https://www.acf.hhs.gov/sites/default/files/documents/ecd/expulsion\\_ps\\_numbered.pdf](https://www.acf.hhs.gov/sites/default/files/documents/ecd/expulsion_ps_numbered.pdf)

<sup>6</sup> 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>

<sup>7</sup> Smith, S. and Granja, M.R. (2017) The Voices of Maine’s Early Care and Education Teachers: Children with Challenging Behavior in Classrooms and Home-based Child Care. New York: National Center for Children in Poverty, Mailman School of Public Health, Columbia University. Available online at: <https://www.mainelegislature.org/testimony/Resources/EDU20210426Furlow132639210953932565.pdf>

**PRELIMINARY FISCAL IMPACT STATEMENT: Not yet determined**