



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,



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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>