



## **DISCIPLINE and DUE PROCESS**

### Balancing the Tension:

“Public schools should ensure the rights of access for all school-age persons to an appropriate educational opportunity, and when necessary, should develop alternatives to regular school curricula for those child and youth at risk of becoming dropouts<sup>1</sup> and those who may have left school.”

20-A MRSA §5001-A(7)

**vs.**

the need to maintain “the peace and usefulness of the school” from students who are “deliberately disobedient or deliberately disorderly” or “for infractions of violence” or “possess on school property a firearm or dangerous weapon without permission of a school official” or possesses, furnishes or trafficks in any scheduled drug”

20-A MRSA §1001(9)

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<sup>1</sup> Dropout defined as “any person who has withdrawn for any reason except death, or been expelled from school before graduation or completion of a program of studies and who has not enrolled in another educational institution or program. 20-A MRSA §5102.

## Protecting Due Process

### Student, Parent, Community Members and School Voices:

School boards are responsible for drafting school policies, including the student code of conduct. Input from parents, students and community members must be considered. 20-A MRSA §1001(15)

### Requirements for Student Code of Conduct:

- Define unacceptable behavior, including bullying
- Establish standards of responsibility for behavior
- Prescribe consequences for violations
- Describe appropriate procedures for referring students in need of special services<sup>2</sup> to those services
- Establish criteria to determine when further assessment of a current individual education plan is necessary, based on removal of the student from class
- Establish policies/procedures concerning the removal of disruptive or violent (including threatening) students from a classroom or school bus, as well as disciplinary and placement decisions
- Establish guidelines and criteria concerning the appropriate circumstances when the superintendent or designee may provide information to the police regarding an offense that involves violence committed by any person on school property.
- See 20-A MRSA §1001(15)

Bomb Threats: As of 2002-2003 school year, school board must have adopted school bomb threat policy and must include in the student handbook the policies and explain the educational and legal consequences of making a bomb threat to school. 20-A MRSA 1001(17 and 18)

The School Board must also establish a crisis plan in consultation with local public safety, mental health and law enforcement officials to deal with crises and potential crisis situations involving violent acts by or against students. 20-A MRSA 1001(16)

### Notice of Code of Conduct:

School board is responsible for ensuring that school officials inform students, parents and community members of the student code of conduct.  
20-A MRSA §1001(15)

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<sup>2</sup> “at risk students” under childfind for IDEA include students who have been suspended or removed in excess of 10 days during a school year. Maine Special Education Regulation, 7.7D

## Removal: Suspension

Temporary prohibition from going to school and receiving educational services. A student can be suspended from school for:

- Being deliberately disobedient or disorderly
- Being violent
- Having a gun or dangerous weapon on school grounds, or
- Having drugs (either for possession, selling or giving away)

See 20-MRSA §1001(9)

As you can see, this is very broad. For more specific information, you should review the school's student code of conduct and suspension policies.

## Rights regarding suspensions:

Before suspension, student has a right:

1. to know what being accused of (the notice does not have to be in writing),
2. to know what evidence the school has and
3. a right to be heard.

This level of due process is not very formal; it can consist of student telling his side of the story to the vice principal; therefore, it can be immediate.

## 10 day maximum without school board action:

The principal has the authority to suspend a student but only for a maximum of 10 days. Only the school board can suspend a student for more than 10 days or expel a student. 20-A MRSA §1001(9)

Because of the 10 day limit, if a student is suspended without having a school board hearing until either:

- 1) a meeting is held between school staff and the student or her parents, or
  - 2) a "risk assessment" is completed,
- the conditions must occur within the 10 days of removal.

## REMOVAL: EXPULSIONS (see 20-A MRSA §1001(9))

Removal from school and prohibition from student being on school property during period of expulsion. Unless specified by school board, expulsion is for indefinite period of time and applies to all public schools in Maine. Unless the student is protected by IDEA or the school district decides to give an expelled student educational instruction somewhere else besides the school building, the student will not be educated by the school district during the expulsion period.

### Grounds for expulsion:

- Being deliberately disobedient or disorderly
- Being violent
- Having a gun or dangerous weapon on school grounds, or
- Having drugs (either for possession, selling or giving away)

### School Board Action required: Due Process

Only the **school board** has the authority to suspend a student for more than 10 days or expel a student after a hearing

Students have a right to:

- know what the “charges” are and to know what the evidence is be heard
- be represented by an attorney
- cross-examine the school’s witnesses
- present their own witnesses on their behalf
- submit evidence

### Standard:

- “substantial evidence”
- expulsion is necessary for the “peace and usefulness of the school.”

### Burden:

- On school administration
- School records, including past discipline reports, can be introduced as evidence

### Right to continued services:

School board discretion to determine if educational instruction in an alternative setting (such as tutoring, alternative school enrollment, etc.) will be provided

### Appeal:

Maine Rules of Civil Procedure 80B to Superior Court.

### Readmission

Students have a right to request re-admission by going before the school board. Standard: satisfactory evidence that the behavior that caused student to be expelled will not happen again. Burden is on the student.

Tips: It is best to talk with the school administration to find out what they would like the student to do before coming back. This way, you can have the support of the school administration when going before the board for readmission. There is no time period for how long you have to wait before requesting a readmission hearing.

**Disciplinary Status at Transfer: 20-A MRSA 6001-B(3)**

Receiving school accepts student in prior schools disciplinary phase  
if expelled or suspended, continues  
if suspension/expulsion pending, continues

**Duration:** until school administrative unit is satisfied conditions of suspension/expulsion met.