

**SUMMARY OF SCHOOL BOARD AND
ADMINISTRATORS' RESPONSIBILITIES
UNDER MAINE LAW FOR
THE AUGUSTA SCHOOL COMMITTEE**

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I. Source of School Board Authority

Municipal School Committees and Regional School Units are special-purpose political subdivisions whose creation, authority and duties are derived from Acts of the Maine Legislature. In turn, under Article VIII, Section 1 of the Maine Constitution, the Legislature is empowered to pass laws regarding education. Most of the school laws are contained in Title 20-A of the Maine Revised Statutes Annotated. School Boards, of course, are also subject to other laws relating to public agencies, such as those laws governing the public's freedom of access to government proceedings and documents, and those laws governing conflicts of interest by public officials. These laws are contained in other titles of the Maine statutes and additional materials are being provided regarding freedom of access issues.

II. Duties of School Boards

As creatures of the Legislature, School Boards have those powers which are delegated to them by the Legislature. Section 1001 of Title 20-A sets forth the duties of School Boards. The authority granted to School Boards is extremely broad and not altogether clear. Among the most important of a School Board's duties are the following:

1. Adoption of Policies. A School Board is responsible for the adoption of policies that govern the school department.
2. Management of School. A School Board is generally responsible for the overall management of the schools, including the custody, maintenance and insurance of school buildings. The School Board is similarly responsible for the maintenance and operation of all school property.
3. Selection of Superintendents. The selection of the Superintendent of Schools is one of the most important duties of the School Board. Indeed, the Superintendent serves in much the same capacity as a chief executive officer of a corporation. Since the Superintendent has additional and specific powers granted to her under State law, it is extremely important that the School Board exercise great care in selecting the person who is to receive this authority. The eligibility requirements for superintendents are set forth in Section 1051 of Title 20-A. An applicant for the Superintendent's job must hold a State Certificate for the position. Moreover, members of the School Board may not themselves be eligible to become Superintendent in the school administrative unit which they represent. The election of the Superintendent is by majority vote of the Board and for a term not to exceed five (50) years. During the term of their contract, Superintendents may be discharged only "for cause" and after "due notice and investigation."

Comment: The Superintendent as the chief executive reports to the School Board. This is the only employee that the School Board supervises. The supervision of the work of other

administrators, teachers, and staff is the responsibility of the Superintendent. The fact that the School Board has the final say in the hiring and discharge of some employees does not translate into supervisory responsibilities.

4. General Course of Instruction. School Boards have the responsibility to establish “the courses of study in alignment with the system of learning results” and to “adopt a policy governing the selection of educational materials and may approve educational materials.” This language contained in Section 1001 is not clear, and it has been subject to relatively little judicial construction. Consequently, it is not certain to what extent a School Board’s authority is limited to an “oversight” function in reviewing instructional programs and textbook selections, and to what extent a School Board may dictate specifics of curriculum and instructional materials. At a minimum, School Boards certainly have the authority to designate subject areas to be taught and may be involved in decision of textbook selection.
5. Student Direction. Among those responsibilities which School Boards have concerning pupils who attend their schools are:
 - a. Determining which students with the school system will attend which schools;
 - b. Adopting a policy to safeguard the health of students and employees who have contracted or been exposed to communicable diseases;
 - c. Adopting a district-wide student code of conduct consistent with statewide standards for student behavior.
 - d. Expelling students who are “deliberately disobedient and deliberately disorderly” or who commit violent acts, use or possess dangerous weapons or firearms, or possess and traffic in drugs. Such expulsion can only be ordered after an investigation and hearing, and a determination that the removal of the student from the school is necessary for the peace and usefulness of the school. The School Board may authorize principals to suspend students for shorter periods, not to exceed ten (10) days, without a full School Board expulsion hearing.

Comment: Board members exercise these powers and duties when acting as a member of the Board or a designated subcommittee. A Board member does not have the authority to act individually. However, Board members do not easily shed the cloak of a Board member, particularly in the perception of the community. The distinction is important. You conduct all business through the corporate Board. However your individual actions and statements may attach responsibility and liability to the Board. Also your statements about personnel matters and students may compromise your ability to fulfill your responsibilities if a hearing is ever necessary.

III. Superintendent’s Powers and Duties

Under Section 1055 of Title 20-A of the Maine Revised Statutes Annotated, the Superintendent serves as secretary ex officio of the School Board and performs such duties as the School Board directs. Among those specific duties belonging to the Superintendent are:

1. Recording School Board votes;
2. Placing purchase orders on behalf of the school system;
3. Maintaining all financial records of the school system;
4. Authorizing payment of bills approved by the School Board;
5. Inspecting the schools and reporting on their condition;
6. Reporting on the condition of school finances;
7. Selecting educational materials pursuant to policies of the School Board;
8. Distributing school supplies;
9. Providing for the display of the national and state flags;
10. Enforcing all rules of the School Board;
11. Supervising the work of teachers and other school employees;
12. Nominating teachers for probationary and continuing contracts to the School Board for its approval. (20-A M.R.S.A. Section 13201).

IV. Individual Versus Corporate Role of School Board Members

It is the School Board and not its individual members who have legal responsibility to act on behalf of the school system. Consequently, it is only when the School Board is duly constituted and in session that it assumes its authority. Individual Board members have no authority (beyond that of any other citizen) when acting in their personal capacities. Similarly, other Board members are not bound by the personal acts of one of their fellows outside of the Board meetings. As public officials, Board members have the obligation to:

1. Attend Board meetings;
2. Participate and vote in the proceedings of the Board;
3. Familiarize themselves with the procedures, regulations and policies of the Board, as well as with new matters which come before the Board for consideration.

Comment: Board members are often parents in the school district. The law does not require these members to shed all parental rights, but this dual capacity does create some complications. A board member parent who has a complaint or concern about his or her child's schooling has the right to voice that concern. We recommend that the concern is channeled through the chain

of command. A concern about a teacher should be directed to the principal, and then if necessary, up the chain. While other parents may freely engage in discussions about these types of concerns, the parent board member needs to be judicious about when and to whom the concerns are voiced.

V. Quasi-Judicial Role of School Boards – A Primer on Due Process

At most times, School Boards act in a legislative capacity by voting on school policies, regulations, appointments, budgets, resolutions, etc. On other occasions, however, School Boards sit as boards of review to consider the appropriateness of proposed actions by school officials and appeals from persons aggrieved by actions of school officials. In these situations, the School Board must conduct a full hearing and grant due process rights to the participants. Examples of such hearing procedures involve teacher dismissals and non-renewals, expulsion of students, discharge of administrators and habitual truancy dispositions.

1. What Is Due Process? The Fourteenth Amendment to the U.S. Constitution provides that no state shall “deprive any person of life, liberty, or property without due process of law.” The due process concept in American constitutional law, as applied to educational institutions, has developed into two types of considerations: procedural and substantive. Due process is a doctrine that only applies when there is state action (a public school system is an arm of the state) and when the state allegedly deprives a party of his liberty or of some property interest (or a right which is recognized as being akin to a property interest).
 - a. Procedural Due Process. Where a teacher or student is subject to loss of an established right—such as a teacher being discharged or a student being expelled—due process requires that certain procedural steps be followed. Full procedural due process generally requires the following:
 - i. Rules governing standards of conduct should have been communicated (preferably in writing) to the person(s) affected prior to the administrative action;
 - ii. A written notice should be given to the affected person (and in the case of a student to his or her parents) stating, with some particularity, the charges which have been lodged against him;
 - iii. The notice should give the charged person sufficient time to prepare a defense;
 - iv. A fair hearing should be held which includes:
 1. Access of the charged party to the evidence to be used against him;
 2. An opportunity for the charged party to confront and examine witnesses who give evidence against him;

3. An opportunity for the charged party to introduce evidence in his own behalf;
4. Use of legal counsel if desired;
5. An opportunity to make or obtain a transcript of the proceedings;
6. A written decision setting forth specific findings and conclusions;
7. Information to the charged party of his appellate rights, if any.

b. Substantive Due Process

The second aspect of the due process doctrine requires that in addition to following certain procedural standards, the entire process must meet a standard of “fundamental fairness.”

1. Rules by which conduct is to be governed should not be unduly vague;
2. Hearings should be conducted before impartial tribunals;
3. Decisions should be supported with findings based on substantial evidence.

2. When do School Boards Conduct Due Process Hearings?

Usually, School Boards act as legislative bodies, considering, debating and voting upon issues of policy and finance. At these times, School Board members are participants in a political process. While it is important that School Board members remain flexible and responsive to the concerns of the public and their fellow Board members, when acting in a legislative capacity, they are not required to be neutral in regard to the issues before them. Under less frequent circumstances, however, School Boards, by statute, are empowered to act in a quasi-judicial capacity and serve as due process hearing panels. These circumstances include the following:

- a. Non-renewal of Teacher Contracts. After a probationary period of 3 years, any continuing contract teacher who receives notice that his or her contract is not going to be renewed, may, during the 15 days following \such notification, request a hearing before the School Board. (20-A M.R.S.A. Section 13201).
- b. Dismissal of Teachers. After investigation, due notice of hearing, and hearing, a School Board may dismiss any teacher who “proves unfit to teach or whose services the Board deems unprofitable to the school.” The teacher will be given a certificate of dismissal and of the reasons for that dismissal. (20-A M.R.S.A. Section 13202).
- c. Discharge of Superintendent or Principal. A School Board may discharge a superintendent or principal before the expiration of a contract term only for cause and only after due notice and investigation. A majority vote of the full

membership of the Board is required, and the superintendent may appeal the Board's decision to the Commissioner of Education. (20-A M.R.S.A. Section 1052). The principal's dismissal requires the Board to consider the recommendation of the Superintendent.

- d. Student Expulsions and Suspensions. The School Board shall expel any student who is deliberately disobedient or deliberately disorderly, for infractions of violence for possession or use of a firearm or dangerous weapon, or for possession, furnishing, or trafficking in any scheduled drug if found necessary for the peace and usefulness of the school. Students may be expelled after a proper investigation and due process proceedings. Suspensions of longer than 10 days also require School Board action. (20-A M.R.S.A. Section 1001).
- e. Habitual Truancy. If the Superintendent of Schools is unable to correct the problem of a student's habitual truancy, he shall report the matter to the School Board which shall conduct a hearing. If, at the hearing, the Board determines that the student is a habitual truant, it shall either instruct the student and parents of their responsibilities or waive the attendance requirements if the student is 15 years of age or older. (20-A M.R.S.A. Section 5051).
- f. Contract Grievance Administration. The Augusta School Department's collective bargaining agreements with teachers and support staff provide a grievance mechanism which includes a hearing before the School Board as one stage in the grievance process, immediately prior to the submission of the grievance to binding arbitration.

3. Roles of the Various Participants at Due Process Hearings.

- a. School Board Members. At a due process hearing (e.g. a teacher non-renewal hearing or a student expulsion hearing), School Board members sit in the position of judges. As such, they are expected to approach the hearing without predisposition or bias. School Board members should not prepare themselves for the hearing by soliciting community reaction or searching out evidence on their own. The decision reached by each individual School Board member should be based upon the evidence presented at the hearing. This is not always an easy self-restraint. The issue may be a controversial one in the community, and parents or teachers may attempt to influence School Board members or obtain a commitment from them prior to the hearing. Such efforts at influence must be resisted, or they could taint the validity of the Board's final decision. Also in some situations, such as teacher non-renewals, because of the statutory scheme, the School Board may actually be sitting in review of its own decision. Nonetheless, the Board members should still approach the hearing with an open mind to the evidence they are about to hear.

Comment: Remember that statements that are attributed to you about the employee (and particularly any electronic communications) may resurface and be used to challenge your impartiality, and also be used to claim that the Board as a whole is tainted by bias.

- b. Superintendent of Schools. At due process hearings, the Superintendent of Schools is often in the position of the prosecuting attorney or, at least, a chief prosecution witness. Indeed, the Superintendent of Schools probably recommended the adverse action which the charged party is protesting at the hearing. Consequently, because the Superintendent of Schools is clearly associated with, and an advocate of, a particular-outcome of the hearing process, she cannot, at the same time, perform the function of adviser to the Board during the hearing. Not only is this detachment from the School Board awkward for the Superintendent, but it may also leave Board members feeling somewhat adrift. It is often up to the Chair of the School Board to assume control of the situation and be sure that the proceedings are well run. This task is easier for the Chair if the School Board has well-established procedures to govern due process hearings. Before a particular case comes before the School Board, it is certainly appropriate for the Superintendent to propose to the Board fair procedures for its conduct of due process hearings.
- c. School Board Legal Counsel. In today's legal environment, it is quite probable that the charged party will be represented by legal counsel. Indeed, where full due process procedures are mandated, the right to counsel is, of itself, an element of due process. Most likely, the Superintendent of Schools will be hesitant to play the role of "prosecuting attorney" before the School Board, if the charged party is represented by a lawyer. If the School Board's regular legal counsel assumes the role of prosecutor at the due process hearing (i.e., presenting the evidence in support of the administration's decision), then it is inappropriate for that same attorney to also serve as counsel to the School Board in its ruling on the admissibility of evidence at the hearing and its deliberating upon the ultimate issues in controversy. The solution to this problem usually requires the School Board to retain two different lawyers. Its regular legal counsel may continue to serve as legal advisor to the School Board and advise the Chairman on procedural rulings and admissibility of evidence. Moreover, legal counsel may advise the entire School Board regarding the legal standards to be applied in reaching its decision and even assist the Board in drafting the decision. Special counsel would then be asked to assist the Superintendent in presenting the evidence and in advocating for the administration's position. This division of roles for those attorneys retained by the School Board avoids any claim of improper influence or improprieties in connection with the role of the School Board's attorneys.
- d. Charged Parties and Their Legal Counsel. Even-handedness is a key element of due process. The charged party and his legal counsel must be given adequate access to relevant information in order to prepare their case. Reasonable efforts should be made to accommodate their need to schedule

witnesses. Also, the charged party should be given adequate time, following notice of the hearing, to prepare his case.

4. Frequently Asked Questions Concerning Due Process Procedures.

- a. Is the School Board a Fair Tribunal for the Conduct of a Due Process Hearing? Yes, according to various court decisions. It is quite frequent for teachers and students who appear before the School Board when it sits as a due process hearing panel to complain that the Board cannot be considered an impartial tribunal. They allege that the School Board promulgated the very rules which the teacher or student is accused of violating. The United States Supreme Court has ruled, however, that this fact alone does not disqualify the School Board as a decision maker if the hearing is otherwise fair. (*Hortonville District v. Hortonville Education Association*, 426 U.S. 482 (1976)).
- b. Do Court Procedures and Rules of Evidence Apply at Due Process Hearings Conducted by School Boards? No. At a typical School Board hearing, strict legal procedures need not be followed, for these are administrative hearings and not court proceedings. Moreover, technical rules of evidence do not apply. Nonetheless, the proceedings must be orderly; evidence must be of a reliable nature; and there must be an opportunity for the charged party to challenge the evidence against him and present evidence in his own behalf.
- c. Must State Laws Be Strictly Followed? Yes. Aside from federal constitutional principles of due process, the Maine Legislature has enacted various statutes which specifically govern the procedures for non-renewal and dismissal of teachers and expulsion of students. Where such statutes do exist, School Boards must strictly comply with them. In other words, while constitutional due process standards may look to the question of whether there was “fundamental fairness” in the proceedings, procedural obligations arising under State law will generally require strict adherence. This is also true in regard to conformity with the procedural requirements relating to School Board hearings under the State’s Right to Know Law.

5. Are Due Process Requirements the Same for Minor Disciplinary Cases Involving Students as they are for Such Matters as Teacher Dismissal or Student Expulsion? No. Nonetheless, there are rudimentary requirements for due process even in minor disciplinary cases involving students. For example, the United States Supreme Court has found that even the suspension of students for up to 10 days requires schools to respect students’ constitutional rights to due process. The Court stated, however, that the seriousness of the possible penalty influences the extent and thoroughness of the due process requirement. Since due process is a flexible concept and not a fixed or rigid set of requirements, less onerous and demanding procedures are appropriate in the case of minor disciplinary action administered by school administrators. As a minimum, students facing suspension “must be given some kind of notice and afforded some kind of hearing.” The notice of the charges may be oral or written, and

a student who denies the charges must be given “an explanation of the evidence the authorities have and an opportunity to present his side of the story.” The central concern of the court is that there be at least “rudimentary precautions against unfair or mistaken findings of misconduct.” (*Goss v. Lopez*, 419 U.S. 565 (1975)). These more relaxed due process standards would ordinarily not pertain to due process hearings which are conducted by School Boards.

6. Does Due Process Require the Granting of a Right of appeal From the School Board Decision? No. The decision of the School Board may, depending upon the particular statutory provision involved, be appealable. But constitutional due process does not, of itself, require any appellate right. However, the very question of whether the School Board did abide by its due process obligations may be the subject of challenge in a court of law.

VI. Freedom of Access Law Basics

Meetings of School Boards are governed by the Maine Freedom of Access Law, which requires that all meetings must be open to the public subject to certain narrow exceptions which permit a School Board to meet in executive sessions.

1. Conditions for Executive Session. Executive sessions are subject to the following conditions:
 - a. The School Board must start with a public meeting.
 - b. There must be a public recorded vote to go into executive session by at least 3/5 of the members present and voting.
 - c. The motion to go into executive session must state the precise nature of the business of the executive session.
 - d. No official action may be finally approved in executive session.
2. Purposes of Executive Session. Items that can be discussed in executive session include the following:
 - a. Discussion or consideration of employment, appointment, assignment, evaluation, resignation, duties, promotion, demotion, compensation, evaluation disciplining, resignation or dismissal of public officials, appointees or employees or the investigation of charges or complaints against a person or person.

CONDITIONS:

- i. Executive session is permitted only if public discussion might cause damage to reputation or an individual's right to privacy may be violated.

- ii. Person charged or investigated has right to be present.
 - iii. Person charged or investigated may request in writing that the investigation be conducted in open session, which request must be honored.
 - iv. Any person bringing charges shall be permitted to be presented.
- b. Discussion or consideration of suspension or expulsion of a student, the cost of whose education is paid from public funds.

CONDITION:

- i. The student and legal counsel, as well as the student's parents or guardian if the student is a minor, shall be permitted to be present if the student, parents or guardian so desire.
- c. Discussion or consideration of the condition, acquisition or the use of real or personal property, but only if premature disclosure would prejudice the bargaining position of the body or agency.
- d. Discussion of labor contracts and proposals and meetings between the School Board and its negotiators, provided that the parties must be named before the School Board may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public providing both parties agree to conduct negotiations in open session.
- e. Consultations between a body or agency and its attorney concerning legal rights, pending litigation, and settlement offers, when attorney-client privileged would be violated or when premature public knowledge would given Board substantial disadvantage.
- f. Discussion of records made, maintained or received by the body or agency, if access is prohibited by statute.

VII. Conflict of Interest

School Board members are expected to represent and serve the public good without personal gain or interests influencing their decisions. The State laws governing conflicts of interest that apply to School Board members are as follows:

- a. Title 30-A of the Maine Revised Statutes Annotated, Section 2605, provides that a vote of a public body is voidable when a public official votes on a matter in which he has a direct or indirect pecuniary interest. School Board

members should remove themselves from consideration of any such matters and abstain from voting;;

- b. Title 20-A Section 1002 of the Maine Revised Statutes Annotated provides that neither a School Board member or spouse may be an employee in a public school within the jurisdiction of the school board to which the member is elected. An employee means a person who receives monetary payment or benefits for personal services performed for the school unit regardless of the amount paid or hours worked;
- c. The same section of Title 20-A provides that neither a School Board member nor spouse may serve as a volunteer when that volunteer has primary responsibility for a curricular, co-curricular or extracurricular program or activity and reports directly to a school administrator in a public school within the jurisdiction of the School Board;
- d. The same section of the law also provides that a School Board member may not be appointed to a paying position which was created or for which compensation was increased by action of the School Board during his or her term on the Board. This prohibition extends for one year after the member's term on the Board is completed.