

**RIGHT TO KNOW ADVISORY COMMITTEE**  
**Public Employee Disciplinary Records Subcommittee**

Thursday, November 7, 2024

9:00 a.m. – 11:00 a.m.

Location: Cross Building, Room 202, Labor & Housing Committee Room  
(Hybrid Meeting)

Public access also available through the Maine Legislature's livestream:

<https://legislature.maine.gov/Audio/#202>

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**AGENDA**

1. Introductions
2. Overview of meeting materials and updates from last meeting – subcommittee staff
3. Public employee disciplinary records - interested party perspectives
  - i. Steve Bailey/Eileen King, Maine School Management Association
  - ii. Maine Municipal Association (written comments)
4. Public comment regarding public employee disciplinary records
5. Next steps and possible future meeting date
  - i. Review/vote on recommendations
6. Adjourn

**Roig, Elena**

**From:** MacMaster, Brian <Brian.MacMaster@maine.gov>  
**Sent:** Thursday, October 31, 2024 9:57 AM  
**To:** Roig, Elena  
**Cc:** Judy Meyer  
**Subject:** RE: Public Employee Disc. Records Subcommittee - Meeting Details

**This message originates from outside the Maine Legislature.**

**I would like to discuss the utility of recommending that disciplinary records for purposes of public access be defined in the personnel statutes to comprise employee termination, demotion, or suspension, which would exclude reprimands (or corrective memoranda) that, for the most part, address performance issues over misconduct. While “discipline” in CBAs may include reprimands, we know in at least one major CBA, that is not the case. I suspect the same exclusion would also pop up in situations where there is no collective bargaining. By defining the term in the personnel statutes, we end up with a uniform scheme for purposes of public access.**

**From:** Roig, Elena <Elena.Roig@legislature.maine.gov>  
**Sent:** Thursday, October 31, 2024 9:12 AM  
**To:** Judy Meyer <jmeyer@sunjournal.com>; Amy Beveridge <abeveridge@hearst.com>; Bolton, Jonathan <Jonathan.Bolton@maine.gov>; Carney, Anne <anne.carney@legislature.maine.gov>; Finn, Julia <julia.finn@courts.maine.gov>; MacMaster, Brian <Brian.MacMaster@maine.gov>; Cheryl Saniuk-Heinig <casheinig@gmail.com>  
**Cc:** Laxon, Lindsay <lindsay.laxon@legislature.maine.gov>; McCarthyReid, Colleen <colleen.mccarthyreid@legislature.maine.gov>  
**Subject:** Public Employee Disc. Records Subcommittee - Meeting Details

Good morning subcommittee members –

Thank you for getting back to me about your preferred date for the next meeting of the Public Employee Disciplinary Records Subcommittee. Our next meeting will be held on **Thursday, November 7 at 9am** in the Labor and Housing Committee room (room 202 in the Cross Office Building). An agenda is attached. The subcommittee will be joined by a representative from Maine School Management Association to participate in a continued discussion about records retention, and the subcommittee will also receive written comments on this topic from Maine Municipal Association – as soon as I receive those, I’ll pass them along to you.

At the last subcommittee meeting there was a question about whether the RTKAC had received comment on the issue of disciplinary records from Maine Municipal Association or individuals representing schools. Below are the links to those recorded meetings:

- Full RTKAC meeting 10/23/23 at which Ben Grant, General Counsel for the Maine Education Association provided testimony (at approximately 1:34): <https://legislature.maine.gov/audio/#438?event=89618&startDate=2023-10-23T13:00:00-04:00>
- Full RTKAC meeting 12/04/23 at which Rebecca Graham provided testimony on behalf of Maine Municipal Association (at approximately 3:33): <https://legislature.maine.gov/audio/#228?event=89780&startDate=2023-12-04T13:00:00-05:00>

As discussed previously, please feel free to send me any potential recommendations that you'd like to discuss with the entire subcommittee. Staff will compile these into a single document to help facilitate the discussion next week. If you're not able to attend the 11/7 meeting, you are welcome to send along more in-depth written comments if you'd like – those will also be included for distribution to subcommittee members. Please reply directly to me (not reply all) with any comments or recommendations by noon on Wednesday, November 6 for inclusion in the materials.

Thank you – let me know if you have any questions!

Best,

**Elena Graham Roig**

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## MMA Responses to Personnel Records Retention Requirements Questions

Richard Cromwell, Personnel Services & Labor Relations Director  
(11/6/2024)

**Default & “Less Serious Misconduct” Record Retention Requirements.** If there is a desire to create consistency in retaining final written disciplinary decisions, a default retention period may be the appropriate direction to take. Currently, the retention requirements of state and local governments, and language in collective bargaining agreements contain inconsistencies that can result in confusion and mishandling of information. Although language tends to vary by collective bargaining agreement, where this language is present, I have seen disciplinary action for “less serious” action be retained for a year and “more serious action” be retained for eighteen months. At times there is additional language requiring that no other disciplinary action take place within that time frame, in order for the disciplinary action to be removed from the file.

Should there be consideration to standardize the retention period, it may be prudent to consider the retention period only be for the purposes of public view of the disciplinary action. As an employer, for progressive disciplinary purposes, may have the need to refer back to prior discipline when handling future disciplinary concerns. It’s also important to note that over time the potency of disciplinary action wanes for the purposes of progressive discipline and perhaps a record retention period could be based on an average of how long an employer tends to hold the relevancy of final discipline for the purposes of progressing an employee to the next level should there be a need.

Regarding the measurement of severity of the discipline when determining the retention period may be a difficult area to define. Employers have different levels/tolerances of how they apply discipline based on the scenario. When considering the retention of discipline and the variables that come with the level of discipline by an employer, it may be best to apply one standard retention period. However, it may be more important to consider what is considered discipline for the purposes of public view. Currently verbal reprimands, written reprimands, suspension without pay, demotion, criminal action and termination are accessible to the public. It may be important to review what types of discipline should be viewable. For example, a verbal reprimand has taken on different meanings to different employers and some employers document these occurrences and some do not as they are typically minor in nature.

**Violation of Public Trust Records Retention Requirements.** There are many public employee positions, clerks, finance, treasurer, recreation workers, public health nurses, teachers, firefighters/EMS, public transportation, code enforcement, city and town officials, and law enforcement, that require a high degree of public trust and are relied on for the safety and livelihood of the public. If a default retention period is established, consideration to apply this retention period equally amongst all public positions should occur for a few reasons. First, there are many different positions that play a significant role in public trust. Second, multiple retention standards become confusing and can result in the mishandling of information that could be considered confidential. Third, at times employees transfer to different jobs within the same organization. It may be important that any disciplinary record carry from one position to the

next with a standard guideline to follow versus the employer determining if the discipline is no longer valid based on job type.

**Collective Bargaining Agreements & Records Retention Requirements.** If the concern is to ensure transparency regarding disciplinary action and one's ability to access those records, then it may be appropriate to create a retention standard and/or a timeline for these records to be viewable but not removed from the employee's file for all public employers to follow.

**Records in the Employer's Possession.** I had been under the impression that that final discipline was part of the employee record and as such, even if it was not stored in the "employee file" that the employer was still responsible for having the ability to locate and provide that discipline upon request, so long as it still met the criteria of final discipline.