

**SANFORD SCHOOL DEPARTMENT
SANFORD SCHOOL COMMITTEE
MINUTES
Monday, June 19, 2017 ~ 6:30 pm**

Note: Meeting was held in the Superintendent's Conference Room, 2nd Floor, City Hall Annex

Members present: John Roux, Scott Sheppard, Jonathan Mapes, Thomas Miscio, Kendra Williams

Student reps present: None

Staff present: David Theoharides, Superintendent
Matt Nelson, Assistant Superintendent
Bernie Flynn, Curriculum Director
Gordie Salls, Athletic Director
Pam Lydon, SJHS Principal

Guests present: None

A. Call to Order Time: 7:12 pm

B. Workshop Session Workshop – Policies and Procedures
(Added attachments B.1. sample policy and B.2. state statute)

Workshop to develop policies and procedures surrounding private school students playing on Sanford Junior High School athletic teams

C. Adjournment

Mr. Miscio made a motion **to adjourn at 8:20 pm.**
Mr. Mapes seconded the motion. Motion carried 5 - 0.

Respectfully submitted,

John Roux, School Committee Chair

David Theoharides, Superintendent

DRAFT

Sanford School Department

NEPN/NSBA Code: JJIAA

PRIVATE SCHOOL STUDENTS—ACCESS TO PUBLIC SCHOOL COCURRICULAR, INTERSCHOLASTIC AND EXTRACURRICULAR ACTIVITIES

The Board recognizes that Maine law sets standards for access to public school co-curricular, interscholastic and extracurricular activities by students enrolled in equivalent instruction programs in private schools.

For the purpose of this policy, “student enrolled in equivalent instruction program” means a student otherwise eligible to attend school in that school administrative unit, including a student who resides in the unorganized territory, when the student is enrolled in an equivalent instruction program in a private school that is recognized as an equivalent instruction alternative under 20-A MRSA § 5001-A(3)(1)(b).

PARTICIPATION IN COCURRICULAR ACTIVITIES

“Cocurricular activities,” for the purpose of this policy, are activities that are sponsored by the school, are directly related to the curriculum and support achievement of the learning standards established by law, Board policy and or administrative action. Examples of such activities include the math club, science fairs and foreign language clubs.

A student enrolled in an equivalent instruction program as defined in this policy is eligible to participate in cocurricular activities sponsored by the Sanford School Department provided that:

- A. The student or his/her parent/guardian applies in writing to and receives written approval from the school principal/designee.
- B. The student currently meets, and agrees to meet in the future, established behavioral, disciplinary, attendance and other rules applicable to all students.
- C. The private school the student attends does not provide the same cocurricular activity.

The principal/designee may withhold approval only if the school does not have the capacity to provide the student with the opportunity to participate in the cocurricular activity.

If approval is withheld, the principal/designee will provide a written explanation to the student or student’s parent/guardian stating the reason for the decision to withhold approval.

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II. PARTICIPATION IN EXTRACURRICULAR ACTIVITIES

"Extracurricular activities," for the purpose of this policy, are school-sponsored activities for which participants are selected by staff supervising the activities, including those teams, both athletic and academic, that participate in interscholastic competition.

A student enrolled in an equivalent instruction program as defined in this policy is eligible to try out for extracurricular and interscholastic activities sponsored by the Sanford School Department provided that the following requirements are met/satisfied:

- A. The student applies for and receives written approval from the principal/designee.
- B. The student agrees to abide by equivalent rules of participation as are applicable to regularly enrolled students participating in the activity and provides evidence that the rules of participation are being met.
- C. The student complies with the same physical examination, immunization, insurance, age, and semester eligibility requirements as regularly enrolled students participating in the activity. All required documentation must be made available upon request by the school unit.
- D. The student meets equivalent academic standards as those established for regularly enrolled students participating in the activity and provides evidence that the academic standards are being met.
- E. The student abides by the same transportation policy as regularly enrolled students participating in the activity.
- F. The private school the student attends does not provide the same extracurricular or interscholastic activity.

The principal/designee will be responsible for approving or withholding approval of applications to try out for an extracurricular activity. The principal/designee may withhold approval only if the school does not have the capacity to provide the student with the opportunity to participate in the cocurricular activity.

If approval is withheld, the principal/designee will provide a written explanation to the student or the student's parent/guardian stating the reason for the decision.

The criteria for selection of participants shall be determined by the staff members (coaches, advisors and their supervisors) responsible for the activities. Tryouts are by nature competitive. Eligibility to try out does not guarantee participation.

Decisions resulting in non-selection of individual students shall not be subject to appeal or reconsideration unless they are in violation of law or Board policy.

VERIFICATION OF ELIGIBILITY

To permit verification that the student has met eligibility requirements under this policy, the student's parent (or the student, if 18 years old) must authorize the private school to provide to the principal all information necessary to determine whether the student meets the requirements.

DELEGATION OF AUTHORITY

In order to maintain an efficient and orderly method for processing applications for participation, the Board authorizes the Superintendent/designee to develop procedures, as appropriate, for the principal/designee's use in determining whether students have met eligibility requirements and for granting or withholding approval of participation.

Sanford School Department has no obligation to notify or provide information concerning eligibility for participation in school-sponsored cocurricular, interscholastic or extracurricular activities to students enrolled in equivalent instruction in private schools.

APPEALS

Except as otherwise provided in this policy, appeals from administration and application of the Board policy are heard by the Board, whose decision is final and binding. Appeals that question the Board's policy compliance with legal requirements must be made to the Commissioner, whose decision is final and binding.

Legal Reference: 20-A MRSA §§ 2901, 5001-A, 5021-A(3)

Cross Reference: KE – Public Concerns and Complaints

Adopted: _____

**PRIVATE SCHOOL STUDENT APPLICATION FOR PARTICIPATION
IN SANFORD SCHOOL DEPARTMENT COCURRICULAR ACTIVITIES**

The parent (or student if 18 years of age or older) must submit a separate application for each activity in which participation is desired.

STUDENT INFORMATION

Student's Name:

Student's Date of Birth:

Grade in Private School:

Student's Address:

Phone Number:

Parent/Guardian's Name:

Private School Name:

Private School Address:

Private School Phone Number:

Private School Principal/Head's Name:

Student is Applying for Participation in the Following Activity: _____

VERIFICATION OF ELIGIBILITY

I authorize [**Private school name**] to provide to [**School unit name**] upon its request all information necessary to verify that my son/daughter, [**Student's name**] meets the eligibility requirements for participation in the cocurricular activity that is the subject of this application.

Parent's Signature (or Student's, if 18 or older)

Date

STUDENT PARTICIPATION AGREEMENT

I agree to comply with all [School unit name] policies, administrative procedures, and behavioral, disciplinary, attendance and other rules that apply to [School unit name] students participating in the cocurricular activity that is the subject of this application.

Student's Signature

Date

**PRIVATE SCHOOL STUDENT APPLICATION FOR PARTICIPATION
IN SANFORD SCHOOL DEPARTMENT EXTRACURRICULAR
ACTIVITIES**

The parent (or student if 18 years of age or older) must submit a separate application for each activity in which participation is desired. [School unit name] will verify eligibility before the student is allowed to try out for the requested activity.

STUDENT INFORMATION

Student's Name:

Student's Date of Birth:

Grade in Private School:

Student's Address:

Phone Number:

Parent/Guardian's Name:

Private School Name:

Private School Address:

Private School Phone Number:

Private School Principal/Head's Name:

Student is Applying for Participation in the Following Activity: _____

**THE FOLLOWING DOCUMENTATION WILL BE REQUIRED FOR
VERIFICATION OF ELIGIBILITY TO TRY OUT FOR PARTICIPATION:**

Evidence that the student currently meets the same behavioral, disciplinary, attendance and other eligibility applicable to all students in [School unit name];

Student's written agreement to comply with the same behavioral, disciplinary, attendance and other eligibility applicable to all students in [School unit name];

Documentation of sports physical (if applicable) and clearance to play;

Documentation of immunization presented;

Evidence of insurance;

Documentation of age eligibility;

Documentation of academic standing (grades or other evidence that academic eligibility standards have been met); and

Student's written agreement to abide by the same transportation rules that apply to regularly enrolled students.

VERIFICATION OF ELIGIBILITY

I authorize [Private school name] to provide to [School unit name] upon its request all information necessary to verify that my son/daughter, [Student's name] meets the eligibility requirements for participation in the extracurricular activity that is the subject of this application.

I agree to provide to [School unit name] documentation of immunization, insurance and sports physical and clearance to play (if applicable) if such information is not maintained at [Private school name].

Parent's Signature (or Student's, if 18 or older)

Date

STUDENT PARTICIPATION AGREEMENT

I agree to comply with all [School unit name] policies, administrative procedures, and behavioral, disciplinary, attendance and other rules that apply to [School unit name] students participating in the extracurricular activity that is the subject of this application.

I also agree to abide by the same transportation rules that apply to all [School unit name] participants in this activity.

Student's Signature

Date

**VERIFICATION OF PRIVATE SCHOOL STUDENT ELIGIBILITY FOR
PARTICIPATION IN SANFORD SCHOOL DEPARTMENT COCURRICULAR
ACTIVITIES**

A separate application must be received for each activity in which participation is desired. This form is used to verify eligibility and to approve/deny participation.

STUDENT INFORMATION

Student's Name:

Student's Date of Birth:

Grade in Private School:

Student's Address:

Phone Number:

Parent/Guardian's Name:

Private School Name:

Private School Address:

Private School Phone Number:

Private School Principal/Head's Name:

Student is Applying for Participation in the Following Activity: _____

FOR COCURRICULAR ACTIVITIES

_____ Written application received [DATE]

_____ Student's written agreement to comply with behavioral, disciplinary, attendance and other rules applicable to all students in [School unit name]

Student participation in the desired activity is _____ approved _____ not approved

Decision by: _____ (Name and Title) Date: _____

Student/parent notified of decision: Date: _____ Method: _____

**VERIFICATION OF PRIVATE SCHOOL STUDENT ELIGIBILITY FOR
PARTICIPATION IN SANFORD SCHOOL DEPARTMENT
EXTRACURRICULAR ACTIVITIES**

A separate application must be received for each activity in which participation is desired. This form is used to verify eligibility and to approve/deny participation.

STUDENT INFORMATION

Student's Name:

Student's Date of Birth:

Grade in Private School:

Student's Address:

Phone Number:

Parent/Guardian's Name:

Private School Name:

Private School Address:

Private School Phone Number:

Private School Principal/Head's Name:

Student is Applying for Participation in the Following Activity: _____

FOR EXTRACURRICULAR ACTIVITIES

_____ Written application received [DATE]

_____ Student's written agreement to comply with behavioral, disciplinary, attendance and other rules applicable to all students in [School unit name]

_____ Sports physical (if applicable) performed on [DATE]; Cleared to play? Yes/No

_____ Documentation of immunization presented

_____ Documentation of insurance

_____ Documentation of age eligibility

_____ Documentation of academic standing (principals may ask to see grades or other evidence that academic eligibility has been met)

_____ Student's written agreement to abide by same transportation as regularly enrolled students

_____ Student has completed tryout

_____ Student has been selected / not selected for the activity (circle one)

Decision by: _____ (Name and Title)

Date: _____

Student/parent notified of decision: Date: _____

Method: _____

Maine Revised Statutes
Title 20-A: EDUCATION
Chapter 211: ATTENDANCE

§5021-A. STANDARDS FOR PARTICIPATION IN PUBLIC SCHOOLS BY STUDENTS ENROLLED IN EQUIVALENT INSTRUCTION PROGRAMS IN PRIVATE SCHOOLS

A school administrative unit shall conform to the following standards in making public school resources and services available to a student enrolled in an equivalent instruction program. For the purposes of this section, "student enrolled in an equivalent instruction program" means a student otherwise eligible to attend school in that school administrative unit, including a student who resides in the unorganized territory, when the student is enrolled in an equivalent instruction program in a private school that is recognized as an equivalent instruction alternative under section 5001-A, subsection 3, paragraph A, subparagraph (1), division (b). [2013, c. 428, §1 (AMD).]

1. Participation in cocurricular activities. A student enrolled in an equivalent instruction program is eligible to participate in cocurricular activities sponsored by the local school unit as long as the following requirements are met.

- A. The student or the student's parent or guardian, on behalf of the student, applies in writing to and receives written approval from the principal of the school or the principal's designee. The principal or the principal's designee may withhold approval only if the school does not have the capacity to provide the student with the opportunity to participate in the cocurricular activity. If approval is withheld, the principal or the principal's designee must provide a written explanation to the student or the student's parent or guardian stating the reason or reasons for the decision to withhold approval. [2013, c. 428, §2 (AMD).]
- B. The student agrees to meet established behavioral, disciplinary, attendance and other rules applicable to all students. [2011, c. 456, §1 (NEW).]
- C. The private school the student attends does not provide the same cocurricular activity. [2013, c. 428, §3 (NEW).]

[2013, c. 428, §§2, 3 (AMD) .]

2. Participation in extracurricular and interscholastic activities. A student enrolled in an equivalent instruction program is eligible to try out for extracurricular and interscholastic activities sponsored by the local school unit as long as the following requirements are satisfied.

- A. The student applies for and receives written approval from the principal of the school or the principal's designee, who may withhold such approval only if the school does not have the capacity to provide the student with the opportunity to participate in the extracurricular or interscholastic activity. If approval is withheld, the principal or the principal's designee must provide a written explanation to the student or the student's parent or guardian stating the reason or reasons for the decision to withhold approval. [2013, c. 428, §4 (AMD).]
- B. The student agrees to abide by rules of participation equivalent to those applicable to regularly enrolled students participating in the activity and provides evidence that the rules of participation are being met. [2011, c. 456, §1 (NEW).]
- C. The student complies with the same physical examination, immunization, insurance, age and semester eligibility requirements as regularly enrolled students participating in the activity. All required documentation must be made available upon request by the local school unit. [2011, c. 456, §1 (NEW) .]

D. The student meets academic standards equivalent to those established for regularly enrolled students participating in the activity and provides evidence that the academic standards are being met. [2011, c. 456, §1 (NEW).]

E. The student abides by the same transportation policy as regularly enrolled students participating in the activity. [2011, c. 456, §1 (NEW).]

F. The private school the student attends does not provide the same extracurricular or interscholastic activity. [2013, c. 428, §5 (NEW).]

[2013, c. 428, §§4, 5 (AMD) .]

SECTION HISTORY

2011, c. 456, §1 (NEW). 2013, c. 428, §§1-5 (AMD).

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Charter School Student Left on Sideline for Public School Team Tryouts



Greg Im

Greg Im represents schools in the areas of finance and general school law.

The Maine Superior Court recently clarified the extent to which charter school students are entitled to participate in extracurricular activities at public schools. The statute governing charter schools provides that the Superintendent of a public school may deny a charter school student's application to participate in extracurricular activities at a public school if the "public school does not have the capacity to provide the public charter school student with the opportunity to participate in the extracurricular or interscholastic activity."¹ When the number of public school students trying out for a team sport exceeds the number of positions on the team, does a charter school student have a right to try out for the team? A trial court judge has answered that question in the negative.

In *Harpwell Coastal Academy v. M.S.A.D. No. 75*,² a charter school student applied to the Superintendent of Maine School Administrative District No. 75 for approval to try out for the Mt. Ararat Middle School's 8th grade basketball team. As it was, there were not enough roster spots on the team for the number of M.S.A.D. No. 75 students already trying out for the team. Based on School Board policy and the applicable statute, section 2415(2) of Title 20-A, the Superintendent denied the charter school student's application. The School Board's policy³ provided that:

The school does not have capacity to provide a charter school student the opportunity to participate in an extracurricular activity when all available slots or positions for the activity are taken by regularly-enrolled students. A student enrolled in M.S.A.D. No. 75 schools will not be denied the opportunity to participate in favor of a student enrolled in a charter school.

The student, his parents, and the charter school challenged the Superintendent's decision in superior court, arguing that, under section 2415(2), the charter school student had a right to try out for the team. The court affirmed the Superintendent's decision.

In reaching its decision, the court compared section 2415(2) to the statutes governing the rights of private school students and home-schooled students to participate in extracurricular activities at public schools. The private school statute requires a private school student to apply for approval from the public school principal, who may withhold approval "only if the school does not have the capacity to provide the student with the opportunity to participate in the extracurricular activity."⁴ By contrast, the home-school statute provides that home-schooled students "are eligible to try out for extracurricular or interscholastic activities sponsored by the local school unit"⁵ According to the court, it is therefore evident that the Legislature knew how to give home-schooled students the right to try out for public school sports teams, and that if the Legislature had intended to confer the same right to private school and charter school students, it would have done so.

The court ruled in favor of M.S.A.D. No. 75 despite a letter from then-acting Commissioner Thomas Desjardins that supported the charter school student's interpretation of the statute, and the court's inclination to allow the charter school student to try out for the team. Ultimately, the court's decision was compelled by the legislative intent that was apparent in the statutory language. It is important to note that this decision may still be appealed to the Maine Supreme Court, which means that it is possible that this decision may not be the final word on this issue.

Additionally, the court's decision in *Harpwell Coastal Academy* did not go so far as to define what the term "capacity" in section 2415 means in every situation. The court only decided that there was no capacity in this particular case, where there were more public school students trying out for a team than there were spots on the team, and the school board had passed a policy that defined capacity in a way that contemplated such a

scenario.⁶ Consequently, school units should be aware that they may adopt policies to address charter school student participation in interscholastic and extracurricular activities (and, indeed, doing so may make good sense). Any such policies should define what "capacity" means. A variety of factors could be considered in addressing this issue – including the grade levels of the students, any applicable MPA or sport/activity-specific guidelines, staffing and safety considerations, and other local needs or priorities.

We are, of course, available to answer questions about the law and policy considerations.

Endnotes

- ¹ 20-A.M.R.S. § 2415(2) (emphasis added).
- ² *Harpwell Coastal Academy v. M.S.A.D. 75, CUMSC-AP-15-44* (Me. Sup. Ct. Cumberland County, January 16, 2016) (Warren, J.). There remains a constitutional claim to be decided by the Court. After the Court issues a final judgment, the case is subject to appeal to the Maine Supreme Judicial Court.
- ³ Policy JJAAB "Charter School Students – Access to Public School Interscholastic and Extracurricular Activities."
- ⁴ 20-A.M.R.S. § 5021-A(2)(A).
- ⁵ 20-A.M.R.S. § 5021(5).
- ⁶ The plaintiffs did not argue that the public school had "capacity" to increase the size of the basketball team to accommodate charter school students.

UPCOMING EVENTS

Affirmative Action and Beyond: What School Administrators Need to Know to Investigate and Address Complaints of Discrimination, Harassment, and Bullying

Due to the popularity of this program, we are pleased to offer a second session!

Thursday, September 22, 2016
Portland, ME | 8:30 AM - 2:30 PM

Drummond Woodsum attorney Melissa Hewey will review legal principles and practical techniques that every administrator involved in addressing issues of harassment, bullying and discrimination should know.

Maine School Business Officials 3rd Annual Law Seminar



*Presented in partnership with
MeASBO
with certification credits.*

Friday, October 21, 2016
Augusta, ME | 8:30 AM - 2:30 PM

Come join your colleagues for a day of professional development and updates on the law as it applies to Maine school business officials. This event presents an excellent opportunity to network with other school business officials from across the state and learn from those with real life experiences in dealing with important legal issues affecting business operations of Maine schools.

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