

## MEMORANDUM

TO: Senator Richard Sears, Chair  
Rep. Alice Emmons, Vice Chair  
Joint Justice Oversight Committee

FROM: Jeff Fannon, Vermont-NEA General Counsel

DATE: August 23, 2016

RE: School Discipline

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Thank you for inviting me to speak about Vermont-NEA's position concerning school discipline. Our view can be summarized that we believe discipline is, unfortunately, necessary at times and the conversation should focus on the root causes of why discipline is necessary. The more routine forms of discipline are not the issue here, but time out of school for significant behavior issues are the real concern.

Vermont-NEA's opinion focuses on school safety for all students and school staff. The dramatic increase in violent student behavior has caused Vermont-NEA's members to be hurt on the job in significant ways. Hospital visits for school staff are not uncommon. And when a teacher is hurt by a student, there is likely little learning taking place by the other students. Both school staff and students are harmed.

The reasons are many for why significant discipline is necessary but largely the reasons stem from the issue of poverty. Addressing poverty in significant and meaningful ways is required, in our opinion. Moreover, the opioid problem is real and causing big challenges in many schools across Vermont. With that backdrop, we believe we must:

- Acknowledge the conditions outside of school that contribute so heavily to the behavioral issues underlying this discussion.
- Acknowledge the use of exclusionary discipline is most often focused on the physical and emotional welfare of all children, and not as punishment.
- Begin the process of addressing measures school officials must take to make working in school safer for both students and staff.
- If necessary, enact a bill that actually is limited to a prohibition against "zero tolerance" policies, so long as there are exceptions for federal requirements (which would prevail anyway) and for circumstances involving dangerous behavior.
- Focus on restorative justice/PBIS considerations **AND** be certain to provide for the time, training, and actual associated costs to make them successful.
- Call for filling in some of the gaps in reported data.
- Consider how this state is going to address the increasingly violent behaviors of some of our children and how to ameliorate the social conditions we know lie at the root of the problem.
- Finally, if a student does need to be removed from a classroom, learning for that child should not stop, but we must acknowledge that alternative programs are expensive. For

example the Gateway School in Springfield recently was closed. It served the most challenging students, those who couldn't succeed in the regular school program. Because the program was cut, those students are sent back to the regular setting where they were not succeeding.

AOE's "Exclusionary Discipline Response," January, 2016 is a good start at reviewing data but we need more data from which to make solid policy decisions. For example, the report tells us percentages of students within single categories subject of some exclusionary discipline but it doesn't tell us how many "excluded" students in one category were also "excluded" students in another category. We might want to learn more before drawing general conclusions.

**Proportion of students excluded within student category (2013-15)**

| <b>Student category</b>       | <b>% of enrollment</b> | <b>% of those excluded</b> | <b>% of those excluded/<br/>% of enrollment</b> |
|-------------------------------|------------------------|----------------------------|---|
| <b>Free and reduced lunch</b> | 39.7%                  | 64.9%                      | 163.6%  |
| <b>Non-Caucasian</b>          | 7.8%                   | 10.9%                      | 140.1%  |
| <b>IEP</b>                    | 15.4%                  | 31.0%                      | 201.9%  |
| <b>504</b>                    | 4.5%                   | 8.8%                       | 197.3%  |
| <b>ELL</b>                    | 2.7%                   | 2.9%                       | 107.6%  |
| <b>Male</b>                   | 51.5%                  | 73.4%                      | 142.4%  |

**A. How does exclusion overlap among categories?** Wouldn't it be important to know how these categories overlap? For example, what percentage of Non-Caucasian or IEP students are also in the free and reduced lunch category? That is, the relative over-representation of one group of students may stem from its own over-representation within another group.

What we do not know is the comparative incidence of students who, say, both are Non-Caucasian AND qualify for free and reduced lunch. If (we also do not know this) all or a great portion of Non-Caucasian students also qualify for free and reduced lunch, that might alter how we to respond to the "over-representation" of one or both categories: e.g., over-representation regarding exclusion is greater among students who qualify for free and reduced lunch than for Non-Caucasian students.

Perhaps the overarching issue is the conditions of relative poverty that is the primary determinant of the need for, at least the use of, exclusionary discipline.

**B. Many IEP and 504 students have behavioral disturbances.** Is it at all surprising that exclusionary discipline is used more with IEP and 504 students, since those with emotional and behavioral conditions are found within those categories?

**C. The data provide only average duration of suspension or expulsion.** Wouldn't it be useful to know the relative incidence of comparatively lengthy and short periods of exclusion? For example, the average length of in-school suspensions was 1.16 days and, for out of school suspensions, 2.26 days. I understand the data reported does not reveal anything shorter than half

a day. It might be quite useful to learn, say, how many in-school suspensions were longer than a day, how many for a class period or two, and so on.

Thank you and we welcome the opportunity to work with you as you discuss any possible legislation.