

To: Senate Education Committee
From: Emily Simmons, Director of Legal and Policy Services, VSBA
Date: February 4, 2016
RE: S.194

Thank you for giving me this opportunity to testify on S.194. My testimony was developed in consultation with the Vermont Council of Special Education Administrators, The Vermont Superintendents Association and the Vermont Principals Association.

From listening to the testimony earlier this week, and from hearing the concerns you express in your deliberations, I believe the committee is considering two issues.

Issue#1:

Starting from the assumption that exclusionary discipline falls disproportionately on certain subgroups of Vermont students, there is a need to address discriminatory discipline in schools.

First, the assumption is problematic because it relies on national data, out-of-state data, incomplete Vermont data and anecdote. Assessing whether there is a problem, and the extent of that problem should be step one in any policy discussion. In Vermont, the primary issue in reporting school discipline data is the very small size of most schools. Subgroups that policy makers would want to consider (such as race, gender, IEP eligibility) are correspondingly small within schools. Those factors, combined with the low overall exclusion rate (5% statewide) makes public reporting on exclusionary discipline by subgroup impossible for many schools. The Agency is able to report state-level patterns and trends, but cannot report most individual school data because doing so would essentially disclose individual student information.

Second, discriminating against a student based on the student's race, class, disability, gender or sexual orientation is unlawful. Schools are recipients of federal funds that directly prohibit them from unlawful discrimination. However, that does not mean that administrators and educators would not benefit from opportunities to continually improve their practice through training opportunities designed to minimize the effects of implicit biases in decision making. As always, meeting this need requires time and resources, in addition to the availability of high quality training opportunities. We welcome a conversation about how to increase resources available to schools in order to meet this need.

Additionally, the laws and administrative rules governing schools require districts to: provide due process, take into account the specific circumstances of each child, balance the rights of the other students, and address a range of behaviors, from possession of a weapon or drugs and/or alcohol, to hazing, harassment or bullying. There are often specific actions and/or protections a district must take or provide in order to respond to this range of behaviors.

Federal and state law ensures that students who have a disability and are on an IEP or receiving Section 504 services have a greater level of protection within the disciplinary process than students who are not identified with a disability. These protections include: behavior plans that address student behaviors, involvement of special education case managers in the decision making process regarding suspensions, “manifestation determinations” whereby the student’s team determines whether the conduct is a direct result of the district’s failure to implement the IEP, and whether there is a “direct and substantial relationship” between the conduct and the disability. These processes make certain that students are not suspended because of behavior that is a manifestation of the student’s disability.

Issue #2:

Vermont’s rate of exclusionary discipline is perceived to be too high, and a solution is needed to bring that rate lower.

First, I want to point to the data provided in the Agency of Education’s report that documents Vermont’s 5% exclusion rate compared to the nationwide rate of 15%.

Second, the comprehensive rules that school administrators and school board members follow for each incident of exclusion create a high bar for imposing suspension or expulsion. They also balance the rights of the student with alleged misconduct against the rights of the rest of the students at school.

The purpose of S.194 is stated as eliminating zero-tolerance discipline policies. It is unclear what the definition of a zero-tolerance policy is in this bill. A primary obligation of a school board is to adopt policies at the local level that govern a range of issues. The VSBA maintains a model policy manual, which includes several policies governing discipline issues. Not one of our model policies could be characterized as “zero tolerance” but we have nonetheless expressed to Vermont Legal Aid and the ACLU that we are willing to review our policies with them in order to see whether they can be improved. In our experience, many districts rely on our model policy manual for their policies. We do not know how many districts have “zero tolerance policies,” so better

data regarding the extent of this problem would be useful before enacting legislation to address what could be a few outlier districts.

S.194 focuses on the idea that suspensions and expulsions should only occur in response to repeated conduct of the same type, despite nonexclusionary interventions. S.194 has language that would, however, allow or unintentionally encourage a “three-strikes” discipline policy. Schools could feel pressure to count and document instances of student misconduct since exclusion would require a circumstance of repeated conduct that reoccurs despite the use of nonexclusionary interventions. I’ll note that the term “nonexclusionary” is not defined in the bill. The term should be defined very clearly before schools are asked to use it in evaluating their discipline practices.

I encourage the committee to look to an area where schools are already making great progress to reduce the use of exclusion. Implementation of Positive Behavior Intervention Systems (PBIS) in Vermont schools is demonstrated to result in decreasing office referrals and suspensions. Critical to the success and sustainability of PBIS is the leadership of the Agency of Education, opportunities for professional development, coaching support and consultation. Enhancing the AOE’s capacity to continue this work may be the best avenue for reducing Vermont’s exclusion rates.

Schools implementing discipline policies and procedures are caught between sometimes conflicting needs. The need to balance the rights of students, the need to follow requirements of state and federal law, and the need to ensure a “safe, orderly, civil, and positive learning environment that is free from hazing, harassment, and bullying, and is based on sound instructional and classroom management practices and clear discipline policies that are consistently and effectively enforced.” (16 VSA 165(a)(8)).

There will be incidents in school that require the removal of a student from the classroom for some period of time. Our administrators and teachers are committed, well-trained, thoughtful professionals and are best positioned to know the most about Vermont’s students. School boards act as an impartial hearing body to determine whether an administrator followed the appropriate process when suspending or expelling a student. The laws we already have allow these adults to work as a team to make decisions that are in the best interest of all students. Training and increased awareness of current best practice can improve the outcomes of the difficult decisions that will inevitably have to be made.