



TO: Members of the Senate Committee on Education
FROM: Jay Diaz, Staff Attorney / Public Advocate, ACLU of VT
DATE: February 19, 2016
SUBJECT: S. 194 (2016) – Make Suspension and Expulsion a Last Resort

On behalf of the ACLU of Vermont and in partnership with the Vermont Dignity in Schools Coalition, I am here today because we believe every child in Vermont deserves an equal chance to learn from their mistakes. When children can remain in school and are given the tools to learn from their mistakes, schools are safer and all students are better off. Unfortunately, in Vermont's schools, children who misbehave in minor ways are regularly kicked out for days, weeks, and months. Exclusionary punishments, like suspension and expulsion, are usually unnecessary to maintain school safety, do not correct misbehavior, and do not account for the student's individual circumstances. And, minority students (students with disabilities, students of color, and students from low-income families) who can least afford it are more likely to be suspended from Vermont schools. We must do better for the sake of Vermont's children and Vermont's future.¹

After meeting with stakeholders regarding S. 194, we have come to consensus on two main points.

- 1) All parties involved agree that the Agency of Education should be legislatively required to replicate on an annual basis the Data Report on Exclusionary Discipline that was provided to the Committee in response to a request last year. This report's analysis should include both statewide and school district/supervisory union, and the legislation should allow for a greater amount of data to be reported.
- 2)
- 3) All stakeholders agree that funding for positive disciplinary regimes in schools and new AOE positions must be a part of any language that puts new obligations on schools.

In addition, S. 194 can also be updated to (suggested bill language is on the following pages):

- 1) Reduce the number of days a child can be suspended from 10 to 5 school days
- 2) Cap the number of days a student can be expelled at 90 calendar days
- 3) Update the legal standards so exclusion terms are proportionate to the misbehavior
- 4) Encourage schools to utilize positive discipline systems and tactics
- 5) Demand that excluded students are able to gain academic credit during exclusions

While banning zero tolerance is a laudable goal, it is not enough to accomplish a meaningful reduction in unnecessary out-of-school suspension and exclusions. We must and should do more to give all children an equal chance to succeed at schools that have the necessary resources.

¹ For a thorough review of the available data, and the educational and societal problems associated with suspension and expulsion, please see the attached Fact-sheet entitled "Make Suspension a Last Resort to Avoid the 'School-to-Prison-Pipeline'" and the January, 2015 "Kicked Out!" Report from Vermont Legal Aid.

Suggested revisions to S. 194

1. Section 2. 16 V.S.A. 1162(a) should be amended to read:

(a) **Expulsion.** A superintendent or principal may, pursuant to policies adopted by the school board that are consistent with State Board rules, when appropriately proportionate and with the approval of the board of the school district, expel a student for up to the remainder of the school year or up to 90 school consecutive calendar days during the school year, whichever is longer, for misconduct that poses a risk of physical harm to the student or others, provided nonexclusionary interventions have failed to prevent occurrences of the same misconduct, and further provided the misconduct occurs:

(1) on school property, on a school bus, or at a school-sponsored activity when the misconduct student has habitually and chronically created an extreme disruption of the educational process or caused serious physical harm to a person, including a finding after investigation of bullying, harassment or hazing pursuant to 16 V.S.A. § 1161(a)(6), or school property makes the continued presence of the student harmful to the welfare of the school;

(2) not on school property, on a school bus, or at a school-sponsored activity when where the misconduct student has habitually and chronically created extreme disruption of the educational process or caused serious physical harm to a member of the student body, including a finding after investigation of bullying, harassment or hazing pursuant to 16 V.S.A. § 1161(a)(6), school staff, or school property where direct harm to the welfare of the school can be demonstrated; or

~~(3) not on school property, on a school bus, or at a school-sponsored activity where the misconduct can be shown to pose a clear and substantial interference with another student's equal access to educational programs.~~

(3) No student shall be prevented from entering school, asked to leave school, or be placed on a shortened school schedule without standard due process procedures.

2. Section 2. 16 V.S.A. 1162(b) should be amended to read:

(b) **Out of School Suspension.** A superintendent or principal may, pursuant to policies adopted by the school board that are consistent with State Board rules, when appropriately proportionate, suspend a student out of school for up to ~~10~~ 5 consecutive school days for misconduct ~~that poses a risk of physical harm to the student or others, provided nonexclusionary interventions have failed to prevent occurrences of the same misconduct, and further provided the misconduct occurs:~~

(1) on school property, on a school bus, or at a school-sponsored activity when the misconduct student has repeatedly created a serious disruption of the educational process, or intentionally harmed another, including a finding after investigation of bullying, harassment or hazing pursuant to 16 V.S.A. § 1161(a)(6), or caused significant property damage makes the continued presence of the student harmful to the welfare of the school;

(2) not on school property, on a school bus, or at a school-sponsored activity when where the misconduct student's actions have created a serious disruption of the educational process, or intentionally harmed a member of the student body, including a finding after

investigation of bullying, harassment or hazing pursuant to 16 V.S.A. § 1161(a)(6), school staff, or school property where direct harm to the welfare of the school can be demonstrated; or

~~(3) not on school property, on a school bus, or at a school-sponsored activity where the misconduct can be shown to pose a clear and substantial interference with another student's equal access to educational programs.~~

(3) No student shall be prevented from entering school, asked to leave school, or placed on a shortened school schedule without standard due process procedures.

3. Section 2. 16 V.S.A. 1162(b) should be amended as (c) to read:

Immediate Removal. (c) Nothing contained in this section shall prevent a superintendent or principal, subject to subsequent due process procedures, from removing immediately from a school a student who poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process of the school, or from expelling a student who brings a weapon to school pursuant to section 1166 of this title.

4. Section 2. 16 V.S.A. 1162 should be amended to include a new section that reads:

Zero Tolerance. Except as required under state or federal law, a superintendent, principal, school board, or independent school shall not adopt, implement, or maintain a policy that requires a student to be suspended or expelled from school for certain conduct and that does not provide for the exercise of discretion by school officials in the decision of whether or not to impose suspension or expulsion from school as the penalty for the conduct.

5. Section 2. 16 V.S.A. 1162(c) should be moved and amended to:÷

Academic Progress During Exclusion. ~~(e) Principals, superintendents, or school boards shall provide a meaningful opportunity for a student, are authorized and encouraged to provide alternative education services or programs to students during any period of suspension or expulsion authorized under this section, to make equivalent academic progress. A "meaningful opportunity" includes but is not limited to online coursework, one-on-one tutoring, or sending work home and allowing the student to return it to an assigned school employee.~~

6. Section 2. 16 V.S.A. 1162 should be amended to include language that encourages new discipline systems and policies. Language could state

"school boards, superintendents, and principals are encouraged to consider disciplinary policy changes that focus on positive interventions and expectations and avoid focusing exclusively on unacceptable behavior" and

"school boards, superintendents, and principals are encouraged to consider disciplinary policy changes that ensure students and parents are provided written notice when a student is suspended in-school or out-of school."