

Jean Murray 2/2/16

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February 2, 2016

To: Senate Education Committee
From: Jean Murray, Chair, Vermont Dignity in Schools Coalition
Re: In support of H.796 and S.194

I would like to explain why amending 16 V.S.A. 1162 is a necessary step in creating safe school environments, making the best use of school resources, and ensuring that education in Vermont is available to all students on equal terms.

Last week, you heard from Secretary Holcombe, and she delivered the statistics on students out of out of school across Vermont. She told you that low-income, disabled and minority children were over represented, meaning the rate at which those groups are sent out of school is higher than other students.

A recent report of the National Association of State Board of Education finds that “Though one might think that students disciplined at higher rates misbehave more, the disproportionality in discipline is not in fact rooted in disparate levels of student misbehavior. Rather, students of color, students with disabilities and students who identify as LGBT appear to be punished more severely for the same offenses.”¹

In my work as a lawyer representing students and parents, I have seen cases where students in disadvantaged groups are sent out of school. School decision makers decide that words coming out of certain student’s mouth are a greater threat to safety than if the same words come out of other student’s mouths. It may be human nature to be more apprehensive of those perceived to be different, but when policies require suspension based on inappropriate words, the result is both unfair and unwise.

Studies have shown that there is no positive effect on student behavior, and no positive effect on the safety of the school environment, of school policies that kick kids out of school for misbehavior. Year after year, the numbers of students are sent out of school stay the same or increase. If exclusionary discipline was effective at addressing school safety, you would expect fewer incidents, not the same or more.

¹ “Advancing School Discipline Reform” Education Leaders Report, Vol 1 No. 2 National Association of State Boards of Education, p. 5. <http://www.nasbe.org/education-leader/advancing-school-discipline-reform/>

To change the high number of incidents of school exclusion, and the over-representation of low income, disabled and minority students who are excluded, school boards must change their disciplinary policies. I have a worksheet from a school district which directs school decision makers to suspend for one to three days on the second incident of defiance/disrespect, language, disruption and leaving school grounds without permission. The rubric imposes a “three-strikes you’re out” mentality, for infractions that have not affected school safety, on students in kindergarten through fifth grade.

The idea that a local school board can make a policy to remove children from school – and we are talking about numbers the equal at least one child out of every class every year – is the reason the law needs to change.

Education is not equal if the policy of the school is to cull one in ten or one in twenty students. Nearly twenty years ago, the Vermont Supreme Court articulated the importance of equal education:

[E]ducation is perhaps the most important function of state and local governments.... It is required in the performance of our most basic public responsibilities.... It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, [166 Vt. 250] where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Brigham v. State, citing Brown v. Board of Education, 166 Vt. 246, 249(1997)

The court found that of all possible government services, education was the only one the Vermont founders accorded constitutional status. “Laws for the encouragement of virtue, and prevention of vice and immorality, ought to constantly be kept in force and duly executed: a competent number of schools ought to be maintained in each town, for the convenient instruction of youth. . .” Vt. Const. of 1786, ch. 11 § 38 . . . corresponds roughly with current constitution, chapter II, §68. Brigham v. State, 166 Vt. 246, 258 (1997).

School policies that remove students from school for “defiance or non-compliance;” and for “insubordination”² do not meet the constitutional goal of encouragement of virtue in Vermont – what means do we have to encourage young people who are excluded from school? Nor does school exclusion in Vermont serve to keep schools safe. Evidence-based studies show that even

² Definition of insubordination: “This means that teachers, substitute teachers, and other members of the school staff have authority over students in the school building, on school grounds, and at school-sponsored events, regardless of whether or not the adult is one of the student's teachers. Each student is responsible for complying promptly with a teacher's or a staff member's requests, including requests that the student identify himself or herself, and directions to report to the office or *Planning Room*. Failure to comply promptly will be considered insubordination and may result in suspension.” U-32 2014-2015 Student Parent Handbook, p. 20

when student populations are demographically similar, some schools don't use exclusion as much.³ In other words, school safety does not depend on excluding some children from school; schools themselves can create safe learning environments with a minimum of exclusion.

The disproportionate use of exclusion on minorities is evidence of flawed decisions making about discipline. It means that school exclusion creates inequality between students: all students do not have the same opportunity to learn good citizenship, cultural values, and adjustment to environment.

Use of exclusion for non-safety reasons has had two verifiable results: exclusion is imposed disproportionately on disabled and minority students, and the exclusionary discipline statistics continue to rise.⁴

In response to the documented benefits of non-exclusionary practices, many states including Colorado, Maine, Maryland, Illinois, Massachusetts, Florida, California, and Indiana, as well as the District of Columbia have changed their laws to limit exclusion. While some of these laws have not been in effect long enough to adequately assess the impact, in the states and D.C. where the impact has been studied, suspensions and expulsions have decreased anywhere from 17.5% (Colorado) to 67% (Maine) and expulsions have decreased by 36% (Maine)- 50% (D.C.). As a result of these laws thousands of children are receiving the educational services to which they are entitled.

The Agency of Education offers a program of Positive Behavioral Interventions and Supports (PBIS) and many schools also use restorative justice practices. When Vermont schools have chosen to implement these programs and adhered to them with fidelity, the number of disruptive incidents goes down, and schools are safer learning environments for all students.⁵

Other programs, such as restorative justice, also have positive effects on school safety and behavioral education.

For these reasons, I ask that law makers change the law, so school boards rethink their policies on imposition of exclusionary discipline.

³ "Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement," Justice Center, The Council of State Governments, Public Policy Research Institute, July 2011 Finding 6: Schools that had similar student populations and were alike in other important regards varied significantly in how often they suspended or expelled students.

⁴ "Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement," Justice Center, The Council of State Governments, Public Policy Research Institute, July 2011, Finding 2: African American Students and those with particular educational disabilities were disproportionately likely to be removed from the classroom for disciplinary reasons.

⁵ <http://www.pbisvermont.org/>