

## MEMORANDUM

TO: Senate Education Committee

FROM: Joel D. Cook, Executive Director, Vermont-NEA

DATE: February 9, 2016

SUBJECT: S.194 – exclusionary discipline

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**As written, S.194 should not pass, but, of course, restorative justice and PBiS approaches should be established in many more of our schools.**

**A. What is actually happening to the safety and education of all students and staff**  
(Attachment A – pages 2-5)

**B. The trajectory of school employee numbers** (Attachment B – pages 6-9)

- According to AOE reports, the FTE number of instructional personnel (teachers and paraeducators) has **declined by nearly 650 since 2009**.
- According to the Treasurer's Office data, the number of individual active teachers (including supervisory administrators) in the mandatory Teachers Retirement System has **declined by more than 1200 since 2009**.

**C. The uses of data: it's really about poverty, isn't it**, and not the "school to prison pipeline," a patently offensive term here and inapplicable here? (Attachment C – page 10)

**D. The different interests underlying S.194**

- Is it about eliminating "zero tolerance" policies, wherever they might be in place?
- Is it about the "school to prison pipeline," a term that has virtually no place in this discussion regarding Vermont school systems?
- Is it about the excluded child and his/her education and well-being?
- Is it about our students more generally and the adults charged with their care and education?

**E. Our view:** As written, S.194 simply should not pass, but a better bill might...

- 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.  
(Attachment D – page 11)
- 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.

## **Attachment A: The safety of all students and staff**

What follows are excerpts from a sampling of reports obtained during the Fall, 2015, by Vermont-NEA from educators across the state (**emphasis** added):

As of day 12 in our school, a small number of students have given a teacher a mild concussion, bitten arms, kicked a pregnant teacher in stomach, threatened to cause bodily harm to staff, and used extremely foul language for all in the areas to hear. **Many of these incidents have taken place within classrooms impacting the learning of peers.**

The list goes on. Everyone, from Admin to Paras, are **trying to do the best we can to assist these traumatized children.** The breaking point is near.

Today I received a call from a teacher at..., the one who had talked the most I think, who said that her special educator, the one who would run between the two classrooms where the needs were, was absent today and there was no sub. Therefore, today was a very rough day. On the playground one student headbutted a para and then took a plastic shovel and hit her in the face with it. **The little children all saw this. Everyone is traumatized.** The teacher called me in tears. I called VOSHA and haven't heard back from them yet. I am going to request that they go to that school tomorrow when the company that is doing the review of the school will be there. ... I'm glad you guys have my back. We are all a bit afraid. The teacher in question and the parent who is injured are both too afraid to do anything but fill out paperwork. They both stayed at their post and continued trying to keep the children safe.

I am hesitant to put things in writing because this is a particularly shady subject at my school where I feel like we are pressured to not speak about issue even in general terms. We have had a number of severe issues over the years and continue to see violent behavior escalate, particularly in the younger grades (k-3). We have had articles in the local paper about the use of our safe room (which we cannot speak to because of confidentiality laws) and I'm seeing staff beat upon by students almost daily- particularly support staff and outside contracted BIs.

I am writing this out of a deep level of frustration on behalf of ..., a dedicated ... teacher for the past ... years. ... doesn't know I am writing this and I would appreciate all efforts to keep ... name and school confidential.

I feel strongly that action needs to be taken to protect teachers...many dedicated teachers who nurture and care for their students and will travel the distance to **protect their children.**

My strong feelings on this issue are very personal. ... has been injured ... times in his classroom within the past ... resulting in a debilitating concussion. All ... injuries were a result of students who struggle with behavioral challenges. ... has been the target of their

inability to follow rules and directions, as well as managing their own impulses. This level of disrespect angers me.

Each of the ... incidents portray the need not only for the safety of teachers, but for support at the administrative and state level. There is a **huge safety and systems issue when classes continue to be created with too many students, many of whom have behavioral issues**. ... has been responsible for the education, safety, and well-being of up to 35 students at one time, without support, in ... classes. This is wrong. It is also wrong when students are not held accountable for their actions and continue to act out without consequences. We need help and deserve to be protected.

I have seen ... suffer physically and emotionally ... and I pray that ...will fully recover. ...has had to let go of a lot of things ...enjoys. ... most recent hobby ...has not been able to enjoy .... This is just one of the many things ... has had to put on the back burner during ...recovery. While this has been difficult for ..., even harder was ...inability to be with the students ... truly cares for. The hardest thing I saw ... have to do last winter was tell ... that he had to resign .... I can't even begin to tell you how sad this was for not only ...and ... but for me as well. It has been difficult to see ... suffer and not be able to enjoy ... career as much as ...has over the past ...years.

... is a respected, dedicated, enthusiastic, and caring teacher .... Many of ...students ...have come to know ... as a mentor, friend, and at times a ...figure. I am so proud of .... ...is retiring in ...and I pray that ...will be able to enjoy ...retirement that ... has worked so hard for. I worry that these injuries will affect ...for a long time. Please, I respectfully ask that you take action to help and protect teachers.

I have concerns on the playground where there are fewer staff and teachers are spread thinly about. We have more duties but it still does not make up for the staff members we lost in the budget this year.

Last week, one of my kindergarten students kicked a classmate between the legs, causing tears and of course physical pain. The next day, that same student, armed with two sharp wood chips from the playground, made an uppercut jab toward the face of his intended victim. Both boys were on the edge of the playground structure, near an opening where the second student would have fallen backwards from a great height had the attack been successful.

The student I am most concerned about has been **denied an evaluation for special education** because we have a co-teaching special educator. That special educator is not providing the supervision outside at both recesses, I am. Even when I am not scheduled for duty, I am outside, ever vigilante, trying to prevent further injuries.

This past week, a first grader grabbed a chair, whipped it over his head with force like I've never witnessed in all my 27 years of teaching and attempted to throw it down upon the head of another child. Fortunately, I was able to intercede quickly enough to stop the chair from hitting the child. **That child would most certainly be seriously injured by**

**the impact of that chair. The same child that reaches out to hold my hand because he's finally begun to trust me, who looks up to me with his big, beautiful eyes came seconds away from severely injuring his classmate.**

**What do I say to the student who witnessed this violence and asked, "Why did he do that?" What do I say to the class when they observed a restraint that involved swearing and screaming. I promised them that this was a safe place. I had broken my promise. What do I say to the new teacher that I'm mentoring that's dealing with these same behaviors down the hall? She's been a teacher for less than 30 days and I've been doing this for 27 years. Surely, I must be able to help her. Right? My colleagues upstairs, downstairs and at every grade level have been struggling with these same behaviors. I was at a loss for words.**

For years it's been the blame game...*You're not doing enough. You just don't want these kids in the classroom. If only your lessons were more engaging. You just want to place a label on these kids. You just want another paraeducator.* **As that child was carried from my room, I felt defeated. No one is going to understand what just happened here.** I am doing enough. My lessons are engaging. I don't want to label kids and I certainly don't want another adult in my room. That just makes my job harder!

Finally, something shifted this week. When I went to my principal for help she listened and acted. For a few months now, she's been strongly advocating for and has begun the creation of a space for children where they would receive the social skills training they need to reenter the regular classroom. It's been a slow start, but it's a beginning. The next day, our district special education coordinator announced that she's going to spend one day a week at our school listening and problem solving. As she sat and listened to my experiences, she gave me a glimmer of hope. She heard me and offered real help. Later in the week, my principal shared with me that the superintendent was touring the district with someone from the state department. They were discussing the importance of the alliance between mental health groups and our community schools to address this issue.

So, for the first time in many years, we have admitted that we have a problem. That's the first step. People are talking and beginning to problem solve. I now have hope.

**Report from  
meeting on classroom violence**  
September 15, 2015

**Association**

Hitting. Kicking. Screaming. Spitting. Punching. Howling. Yelling. Throwing. For kindergarten and first grade teachers in ... public schools, this is a daily reality – from their students.

The violence and disruption caused by some students has left teachers and paraeducators in a state of disbelief – even shock. "What am I supposed to do when a kid is screaming, in a blood-curdling shrill, for three hours every day?" one member asked yesterday

during a meeting of more than a dozen members .... **“Every other kid in my class is not getting the education they deserve.”**

For nearly three years, the ... leaders **have tried ... to do something to address the prevalence of special needs students who are violent, insolent and unruly.** ...

Listening to the stories told by the 14 members gathered yesterday, it is quite clear that this is a real problem, one that ... was only going to get worse with this year’s incoming kindergarten class:

- One kindergartner routinely responds to requests from his teacher with “fuck you, bitch.”
- One kindergartner routinely throws furniture, hits other students and has stricken a teacher.
- One kindergartner sent a para to the emergency room after head-butting her
- One 62-year-old para was assigned to deal with a very large kindergartner, who routinely spits, kicks, yells and hits
- One kindergartner has choked a fellow student

“We’ve seen blood drawn, diapers thrown,” one meeting attendee said. “At what point do we say that this has moved way beyond being acceptable?”

The association is suggesting that it already has moved way beyond acceptable. While solutions are complex and perhaps costly, the costs of doing nothing and allowing this to fester – these children will be next year’s first-graders, and so on – will make schools increasingly more dangerous for paras and teachers, and **rob other children of the chance to learn.**

Without exception, the problems stem from children whose behavioral issues are well-documented in Head Start and EEE. “We knew what was coming,” one attendee said. **“Why on earth don’t we do something to make sure these kids’ needs are met so that all our students can learn?”**

The situation has become serious in some classrooms, to the point where teachers are finding it impossible to focus on anything other than the disruptive child.

**“We are taking the kids who are ready to learn, and, instead, they are being traumatized,” said one teacher. “They see their teacher getting hit. That is not supposed to happen.”**

The association leadership is asking all members – not just those affected directly – to recognize this very serious issue. They have distributed materials making it clear that ALL incidents of student violence be recorded and reported. They have made it clear that if any staff member is hit or otherwise assaulted by a student, then a call to 911 must be made. And they have made it clear that all victims of this violence file a report with the administration, and to demand access to medical care immediately. ...

## **Attachment B: The Trajectory of School Employee Numbers**

### MEMORANDUM

TO: David Sharpe, Chair, House Education Committee

FROM: Joel D. Cook, Executive Director, Vermont-NEA

DATE: January 23, 2016

SUBJECT: School employee numbers over time

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You requested I put some detail together about this for you. I've put all the numbers on the accompanying spreadsheet. What they show is this:

In his presentation material, Rep. Olsen used the same numbers I have used here. They come from the AOE website, which houses relevant reports dating from 2004. His exclusive focus is comparing 2004 and 2014. That is essentially what most analyses do, and that approach simply masks school system employment trajectories. My numbers add AOE's more recently available report for 2015.

4 important facts:

- There is a trend within that 2004-2015 span: increases (for some reason, largely in 2006<sup>1</sup>) followed by a, now, recent almost unbroken string of decreases, beginning in different years for different employment categories. As I've been saying, though, the peak year for total school employment was 2009, six years ago.
- While there are small variations within categories of employees, the total number of school employees has declined every year since 2009 (that is, in 2010-15 inclusive).
- The one internal exception to that trend is non-instructional employees, the number of whom grew through 2012, declined for a couple of years, and increased again in 2015. This category includes all administrators and support services from maintenance through food services, drivers, secretaries, guidance, nurses, etc.
- We don't yet have 2016 (this year's) numbers. I see no reason to believe the downward trend in direct instructional employees was broken this year (2016). I suspect it was accelerated. I am not sure when those numbers will be available, but AOE can estimate that if asked.

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<sup>1</sup> My guess is it's related to a budding sense that schools needed to beef up instruction for NCLB-related testing to avoid/delay being identified as "failing."

So, going beyond the simple comparison of 2004 and 2014, the story between 2004 and 2015 is summarized in the table below (in which "Peak year" means the year with the greatest number of employees in the specific category).

## **Vermont school employees between 2004-2015**

### **How school employment numbers have declined from their peak year**

Category of employee	Peak year	Number employees		Difference in number of school employees from peak year through 2015
		in peak year	in 2015	
<b>Total Direct Instruction (Teachers + Paraeducators)</b>	2009	12,936	12,301	<b>-636</b>
<b>Teachers</b>	2006	8593	8272	<b>-321</b>
<b>Paraeducators</b>	2009	4445	4029	<b>-416</b>
<b>All other employees</b>	2012	5948	5942	<b>-6</b>
<b>Total employees</b>	2009	18,808	18,243	<b>-565</b>

As I've mentioned, the number of instructional employees has declined, since 2009, by nearly 650. The decline in total employees over the same period is a bit less because the number of non-instructional employees increased over that span.

Editorial comments:

- The unfortunate truth about "caps" or thresholds is its broad-brush diversion of attention away from education opportunities. The children whose needs always – virtually without exception anywhere – are less well met using such devices are special needs children and children in poverty. Whatever else happens in this discussion, that will happen as a result of any "caps."
- Total school employment follows – it does not lead, because it cannot lead – enrollment decline. Nor can employment numbers decline in some lock-step proportion with the decline in student numbers. But they can decline, they have declined, and they will continue to decline without "caps."

Please let me know how I can assist in providing this information more broadly. Thanks for asking me to put it together.

**Vermont-NEA**  
**School Employees in Vermont**  
**- From AOE Annual Teacher/Staff Full-time Equivalency (FTE) and Salary Reports -**

Fiscal Year	Total Direct Instruction		Teachers		Paraeducators		All Other		All employees	
	Total	Annual change	Total	Annual change	Total	Annual change	Total	Annual change	Total	Annual change
<b>2003</b>	12,630		8,452		4178		5,447		18077	
<b>2004</b>	12,597	-33	8,439	-13	4158	-20	5,570	123	18167	90
<b>2005</b>	12686	89	8,399	-40	4287	129	5,664	94	18350	183
<b>2006</b>	12,842	156	<b>8,593</b>	194	4,249	-38	5,737	73	18,579	229
<b>2007</b>	12,887	45	8,572	-21	4,315	67	5,841	104	18,728	149
<b>2008</b>	12,849	-38	8,485	-87	4,364	49	5,843	3	18,693	-36
<b>2009</b>	<b>12,936</b>	87	8,491	6	<b>4,445</b>	81	5,871	28	<b>18,808</b>	115
<b>2010</b>	12,859	-78	8,460	-31	4,399	-46	5,915	44	18,774	-34
<b>2011</b>	12,666	-193	8,382	-78	4,284	-115	5,923	8	18,589	-185
<b>2012</b>	12,534	-131	8,364	-18	4,171	-113	<b>5,948</b>	25	18,482	-106
<b>2013</b>	12,583	49	8,387	23	4,197	26	5,881	-67	18,464	-18
<b>2014</b>	12579	-4	8,376	-11	4,203	7	5,832	-49	18,411	-53
<b>2015</b>	<b>12301</b>	-278	<b>8,272</b>	-104	<b>4,029</b>	-175	<b>5,942</b>	110	<b>18,243</b>	-168

	Total Direct Instruction	Teachers	Paraeducators	All Other	All employees
<b>Difference since peak year*</b>	<b>-636</b>	<b>-321</b>	<b>-416</b>	<b>-6</b>	<b>-565</b>

1/23/16

\* These totals do not match one another because they stem from different peak years

## VSTRS Demographic Data

(Excerpt from page 17 of January 20, 2016 State Treasurer "Presentation to House Government Operations Committee")

VSTRS = Vermont State Teachers' Retirement System

Active = currently meeting definition of "teacher" in the System's statute

<u>Year</u>	<u>Active Members</u>
1979.	7,515
1980.	7,665
1981.	7,713
1982.	8,143
1983.	8,116
1984.	8,218
1985.	8,367
1986.	8,549
1987.	8,737
1988.	9,057
1989.	9,487
1990.	9,644
1991.	9,770
1992.	9,763
1993.	9,777
1994.	9,836
1995.	10,110
1996.	10,185
1997.	10,280
1998.	9,808
1999.	10,006
2000.	10,234
2001.	10,264
2002.	10,257
2003.	10,355
2004.	10,315
2005.	10,744
2006.	10,696
2007.	10,675
2008.	10,685
<b>2009.</b>	<b>10,799 = peak year</b>
2010.	10,509
2011.	10,123
2012.	10,262
2013.	10,101
2014.	9,952
<b>2015.</b>	<b>9,585</b>

$$10,799 - 9,585 = 1214$$

## **Attachment C: What the Data Don't Tell Us**

AOE's "Exclusionary Discipline Response," January, 2016

The data tell us percentages of students within single categories subject of some exclusionary discipline. They do not 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/ % 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.

## Suggested revisions to S.194

1. Ultimately, the bill is devoid of any reference to **restorative justice** or **PBis**. That obviously needs to be remedied. We suggest referring to them in the purpose statement (see suggested language in item 2 below) and adding a substantive provision and appropriation to help.
2. Sec. 1. Avoid restating findings that may not be accurate or relevant to Vermont. There is no need or accuracy to suggest that *any and all* exclusionary discipline "consistently" increases anti-social behavior and educational loss. Perhaps change Sec. 1 to read:

**The purpose of this act is to eliminate zero-tolerance school discipline policies for nonviolent conduct and nonviolent infractions of school policies. It does not prevent schools from immediately removing dangerous or potentially dangerous students from school or from removing a repeatedly disruptive student from class or school after the unsuccessful use of non-exclusionary interventions to bring the disruptive conduct to a stop. It also proposes to provide the Agency of Education and school districts adequate resources with which to providing training and oversight regarding the use of principles and methods of restorative justice and Positive Behavioral Interventions and Supports by school personnel and students.**
3. Sec. 2 - §1162(a). While it is fine to set different standards for expulsion and suspension, it is simply not proper to prohibit expulsion for *any and all property damage*. It is also not proper to prohibit expulsion for *any single act of injurious violence*. That is what the change to §1162(a) would do. *In addition*, we suggest changing the proposed standard to permit expulsion for "**habitually disruptive**" conduct or "**conduct that has created a chronic and extreme disruption of the educational process,**" each of which is suggested by the Incarceration Taskforce as "effective" in other states.
4. Sec. 2 - §1162(b). This provision prohibits suspension for any danger to property or for active destruction of property, while the next provision permits "immediate removal" for a "continuing danger" to persons or property. There must be situations where active destruction of property merits suspension.
5. Sec. 2 - §1162(b)(3). There is no (3) in the bill, yet. It is not apparent why expulsion should be permitted, but not suspension, where the student's off-school conduct presents a "clear and substantial interference with another student's equal access to educational programs." Why should a school have to resort to the ultimate exclusionary method if a less restrictive/exclusionary one will do?
6. Sec. 2 - §1162(c). Why, so long as subject to due process procedures, should a school be prohibited from immediately removing a student presenting an "ongoing threat of disrupting the academic process of the school." We would not delete this clause.
7. Sec. 2 - §1162(d). Several laws make bullying, hazing, or harassment (close to) criminal. This provision, while acknowledging those laws exist, adds an almost redundant element before exclusionary discipline may be used. We suggest amending this provision by deleting all after "or harassment" ("and such misconduct has substantially interfered with at least one other student's equal access to education").