

Bills related to School Discipline

Testimony

Agency of Education Response to Four Bills related to exclusionary discipline

- **H-0796**
- **S-0248**
- **S-0067**
- **S-0194**

Secretary

Rebecca Holcombe

Legislation

- H-0796
- S-0248
- S-0067
- S-0194

Introduction

Across the nation, considerable attention has been paid to the rate of exclusionary discipline and the link to negative outcomes later in life, particularly incarceration. The Agency of Education concurs that every day spent away from learning represents a real and substantial loss for those who are excluded. Simultaneously, the Agency wishes to remind legislators that the principals and assistant principals who are charged with reducing these exclusions are also held responsible for maintaining school environments that are safe, productive learning experiences for all students. The natural tension which exists in carrying out these competing goals is one which must be kept in mind.

In the discipline report submitted to the Senate last week, the Agency found the following key points to keep in mind while entertaining conversations related to exclusionary discipline:

1. Vermont's exclusionary discipline is 5% each year while the national average is 15%.
2. Some student groups are disproportionately represented compared to their populations in terms of incidents: males, non-Caucasian, students with disabilities (504 and IEP), students on FRL.
3. The average in-school exclusion is 1.2 days; the average out-of-school exclusion is 2.2 days; existing statute allows for exclusion up to 10 days.
4. No student groups experience disproportionately longer exclusions than others.

The Agency does not support the passage of any of the four current bills related to student discipline largely because they impose on schools and the Agency additional work that is unlikely to bring about any substantial changes in existing practice. Rather, the Agency recommends that the legislature consider allocating financial resources to support the recommendations made in the Discipline Report:

1. Provide staffing to the Agency of Education to facilitate:
 - a. Administrator professional judgement in implementing discipline including but not limited to discerning appropriate incident codes, exercising judgement in determining disciplinary consequence and alternatives to exclusion, and implicit bias training.
 - b. Professional development, training and monitoring of data entry related to exclusionary discipline including audits.
2. Or grants which would support supervisory unions and supervisory districts to:
 - a. Provide professional development in supporting social-emotional development and responding appropriately to challenging behaviors (PBIS/BEST Institute)
 - b. Help teachers, especially novices, distinguish behaviors that are inappropriate from those that are developmentally age appropriate (students need to learn how to behave in school and public). (Supervision and support.)
 - c. Train educators to recognize behaviors that may be indicators of an underlying disability, so they can address the disability and not punish children for behaviors caused by disabilities.

- d. Help develop and support the self-reflective capabilities teachers need to identify and correct any potential biases, including racial, ethnic and class biases.
- e. Provide professional development to help teachers provide culturally competent instruction, including teaching and materials that reflect and show value for every student's own experiences and culture.

In addition, we support efforts by AHS to provide access to affordable housing, drug prevention and treatment, medical care, job training and family supports that lead to stable and healthy families. We believe stable and safe families play a critical role in breaking the cycle of poverty that is a driving factor in poor educational and discipline outcomes. Absent these supports, we fear increasing economic inequity will drive greater inequity in school outcomes.

H-0796

Introduced by Representatives Ram and Rachelson

Key ideas: Modifications to 16 V.S.A. § 1162

1. Reduce the time students can be suspended from 10 to 5 days.
2. Increases the standard for an exclusion from “harmful” to “substantial harm” for a suspension and for an expulsion to pose an “imminent risk.”
3. Introduces an exception for bullying, hazing and harassment.
4. Introduces several considerations which the superintendent or principal must consider before administering the exclusion.

Agency Response: *This legislation is unnecessary, produces a need to re-define and re-train administrators when they are already meeting the language put forth in the proposed statute.*

1. *Currently administrators are not electing to use the full length of exclusion (10 days) with any regularity. Reducing to 5 days may have the unintended consequence of pushing more administrators to seek expulsion if they feel that 5 days is too short of a suspension for order and safety to be restored to campus.*
2. *Currently administrators weigh the degree of harm to the learning environment of all students when they exclude any student. By raising the perceived degree of harm to the learning and safety of other students, the legislature would be determining that it is willing to tolerate a more disruptive, less emotionally safe learning environment for all students to provide greater protections to those students who do not meet expectations set by local school boards.*
3. *The exception is a valuable one if the bill is to pass into law.*
4. *The considerations introduced prior to exclusion are the very considerations made by administrators in determining what action to take:*
 - a. *The vast majority of exclusionary discipline is administered in grades 7 and higher (70% of all exclusions).*
 - b. *Prior to exclusion, students with disabilities participate in manifest determination hearings to determine and rule out if the behavior which warranted the exclusion, is behavior related to the student's disability or a failure to provide appropriate services.*
 - c. *Students with disabilities participate in manifest determination hearings to determine prior to exclusion if the behavior which warranted the exclusion, rule out that the behavior is related to the student's disability or a failure to provide appropriate services.*

- d. *Consideration of all that is known about the student being excluded including prior disciplinary action, circumstances which affect judgement and willingness to engage in restorative practices.*
- e. *The impact of the misconduct on the learning and safety of other students and staff.*
- f. *The degree to which the misconduct was intentional or pre-meditated.*

S-0248

Introduced by Senator Sears

Key ideas:

1. Increase fine for truancy from \$1000 to \$2000.
2. Require data collection and reporting on a number of measures, specifically exclusionary discipline.
3. School resource officer reporting requirements.

Agency Response: *This legislation is unnecessary and contains issues pertaining to student privacy that would violate federal and state law.*

1. *The Agency has no comment on the modification of the fine. However, since a disproportionate number of truant students come from lower poverty families, the effect of the fine would be disproportionately born by already fiscally stressed families, which may in turn affect the children in the family.*
2. *Some of the contents requested in the report are problematic, specifically:*
 - (1) Total enrollment for the school- *duplicative of federal ESSA requirements*
 - (2) Daily attendance rate including trancies- *duplicative of federal ESSA requirements*
 - (3) Dropout rates- *this is duplicative of work that is better done at the State level to ensure data suppression rules are met: <http://education.vermont.gov/data/dropout-and-high-school-completion>*
 - (4) School Discipline- *duplicative of federal ESSA requirements and does not have the necessary language regarding suppression to protect privacy. As we have seen in the discipline report, even without disaggregating by type of exclusion or student demographics, the small size of our schools coupled with the relative rarity of exclusions means that 85% of our schools would not be able to produce the requested data without violating privacy laws. But all would need to expend time to generate reports. This is an inefficient use of resources that will end in limited data.*
 - i. Number of exclusions
 - ii. Number of exclusions by grade
 - iii. How many times each individual student was excluded by suspension or expulsion
 - iv. Duration of each exclusion
 - v. The infraction for each exclusion
 - vi. Each referral to law enforcement
 - vii. Every excluded student's demographics
 - (5) Average class size- *This could be incorporated into the ESSA report card.*
 - (6) School bullying prevention policy- *this is duplicative, it is already required by <http://legislature.vermont.gov/statutes/section/16/009/00570> .*
3. *The Agency defers to the Department of Public Safety and the Attorney General regarding the burdens that the legislation may pose for school resource officers and their staff.*

S-067

Introduced by Senators Sears, Campion, and McCormack

Key ideas:

1. Creation of a School Discipline Advisory Task Force
 - (1) Analyze current data collection on exclusionary discipline
 - (2) Annually analyze school-district level exclusions for a variety of demographic and exclusion related factors similar to the discipline data report presented to the Senate
 - (3) Identify other strategies and policy changes to reduce exclusionary discipline
 - (4) Share insights and best practices
2. Creation of a report by the Agency of Education

Agency Response:

1. *The Agency recommends delegating the tasks assigned to the School Discipline Advisory Task Force to one of two existing committees: PK-16 Task Force or the Juvenile Justice Commission. Both of these existing committees would be appropriate venues to review the disciplinary data without creating an additional committee for Agency staff and education field staff to attend.*
2. *The Agency recommends that whichever committee is charged with this work should use the recently presented Discipline Report.*

S-194

Introduced by Senator Sears

Key ideas: Modifications to 16 V.S.A. § 1162

1. Defines misconduct for expulsion as that which “poses a risk of physical harm”
2. Defines suspension as allowable when there is “risk of substantial harm to the safety of others” and “non-exclusionary interventions have failed” or “misconduct substantially interferes with the academic process”
3. Allows for circumstances for immediate removal
4. Allows for exclusion related to bullying/hazing/harassment

Agency Response:

1. *Expulsions in Vermont are extremely rare, only 67 cases in the last 3 years which is less than 0.2%. It is our belief that school administrators are already meeting this benchmark but changing the language requires unnecessary revision of existing training documents and materials in each school system that is unlikely to result in any difference in the administration of expulsion.*
2. *The Agency believes that administrators are applying exclusion as a last resort method given the relatively low exclusion rate (5% compared to national of 15%) and that this wording change introduces vocabulary that already defines the steps administrators take.*
3. *The exception is a valuable one if the bill is to pass into law.*
4. *The exception is a valuable one if the bill is to pass into law.*