
School Discipline Disparities in Vermont

**Vermont Advisory Committee
to the U.S. Commission on Civil Rights**

December 2019

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By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

Letter of Transmittal

Vermont Advisory Committee to
the U.S. Commission on Civil Rights

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The Vermont Advisory Committee, as part of its responsibility to advise the Commission on civil rights issues within the state, submits this report, “Human Trafficking in Massachusetts.” The report was unanimously adopted by the Advisory Committee.

Sincerely,

Curtiss Reed, Jr.

Vermont State Advisory Committee to the U.S. Commission on Civil Rights

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I. Introduction

School discipline has been at the forefront of politics and policy in the United States for many years, with varied views on the most effective methods and an everchanging federal legislative landscape. In 2014, the Obama administration implemented a policy urging schools across the country to only suspend, expel, or report students to police as a last resort.¹ This policy also took steps to implement restorative discipline initiatives, which are policies centered around a “relational approach to building school climate and addressing student behavior that fosters belonging over exclusion, social engagement over control, and meaningful accountability over punishment.”² The 2014 policy provided schools with guidance on civil rights and disciplinary matters, guiding principles on best disciplinary practices, a directory of Federal School Climate and Discipline resources, and a compilation of relevant disciplinary laws and regulations in all 50 states.³

In December of 2018, the Trump administration’s Education and Justice departments officially withdrew the Obama disciplinary policy and guidance from 2014.⁴ Education Secretary Betsy DeVos stated that the administration’s decision “makes it clear that discipline is a matter on which classroom teachers and local school leaders deserve and need autonomy,” further encouraging teachers and administrators to “continue [] implement[ing] reforms that they believe will foster improved outcomes for their students.”⁵ The rollback of this policy leaves room for the continued use of exclusionary discipline in schools across the country, and highlights the divided landscape within which disciplinary policy exists.

Research has shown that exclusionary discipline techniques are often ineffective and may even increase the likelihood of future criminality and lower overall student academic performance in schools.⁶ It is important to note though that exclusionary discipline is necessary in limited

¹ Department of Education and Department of Justice Dear Colleague Letter on School Discipline (Jan. 8, 2014) (hereinafter “2014 School Discipline Guidance”), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>; see also Colin Binkley, “Trump Officials Cancel Obama-Era Policy on School Discipline,” *U.S. News and World Report*, Dec. 21, 2018, <https://www.usnews.com/news/politics/articles/2018-12-21/trump-officials-cancel-obama-era-policy-on-school-discipline>.

² “Restorative Discipline in Schools,” *The Institute for Restorative Justice and Restorative Dialogue*, <https://irjrd.org/restorative-discipline-in-schools/> (last accessed Aug. 29, 2019).

³ 2014 School Discipline Guidance; U.S. Dep’t of Ed. Press Office, “U.S. Departments of Education and Justice Release School Discipline Guidance Package to Enhance School Climate and Improve School Discipline Policies/Practices,” Jan. 8, 2014, <https://www.ed.gov/news/press-releases/us-departments-education-and-justice-release-school-discipline-guidance-package->.

⁴ Department of Education and Department of Justice Dear Colleague Letter Withdrawing 2014 School Discipline Guidance (Dec. 21, 2018), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201812.pdf>; see also Francisco Vara-Orta, “It’s Official: DeVos has axed Obama discipline guidelines meant to reduce suspensions of students of color,” *Chalkbeat*, Dec. 21, 2018, <https://chalkbeat.org/posts/us/2018/12/21/its-official-devos-scraps-obama-discipline-rules-meant-to-reduce-suspensions-of-students-of-color/>.

⁵ Francisco Vara-Orta, “It’s Official: DeVos has axed Obama discipline guidelines meant to reduce suspensions of students of color,” *Chalkbeat*, Dec. 21, 2018, <https://chalkbeat.org/posts/us/2018/12/21/its-official-devos-scraps-obama-discipline-rules-meant-to-reduce-suspensions-of-students-of-color/>.

⁶ U.S. Commission on Civil Rights, *Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities*, 2019, p. 5,

circumstances, such as a student bringing a firearm to campus, to ensure school safety, and is in fact required by Vermont law for a small number of actions.⁷ In light of data showing the ineffectiveness of exclusionary discipline, some school districts across the country have turned to restorative justice measures. Data shows that these methods, which do not involve exclusion, are more effective in addressing many forms of school misbehavior.⁸

In addition to the ineffectiveness of exclusionary discipline, several decades of research have demonstrated persistent disparities in the use of such disciplinary tactics for students of color and those with disabilities.⁹ According to a national report by the Government Accountability Office, African American students made up only 15.5 percent of public school students but accounted for 39 percent of exclusionary discipline cases.¹⁰ Further, the U.S. Commission on Civil Rights found that students with disabilities nationwide are twice as likely as their peers without disabilities to be suspended throughout each school level.¹¹

Vermont has seen continued use of exclusionary discipline practices statewide and has not been immune to the trend of persistent disparities in disciplinary outcomes for students of color and students with disabilities. According to statewide data, students as a whole have missed more than 8,000 school days because of exclusionary discipline.¹² Students of color in the state are two to three times more likely than their peers to be the subject of exclusionary discipline,¹³ and students with disabilities who have an Individual Education plan account for 18 percent of the student body but 49 percent of exclusionary discipline cases.¹⁴

<https://www.usccr.gov/pubs/2019/07-23-Beyond-Suspensions.pdf> (citing Edward W. Morris and Brea L. Perry, “The Punishment Gap: School Suspension and Racial Disparities in Achievement,” *Social Problems*, Vol. 63, No. 1, 2016, 68–86; M. Karega Rausch and Russell J. Skiba, “The Academic Cost of Discipline: The Relationship Between Suspension/Expulsion and School Achievement,” Center for Evaluation and Education Policy at Indiana University, Annual Meeting of the American Educational Research Association, April, 2005, <http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/Academic-Cost-of-SchoolDiscipline.pdf>; Kaitlin P. Anderson, Gary W. Ritter, Gema Zamarro, “Understanding a Vicious Cycle: Do Out-of-School Suspensions Impact Student Test Scores?,” Dep’t of Education Reform at The University of Arkansas, EDRE working paper, March 30, 2017, <http://www.uaedreform.org/downloads/2017/03/understanding-a-viciouscycle-do-out-of-school-suspensions-impact-student-test-scores.pdf>; Andy Whisman and Patricia Cahape Hammer, “The Association Between School Discipline and Mathematics Performance: A Case for Positive Discipline Approaches,” Division of Teaching and Learning Office of Research, West Virginia Dep’t of Education, Sept. 2014, <https://files.eric.ed.gov/fulltext/ED569903.pdf>; Tom Loveless, 2017 Brown Center Report on American Education: Race and school suspensions, Brookings Institute, March 22, 2017, <https://www.brookings.edu/research/2017-brown-center-report-part-iii-race-and-school-suspensions/>) (hereinafter *Beyond School Suspensions*).

⁷ See Vt. Stat. Ann. tit. 16, § 1166.

⁸ *Beyond School Suspensions*, *supra* note 6, at 5-6.

⁹ See, e.g., U.S. Dep’t of Education, “Civil Rights Data Collection Data Snapshot: School Discipline,” March 2014, <https://ocrdata.ed.gov/downloads/crdc-school-discipline-snapshot.pdf>.

¹⁰ U.S. Government Accountability Office, “Discipline Disparities for Black Students, Boys, and Students with Disabilities”, March 2018, p. 2, <https://www.gao.gov/assets/700/690828.pdf>.

¹¹ *Beyond School Suspensions*, *supra* note 6, at 10.

¹² Jay Diaz, “Kicked Out!,” *Vermont Human Rights Commission*, January 2015, p. 2,

<https://hrc.vermont.gov/sites/hrc/files/publications/Kicked-Out.pdf>.

¹³ *Ibid*.

¹⁴ Yaw Obeng, *Briefing before the Vermont State Advisory Committee to the U.S. Commission on Civil Rights*, Montpelier, VT, May 20, 2019, transcript, p. 64 (hereinafter *School Discipline Briefing*).

According to the U.S. Commission on Civil Rights, “too often, exclusionary discipline policies and practices such as suspension and expulsions also remove students from the classroom in a discriminatory manner and prevent students from achieving their educational goals.”¹⁵ The Vermont State Advisory Committee believes, based on federal law, state law, and Supreme Court jurisprudence, that the disparities in Vermont may constitute violations of the civil rights of students of color and students with disabilities, warranting closer examination of the issue. The Advisory Committee convened a public briefing on May 20, 2019, to gather information from government officials, school administrators, education specialists, law enforcement officials, and community advocates on discipline disparities in the Vermont school system and possible solutions. It is the hope of this Committee that this report serves as a step towards attaining the goal of giving all students a nurturing, welcoming, and safe educational environment.

II. Background

National Background

In 1954, the Supreme Court utilized the equal protection clause in *Brown v. Board of Education* to hold that the racial segregation of schools violated the right of students of color to “equal educational opportunities.”¹⁶ The Supreme Court stated about public education that, “such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”¹⁷ Congress has also taken steps on a national level to prohibit racial discrimination in public accommodations, facilities, and education. Title IV of the Civil Rights Act of 1964 prohibits discrimination in public schools based on race, color, religion, sex, or national origin, and Title VI of the same Act protects those classes from discrimination by schools that receive any federal funding.¹⁸ Disciplinary practices that impact one of these protected categories disparately may be a violation of federal civil rights law.¹⁹

The Equal Protection Clause has also been utilized to protect students with disabilities from discrimination in schools. While there is no Supreme Court precedent on this issue, several federal courts have recognized equal protection claims of students with disabilities.²⁰ Congress

¹⁵ *Beyond School Suspensions*, *supra* note 6, at 6.

¹⁶ *Brown v. Board of Education*, 347 U.S. 483, 493 (Sup. Ct. 1954).

¹⁷ *Id.*

¹⁸ Title VI of the Civil Rights Act of 1964, Pub. L. No. 88-352 (codified at 42 U.S.C. § 2000d (Title VI)).

¹⁹ U.S. Dep’t of Justice, *Title VI Legal Manual*, available at <https://www.justice.gov/crt/fcs/Title-6-Manual#B.%20Disparate%20Impact/Effects>.

²⁰ *See, e.g., H.M. v. Bd. of Educ. of the Kings Local Sch. Dist.*, 117 F. Supp. 3d 992, 1002–04 (S.D. Ohio 2015) (denying school personnel’s motion to dismiss the claim of students with disabilities who alleged that they were subjected to discipline procedures in violation of the Equal Protection Clause); *Barnett v. Baldwin Cty. Bd. of Educ.*, 60 F. Supp. 3d 1216, 1231–32 (S.D. Ala. 2014) (finding that school officials were not entitled to dismissal of parents’ claims that the officials violated the equal protection rights of students of color with disabilities by “systematically targeting African–American, Hispanic, bi-racial, students whose parents were or are in inter-racial relationships, or Caucasian students with close friendships with student [sic.] of color” by placing them in “black boxes” or “locked closets.”); *Clark v. Bd. of Educ. of Franklin Twp. Pub. Sch.*, Case No. CIV.A. 06-2736 (FLW), 2009 WL 1586940, at *3, *9-11 (D.N.J. June 4, 2009) (finding that plaintiffs presented a genuine issue of material fact as to whether a teacher violated the equal protection rights of an African-American preschooler with disabilities

has taken similar steps to protect persons with disabilities as they did the specified classes in the Civil Rights Act. Section 504 of the Rehabilitation Act was enacted by Congress to protect people with disabilities from discrimination in “employment, housing, public accommodations, education” and other “public services.”²¹ This legislation prohibits intentional discrimination and discriminatory effects. This framework operates in conjunction with the Americans with Disabilities Act, which mandates that a student cannot be “excluded from participation in or be denied the benefits of” such schools on the basis of a disability, to protect students with disabilities from disparate impacts of disciplinary policies.²²

Vermont Law

Vermont has statutory provisions that govern the use of exclusionary discipline and provide students with substantive due process rights in disciplinary hearings. 16 V.S.A. § 1161a mandates that all public and approved independent schools shall create a disciplinary code that includes a description of the behaviors for which a student may be subject to punishment, particularly those that may result in expulsion.²³ Further, schools must provide a plan that expresses the standard due process procedures for suspensions and expulsions for students.²⁴

At a minimum, school administrators are permitted to suspend a student for 10 school days pursuant to policies adopted by the district school board or, with the approval of the board or school district, may expel a pupil for “the remainder of the school year or up to 90 school days, whichever is longer.”²⁵ Vermont law does require that schools implement particular processes surrounding students who possess a firearm on campus, namely that the student must be referred to law enforcement and may, with board approval, be suspended for no less than one calendar year.²⁶

Vermont school regulations afford students with disabilities facing disciplinary action due process protections. Students with disabilities facing short-term suspensions, generally regarded as those not more than 10 days, are given the opportunity to have an informal hearing before a school official with their parent or guardian.²⁷ Policy dictates that “the hearing must precede the suspension and the district shall provide (1) notice of the charges; (2) explanation of the evidence against the student; (3) opportunity for the student to tell his or her side of the story; (4) decision in writing to the parent/guardian.”²⁸ If facing a long-term suspension or expulsion, which is any

by suspending him for nine days, where such punishment was never inflicted on a white preschooler); *James S. ex rel. Thelma S. v. Sch. Dist. of Phila.*, 559 F. Supp. 2d 600, 627 (E.D. Pa. 2008) (allowing a student’s claim that school personnel subjected him to “unequal punishment . . . for disability-related conduct” in violation of the Equal Protection Clause to proceed, and denying the school personnel’s motion for dismissal on these grounds); *50 Mills v. Bd. of Ed. of D.C.*, 348 F. Supp. 866, 868, 875-76 (D.D.C. 1972).

²¹ 29 U.S.C. § 794; 29 U.S.C. § 705(20)(A).

²² 42 U.S.C. § 12132.

²³ Vt. Stat. Ann. tit. 16, § 1161a.

²⁴ *Id.* at § 1161a(7).

²⁵ Vt. Stat. Ann. tit. 16, § 1162.

²⁶ Vt. Stat. Ann. tit. 16, § 1166.

²⁷ 22-006 Vt. Code R. § 2365.1.6.17, <https://education.vermont.gov/sites/aoe/files/documents/edu-series-2360-special-education-rules.pdf>.

²⁸ 22-009 Vt. Code R. § 4311, <https://casetext.com/regulation/vermont-administrative-code/agency-22-department-of-education/subagency-000-general/chapter-009-pupils-4000/part-4300-disciplinary-action/section-22-000-009->

greater than 10 days, the student will have an opportunity to have a formal hearing before the school board with a guardian present.²⁹ The district is required to provide written notice of the nature of the charges, date, time, and place of the hearing, right of the student to legal representation, and the possible penalties involved.³⁰ Further, the student will receive the opportunity to present evidence, the opportunity to cross-examine witnesses, and receive a written decision.³¹

School Discipline Disparities in Vermont

The purpose of this report is to investigate the possibility of civil rights violations stemming from the disparate use of disciplinary measures on particular, protected cohorts of students. In addition, testimony has been gathered that suggests the state mandated processes and procedures are not being followed for all students, only exacerbating the apparent consequences of school discipline and creating further disparate disciplinary outcomes.

As noted previously, Vermont students have missed more than 8,000 school days due to being excluded for disciplinary reasons. While some disciplinary exclusion is necessary, namely excluding a student for possessing a weapon on school grounds, over 97 percent of suspensions in the 2015-16 school year did not involve a weapon and roughly 90 percent did not involve drugs.³² Further, 55 percent of all school suspensions were for “disorderly conduct violations,” or discretionary behavioral issues. This shows that a large portion of exclusionary discipline is being instituted in cases of behavioral issues.³³ Data suggests that such behavioral incidents could be better addressed through restorative disciplinary means and creating an inclusive environment.³⁴

Students of color and students with disabilities have been found to be overrepresented in cases of exclusionary discipline in Vermont. In the *Kicked Out!* report, a study done by Vermont Legal Aid in 2015, Jay Diaz determined that students of color were three times more likely to be excluded from the classroom.³⁵ This trend was evidenced further by data released by the Agency of Education in the 2015-16 academic year, finding that “non-Caucasian” students were excluded at a disproportionately higher rate than their Caucasian peers based on the amount of the student body they make up.³⁶ Diaz further concluded that based on data from the 2012-13 school year, students with disabilities were excluded at a rate two to three times that of their peers.³⁷ In the Burlington School District for example, students with an Individual Education

[4300-4312-discipline-procedures-for-children-who-are-not-eligible-for-special-education-services-but-who-are-or-may-be-qualified-individuals-with-disabilities-under-section-504-of-the-rehabilitation-act-of-1973-29-usc-section-794-34-cfr-section-104-et-seq.](#)

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Diaz Testimony, *School Discipline Briefing*, transcript, p. 128.

³³ *Ibid.*, 128.

³⁴ *Beyond School Suspensions*, *supra* note 6, at 34.

³⁵ *Kicked Out!*, *supra* note 14, at 13.

³⁶ Diaz Testimony, *School Discipline Briefing*, transcript., p. 129.

³⁷ *Kicked Out!*, *supra* note 14, at 2.

Plan, a plan developed for students who need special education, make up only 18 percent of the student body, but 49 percent of exclusionary suspensions.³⁸

While the impact this type of discipline has on students is the primary concern, exclusionary discipline has negative consequences beyond the school. Some analysts suggest that using exclusionary discipline has a tremendous economic impact due to its contribution to school dropout rates, increased likelihood students become involved in the criminal justice system, and wasted state resources.³⁹ For example, the *Kicked Out!* report found that the State of Vermont spends roughly \$16,000 per year to educate a student in the public school system, an amount that is paid whether the student is suspended or not.⁴⁰ This report further posited that because exclusionary discipline increases the likelihood that a student drops out, it also impacts the economy by making it less likely the former student will become a net taxpayer as an adult.⁴¹ They estimated that this cost comes at about \$120,000 per dropout over their lifetime.⁴²

The Committee heard testimony and found that some school district actions taken as disciplinary measures may violate the due process protections granted to students by Vermont law as well as regulations surrounding school discipline. Namely, the action of informally excluding students without providing them the proper due process or requisite support to ensure their academic success has been brought to the forefront of the discussion surrounding reform to school discipline in Vermont. As discussed in the Appendix, several panelists noted that it is not uncommon for school administrators to exclude students and continue doing so “until they are ready to return.”

III. Summary of the Briefing

Disparities in the administration of school discipline is a focus of concern for educators, school administrators, and community activists. With over 8,000 school days being lost by students in Vermont, and the continued overrepresentation of students of color and those with disabilities in exclusionary discipline data, the Committee sought to hear from a variety of community actors on the depth of the issue and paths towards reducing the impact of exclusionary discipline on the student body of schools in the state. To discuss this issue, the Advisory Committee invited 16 panelists made up of government and school officials, civil rights researchers, and community activists and advocates.

The Advisory Committee hearing began with testimony from government officials and data analysts. Offering their experiences and perspectives were General Counsel Emily Simmons for the Vermont Agency of Education (VAE), Wendy Geller, the Director for Data Management and Analysis for the VAE, Executive Director Bor Yang of the Vermont Human Rights Commission, and Division Commander Ingrid Jonas of the Vermont State Police.

³⁸ Obeng Testimony, *School Discipline Briefing*, transcript, p. 64.

³⁹ *Kicked Out!*, *supra* note 14, at 3.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

The second panel of experts was comprised of Burlington School District Superintendent Yaw Obeng, Communications and Professional Development Associate of the Vermont Superintendents Association Chelsea Myers, and Racial Equity Liaison for the Vermont NEA, Martha Allen. This panel focused on disparities and potential solutions for the issue that are beginning to be implemented both across the state and at the district level.

The third panel of experts was comprised of advocates for disciplinary reform and equal access to education; these experts included Staff Attorney for the ACLU Jay Diaz, Professor of Education Justin Garwood, Professor of Higher Education Tracy Ballysingh, and the Vermont State Director of the NAACP Tabitha Pohl-Moore. Panelists discussed the stark data that highlights the disparities in exclusionary discipline and discussed reform efforts that they believe would create a more just educational system. While much of this panel was focused on disparities faced by students with disabilities, they provided solutions that would be useful for all students facing an increased chance of being excluded from the classroom.

The fourth panel, which consisted of A.J. Ruben of Disability Rights Vermont, Max Barrows of the Green Mountain Self-Advocates, Karen Price from the Vermont Family Network, and Community Organizer Infinite Culcleasure, discussed advocacy initiatives and solutions to disparities in school discipline from the perspective of advocates and community organizers. Their testimonies centered around the importance of providing students with proper access to advocates, creating a spirit of inclusion in the school system, and holding school officials accountable when they deviate from the proper processes for discipline.

A summary of each panelist's presentation is provided in the Appendix.

IV. Findings and Recommendations

Among their duties, advisory committees are authorized to advise the U.S. Commission on Civil rights (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws; and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.⁴³ In keeping with these responsibilities, and in consideration of the testimony heard on this topic, the Vermont Advisory Committee submits the following findings and recommendations to the Commission.

Finding 1: Vermont has disparities in school discipline

Vermont has not been immune to a national trend showing the existence of persistent racial disparities in disciplinary rates and disparities based on disability status. The *Kicked Out!* report, written in 2015 by Jay Diaz, drew attention to disparities in disciplinary outcomes for these student cohorts in Vermont. According to data submitted by the state Department of Education, students of color are two to three times more likely to be suspended or expelled from school. Data also shows that students with disabilities, particularly those with Individual Education

⁴³ 45 C.F.R. § 703.2.(a)

Plans, make up 18% of the student body but 49% of school suspensions. This disparity impacting students with disabilities is especially urgent due to the fact that Vermont has the highest rate of emotional disturbance identification in the country.

These disparities may be occurring in part because of the continued use of zero-tolerance policies, implicit biases among faculty and staff, and inadequate data collection and dissemination. All of these issues exacerbate disparities and make it difficult for advocates in the state to support and defend students suffering from disparate disciplinary outcomes.

Recommendation 1.1: Institute Equity and Inclusion data reports

A representative of the Burlington School district testified regarding several initiatives they have adopted to combat disparities in school discipline which have, at least in part, been successful. Superintendent Yaw Obeng discussed success the district has had with compiling an “Equity and Inclusion Data Report,” that aims at collecting data to aid the district in reducing race/ethnicity, household income, disability, gender, or gender orientation as predictors of particular outcomes. Dr. Obeng believes that the initial collection of this data and acknowledgement of the issue has been a crucial step forward in reducing the number of students suspended from 409 to 295 in his time there. This sort of pointed, comprehensive data collection for the purpose of combatting school discipline disparities has proven useful in aiding the Burlington School district in confronting the issue and can be similarly useful in districts across the state.

Recommendation 1.2: Adopt Restorative justice programs

Although data shows that restorative justice practices have been adopted by all school districts in Vermont in some capacity except for one, these programs could be more comprehensively adopted statewide. The Burlington School district noted success in implementing these programs, and many believe them to be much more impactful at creating a safe and inclusive school environment than zero-tolerance policies. The broader adoption of restorative justice programs would create a useful alternative to other disciplinary methods in combatting disparities and reducing lost instructional time for students. The Burlington School district may serve as an example on the adoption of these practices for districts across the state.

Recommendation 1.3: Hire Equity Instruction Leaders to Create Initiatives of Inclusion

One school district in the state has taken great strides in fostering a more inclusive and safer environment by hiring an equity instruction leader. This staff member has a focus on creating a “safe and inclusive” school environment and is specifically dedicated to developing alternative programs to suspension. Investing in staff for the sole purpose of creating an inclusive environment and developing better disciplinary processes would be beneficial in decreasing instances of exclusionary discipline all together.

School districts should strive to create a community of inclusion for all students via a variety of initiatives. Disability rights advocates suggest that peer-to-peer mentorship programs have been beneficial in creating a community of inclusion and instilling a spirit of belonging in students

with disabilities. Creating this community can be beneficial in combatting behavioral challenges that might otherwise lead to disciplinary outcomes.

Recommendation 1.4: End the use of seclusion and restraint techniques

Seclusion and restraint techniques have continued to be utilized as a method of addressing instances of emotional disturbance in schools, particularly with the increased prominence of school resource officers. Federal data has shown that sworn law enforcement officers physically or mechanically restrained 86,000 students in the 2015-16 academic year, 71 percent of which were students with disabilities. Disability rights advocates in Vermont have been calling for an end to seclusion and restraint tactics for nearly a decade and have advocated for more appropriate, less combative methods of engaging with students with emotional disturbance issues. Doing so would be a more appropriate means of handling these circumstances and more beneficial to the mental and emotional well-being of students with disabilities.

Recommendation 1.5: Improve communication with and involvement of families in disciplinary processes

Because, often, it is not only students but entire families that are significantly impacted by school discipline, and because families are frequently the primary support for students of color and students with disabilities who are subject to disciplinary responses, the committee believes it is crucial for school administrators to engage parents and legal guardians before a student is given a suspension or expulsion that proposes loss of instructional or classroom time. Furthermore, administrators should, in collaboration with parents and legal guardians, review and wherever possible improve policies regarding family communication and their inclusion in the disciplinary process. The committee heard testimony from community organizers regarding the negative impact on families and students from underrepresented groups when families are excluded from restorative practices and other disciplinary processes, particularly discipline that involves loss of educational instruction. Improved communication with and involvement of families may greatly benefit marginalized students and the community as a whole.

Finding 2: There is no long-term or continuous plan for addressing implicit bias in the state

The Committee heard testimony from state police on how they have addressed implicit bias within their organization and their approach may be a useful blueprint for the school system. Law enforcement in the state has particularly focused on continued training and developing a long-term plan for dealing with implicit bias. Most notably, state police have instituted implicit bias training in basic and post-basic education so that it is continually addressed and evaluated. Currently, the Vermont school system lacks any similar long-term solution for addressing implicit bias that is contributing to disparities in school discipline.

Recommendation 2.1: Encourage the implementation of long-term training initiatives

Schools in Vermont should develop a plan for the long-term training and evaluation of implicit bias across faculty, staff, and teachers. Ensuring that all school officials are being confronted with their own potential implicit biases is crucial in beginning to create a more inclusive, safe, and welcoming educational environment for all students.

Finding 3: Zero-tolerance policies are still being utilized in districts across Vermont

A task force commissioned by the American Psychological Association found that zero-tolerance policies, or those that require a mandatory disciplinary response to behaviors without regard for individual circumstances, are ineffective in improving school safety or reducing disruptions. A survey of District Superintendents in Vermont revealed that zero-tolerance policies are still being utilized within the state. Responses to this survey showed that these policies remain in effect for offenses such as weapons, bullying, alcohol, tobacco, drugs, assaults, disfigurement, and explosive devices.

Recommendation 3.1: Zero-tolerance for Zero-Tolerance Policies

Zero-tolerance policies generally inhibit school administrators from making case-by-case decisions after accounting for extenuating circumstances of a student. Schools should instead implement policies that allow for adjudication of behavioral issues based on factual circumstances and any extenuating needs of the student. Creating a “zero-tolerance for zero-tolerance” policy would, as data shows, be more effective in creating a safe school environment.

Finding 4: There is Inadequate data collection and dissemination across Vermont

The Vermont Agency of Education has significantly changed its approach to data collection, using statewide data to inform and engage district-level actors and shape disciplinary initiatives. This data is used by the Agency itself to determine if a particular district needs to be monitored, if the district needs to implement an improvement plan, or if the Agency needs to engage in outreach to support a district. However, according to panelists, the size of Vermont necessitates significant data suppression to ensure the identity of certain students is not revealed when data is released to external actors. While the unsuppressed data is provided to school officials and administrators, it is heavily suppressed when published for dissemination to the public. This suppression makes it difficult for advocates and public interest organizations to utilize disciplinary data in appropriately informing their agendas.

The Committee also heard concerns about the soundness of the data collected by the Agency of Education. Particularly, one panelist noted that the data collected regarding disciplinary disparities between ethnicities is unhelpful. For example, the Agency, when comparing disciplinary disparities between ethnicities, collects and compares data between Caucasian and non-Caucasian students. This increases the difficulty in determining disparities between and in particular ethnicities because not all non-Caucasian student cohorts experience disciplinary disparities at the same rate.

Recommendation 4.1: Improve access to comprehensive and complete data

Activists, advocates, and community organizers all expressed a need to have access to disaggregated data for the purposes of better informing their initiatives. Having an incomplete view of the breadth of disparities in educational discipline hinders outside organizations from being able to effectively advocate for students who are being disparately impacted. Providing those outside of the school system with disaggregated data is imperative in ensuring these outside organizations can continue to hold the Vermont school system accountable. The Committee urges the state government and Agency of Education to come up with a solution that would allow more comprehensive and complete data to be published for the public.

The data collected regarding school disciplinary rates between ethnicities should be analyzed more granularly than Caucasian versus non-Caucasian rates of discipline. This would ensure that the needs of and disparities suffered by each minority cohort of students is addressed and documented. Further, it would provide a more accurate picture of the disparities felt by minority groups within the non-Caucasian cohort.

Finding 5: Students are being informally excluded from school

One panelist expressed experience with a particularly troubling practice that has been present in Vermont, the informal exclusion of students. Some students are being excluded from school without being afforded the typical processes and protections of students facing disciplinary sanctions. For example, the Committee heard testimony of one student who was merely told to not return to school until “he was ready to learn.” This effectively left the student in what a panelist referred to as educational limbo. After being excluded from school for ten days, the student’s parents requested a tutor be provided but were told that tutors were only for students that had been expelled or suspended.

The Committee further heard testimony that suggested there is a lack of accountability for administrators that are engaged in this practice of informal exclusion. One panelist said that “if a parent decides that they’re not going to send their kid to school, they can wind up in court for that... That same amount of accountability is not on the school side.”

Recommendation 5.1: End the practice of informal exclusion

Practices of informal exclusion should be prohibited, and school officials who engage in such practices must be held accountable. Prohibiting school officials from circumventing the due process rights of students is essential to ensuring that each student facing discipline is afforded the protections that federal and Vermont law give to them.

Finding 6: There is insufficient training regarding cultural competency and emotional disturbance

Teachers in Vermont may be ill-prepared for handling nuanced and difficult circumstances that may arise when students with emotional disturbance issues are in their class. One panelist noted that in her career, she has not seen one school counselor that is proficient in cultural competency

training prior to becoming licensed. Further, prospective teachers are not required to take extensive training in classroom management and special education specific coursework during their own education. This may be contributing to disciplinary disparities in Vermont schools because teachers are not prepared to manage a classroom where students with emotional disturbance issues are present.

Recommendation 6.1: Require classroom management and special education courses for teachers

Teachers in Vermont should be required to take courses in classroom management as well as courses focused on proactive, restorative, and relationship-based teaching strategies. These requirements would better prepare teachers for managing classroom situations that might otherwise turn in to circumstances where discipline might be necessary.

It was also recommended to the Committee that General Education majors, who might not otherwise be exposed to strategies in special education, should be required to minor in the subject area to ensure that they are equipped to manage a diverse group of students.

APPENDIX

Emily Simmons – General Counsel, Vermont Agency of Education

Emily Simmons began the briefing by discussing current laws and regulations in the state of Vermont for school disciplinary actions. She noted that the relevant law, § 1161(a) through §1167 of Title 16 of Vermont law, require both public and approved independent schools to adopt and implement a comprehensive plan for responding to student misbehavior. This plan should include policies regarding classroom management, alternative-educational settings, information on conflict resolution, peer mediation, and a response to significant disruptions such as the threat or use of a weapon. This plan must also specify what conduct is grounds for expulsion.

Vermont law has two tiers of exclusionary discipline that require different due process procedures. The first tier, a suspension of 10 days or less, requires giving the student a hearing with a school official to plead their case; however, Vermont law allows the school official adjudicating the case to use their professional judgement in any disciplinary outcome. For a suspension of more than 10 days or expulsion, disciplinary action must be approved by the District's school board prior to being effective. Further, for this prolonged punishment, the behavior must meet one of three criteria: it must be (1) harmful to the welfare of the school, (2) demonstrate direct harm to the welfare of the school, or (3) clearly and substantially impede other students' full access to education.

Wendy Geller – Division Director for Data Management and Analysis, Vermont Agency of Education

Wendy Geller spoke about Vermont's use of data to inform and monitor the disciplinary actions and behaviors of various school district actors. In the past several years, the state government of Vermont has utilized a federal grant to invest in their statewide internal data system, which is the primary method of discipline data collection. The data that is gathered is used to make various decisions such as determining whether a particular school district needs to be monitored, whether they need to develop a contingency improvement plan for a district, or whether the agency needs to engage in outreach for technical assistance. Although this data may be utilized by the state government and school officials, Geller did note that due to Vermont's small size, the Agency has to engage in significant data-suppression when publishing data in order to protect the privacy of students. This puts limitations on the ability of the public to utilize this data.

Bor Yang – Executive Director and Legal Counsel, Vermont Human Rights Commission

The Human Rights Commission, which is charged with investigating claims of discrimination in state-government employment, housing, and places of public accommodations, has investigated eighteen complaints of discrimination in schools from 2015-2018. Of these 18 cases, eight were disability discrimination related, four were related to race, three were based on sex or sexual orientation, and two were related to gender identification. Yang stated that no conclusions should be drawn about the prevalence of discrimination in Vermont based on these low numbers of

cases, citing several possible explanations for the low number of complaints received by the Commission. Possible explanations included the limited resources and staffing of the Commission, the lack of an education or outreach coordinator, the inability of the commission to foster relationships with students and particular communities, and the availability of other grievance processes within the education system.

In addition to investigating complaints, the Commission provides training events for state-government employees and places of public accommodation. In the last five years, they have provided 10 trainings on bullying and harassment, and 16 trainings on implicit bias.

Ingrid Jonas – Division Commander, Support Services of the Vermont State Police

Ingrid Jonas testified about the process of cultural change that the State Police Agency has experienced to provide a framework for other systems with the goal of ensuring fairness and building trust. The State Police began their mission of examining and combatting racial disparities in 2004, which came at a time when 81 percent of citizens of color felt that racial profiling by police was a serious issue in Vermont.

In order to mend this relationship, the director of the state police agency focused on fostering strong relationships with minority communities. The most successful method state police employed in order to build these relationships was engagement outside of normal policing duties. Jonas testified that engaging community members in a place and time that is not necessitated by a critical incident was crucial to building trust with the community disparately impacted by racial profiling.

In addition to a shift towards a community policing model, state police also began implementing mandatory training on implicit bias, which is still a part of basic and post-basic training for all officers. Further, the agency implemented a citizen-based committee that helps the Commissioner of Public Safety resolve community complaints as well as make disciplinary decisions for officers convicted of misconduct. In closing, Jonas noted that “it’s not enough to just check a box and deal with implicit bias training... We’ve successfully engaged in greater community involvement...that has influenced our policy and practice, and it is not in a reactive stance, or a defensive stance.”

Dr. Yaw Obeng – Superintendent, Burlington School District

Yaw Obeng began his testimony by acknowledging that his school district does have disparities in both achievement and discipline, which have existed for decades. For example, he noted that students who utilize free or reduced lunch plans make up 50 percent of the student population and 75 percent of out-of-school suspensions. Further, those with an individual education plan make up 18 percent of the population and 49 percent of school suspensions.

In order to address these disparities, the Burlington School District began by producing an Equity and Inclusion data report, which was used to “identify[] gap areas and opportunities for growth within our student cohorts.” Obeng identified 409 students that were expelled just three years ago in his first year in the district. He believes that simply identifying and acknowledging

this number has helped in reducing suspensions, which were down to 295 last year. Obeng also attributes this reduction to several policies the district has implemented over the past several years.

First, Obeng highlighted the district's focus on implementing a restorative approach to school discipline, as well its adoption of a no expulsions policy. Further, Burlington Schools have entered in to an M.O.U. with police, which has led to a reduction of students being given citations or charged by police. Finally, this school district has invested in a "safe and inclusive schools approach" by hiring an equity instructional leader to aid in the development of inclusive policies. This has also included the development of an alternative suspension program which allows students to continue their education within the system, even if they are removed from the classroom for behavioral issues.

Heather Lynn – Attorney, Vermont School Boards Association

Heather Lynn, a consultant for school boards statewide on discipline and compliance matters, discussed the shift she has seen in the last ten years regarding the discipline of students with an individual education plan. She noted that, generally, educators and administrators have shifted away from a disciplinary response to behavior issues to one more focused on support for particular students. Typically, her work focuses on how her clients can provide alternatives to suspension and expulsion in instances where discipline would have been instituted. Although she was hopeful and encouraged to hear testimony from Dr. Obeng about a decrease in discipline of students with an individual education plan, she highlighted that Vermont does have the highest incidences of emotional-disturbance in the country.

Chelsea Myers – Communications and Professional Development Associate, Vermont Superintendents Association

In preparation for her testimony, Myers conducted a survey of Vermont Superintendent Association members on relevant topics and provided her findings to the Committee. Her survey was centered on questions pertaining to disciplinary policies, services provided to students that are disciplined, involvement of law enforcement, and initiatives to reduce disparities.

Respondents to this particular survey gave varied responses on disciplinary policies. Most notably, some respondents stated that they have no zero-tolerance policies, which are traditionally viewed as ineffective in creating a safer school environment. Other respondents said they do retain these policies for issues such as weapons, bullying, alcohol, tobacco, drugs, assaults, disfigurement, and explosive devices. All of the zero-tolerance policies district officials stated they have retained are in addition to a Vermont law that requires a minimum one-year expulsion for students possessing a firearm on school property. Apart from zero-tolerance policies, respondents also noted very few occurrences of expulsions in their systems. Even if they did, each respondent discussed at least one way in which they support students that are expelled. Services often included social and educational support and identifying re-entry plans.

School administrators typically cited positive relationships with local law enforcement in response to this survey. One respondent described how they have fostered a positive relationship

with law enforcement by partnering proactively in emergency preparedness and relationship building between police and the student body.

Myers ended her testimony on a positive note, highlighting initiatives being undertaken by respondents to combat discipline disparities. Most notably, Vermont has seen an increase in the number of districts implementing restorative justice practices. Only one superintendent said they were not implementing these practices in any capacity. Further, respondents expressed an increase in trauma-informed practices and social-emotional learning to support students with significant mental health challenges. Per the Burlington Free Press, spending on mental health support services has increased from one percent in 1996 to over eight percent in 2016. Finally, the Vermont Superintendents Association has provided many districts with implicit bias training.

Martha Allen – Racial Equity Liaison, Vermont NEA

Martha Allen discussed the development of the Vermont NEA’s racial-justice task force, a team made up of representatives, teachers, support staff, students, community members, and representatives from the Agency of Education, Vermont School Boards Association, and Attorney General’s office. This task force has developed a virtual toolkit called Advancing Racial Equity in Vermont’s Public Schools, which “provides educators and administrators with reliable resources as they examine issues of equity, implicit bias, and systematic racism in their school communities.”

While she generally feels as though this toolkit has enabled great strides in combatting implicit bias and systematic discrimination in the Vermont school system, she also recognizes the lack of a long-range plan for ongoing professional development and implicit bias training. Allen stated that addressing the issues of racism in schools will not be possible until administrators and staff have a clearer understanding of their own biases. A long-term approach would be beneficial in educating and enlightening school staff on these issues.

Jay Diaz – Staff Attorney, ACLU

Jay Diaz, the author of *Kicked Out!* report, which analyzed the long-term impact on child poverty, presented data collected for his report to the Committee. The *Kicked Out!* report found that, in the 2012-13 academic year, students with disabilities were two to three times more likely to be suspended in Vermont. Furthermore, for counties in which there was sufficient data on students of color, these students were three times more likely to be suspended than white students. Diaz noted that these disparities largely continued into the 2015-16 academic year, the last one for which the state has data. In 2015-16, students of color, students with disabilities, and those with free and reduced lunches were all overrepresented in the cohort of students that were suspended or expelled.

Diaz further noted several shortcomings of the statewide data collection done by the Agency of Education. He asserted that the agency’s data is diluted because they compare non-Caucasian and Caucasian students rather than comparing each race. Moreover, by not releasing disaggregated data on the district level, state activists are inhibited from fully understanding the extent of discrimination in Vermont according to Diaz.

Moving forward, Diaz suggested that initiatives such as trainings, banning suspension in elementary schools, better data collection, and alternative disciplinary measures must be implemented to address the disparities in the school system of Vermont.

Justin Garwood – Professor of Education, University of Vermont

Justin Garwood began his testimony by highlighting the disparities in discipline of between students with and without disabilities. His testimony focused on one group in particular, students with “emotional disturbance” issues. Garwood asserted that these students, which make up roughly three percent of the school population, account for twelve percent of all school suspensions. Despite this disparity, he was hopeful about Vermont’s general approach to educating students exhibiting emotional disturbance issues. He noted that on a national level only 46 percent of such students are fully included in the general education classroom; in Vermont, however, the figure is 59 percent. While this higher percentage of integration into the classroom is positive news, Garwood also stressed that teachers and faculty still lack—and should receive--the necessary training to accommodate such students in the classroom.

Garwood offered several suggestions about how to provide teachers with more comprehensive training for dealing with these issues. First, all teachers should be required to take a classroom management course based on proactive, restorative, relationship-based teaching. Second, any student aspiring to be a general education teacher should have to minor in special education. In his experience, he sees teachers “entering the classroom and they don’t understand concepts such as manifestation determination [and] functional assessment based behavior support plans – if they don’t know what that is, there’s no way they can begin to tackle things like overrepresentation and disciplinary practices.” Finally, Garwood suggested teachers be required to take classes focused on culturally and linguistically diverse students.

Tracy Ballysingh – Assistant Professor of Higher Education, University of Vermont

Professor Ballysingh focused her testimony on the broader picture of discrimination and the correlation with disproportionate incarceration of communities of color. Her testimony highlighted how school discipline factors into this, but Ballysingh discussed the broader ideas of economic, social, and educational circumstances preclude access to higher education for minority students.

Focusing on economic circumstances, Ballysingh noted that geographic location plays a part in the economic success of a person. For example, she cited a study that compared students from various neighborhoods that went to the same middle school. The study found that “localized census-tract disparities reveal that even children who attended the same middle school, but derive from different neighborhoods, went on to earn less per year, were more likely to be incarcerated, and were less likely to be employed...”

Ballysingh then discussed a nationwide trend toward divesting resources in school counselor and investing in school resource officers, which deprives students of a vital resource for attaining higher education. Even when students of color have access to school counselors, they may not be

getting the same advice as their Caucasian counterparts. One study cited in the briefing noted that even though Latino men were just as likely as their white counterparts to enroll in college if they applied, those that met with a school counselor in the ninth grade were significantly less likely to apply to a four-year college.

All of these circumstances coexist with apparent disparities in school discipline, making achievement in high school and the attainment of higher education more difficult for students of color than white students. This further contributes to the school-to-prison pipeline, which in turn further impedes economic success.

Tabitha Pohl-Moore – Vermont State Director, NAACP

Ms. Pohl-Moore gave examples of the types of race-based discrimination she has witnessed during her professional career in the Vermont school system that she has experienced in her professional career. She described a predominantly black soccer team being made to apologize for “being too aggressive” after they themselves had had bananas and other racist gestures made to them all season long. She also witnessed a student of color who was made to “lay on the ground with a bunch of white kids to simulate what it was like to be on a slave ship.” This student, who subsequently questioned the simulation, was removed from the classroom for being combative.

In addition to these examples of discrimination, Pohl-Moore described systemic issues giving rise to disciplinary disparities. Most notably, in her work of licensing school counselors, she has not seen one candidate who, upon becoming licensed, has sufficient mastery of cultural competencies, despite the fact that these same candidates have met the state’s minimum requirements for licensure. She also expressed frustration in the lack of access to disaggregated data that would allow her organization to better tailor their advocacy and policy efforts and resources. Finally, she argued that, due to financial mismanagement and budget cuts, there is a grave lack of resources for schools to address issues of race-based discrimination and disciplinary disparities.

A.J. Ruben – Supervising Attorney, Disability Rights Vermont

Ruben, an advocate himself, began his testimony by asserting “that one of the best things we could do as a society...is to provide more advocates for [students with disabilities].” He gave testimony of one example he saw as a preventable circumstance had advocates been sufficiently provided to the student involved. In the instance that he witnessed, a school in Vermont was putting students with disabilities in locked rooms, isolating them from their peers for days or weeks, rather than expelling or suspending them. This sort of restraint and seclusion has been shown to cause trauma and education delays students with disabilities.

Ruben then discussed the stigmatization of students throughout the disciplinary process. For example, he was involved in a case in which a student was suspended for smoking cigarettes and labeled “harmful to the wellbeing of the school,” during the disciplinary process. Obtaining this label can impact the self-esteem of students and be harmful to their mental health.

Max Barrows – Green Mountain Self-Advocates

Max Barrows strongly advocated in his testimony for the abolition of the use of physical restraint and seclusion tactics for disciplining students with disabilities. He stated that “being physically handled in a destructive way ... or being told what to do under someone else’s control is abuse.” He claimed that this form of punishment “violates personal space and harms a person’s sensory sensitivity to touch, sound, smell, or anything visual.” He recommended that these sorts of restraints and seclusion be ended, as advocates have been calling for since 2011.

Barrows further recommended that more comprehensive data be collected on where exactly students with disabilities are within the educational system. According to FBI data, during the 2016-17 school year, roughly seven percent of students with disabilities were outside of Vermont’s public education system. This is more than the national average of five percent for the same academic year. According to Barrows, this means seven percent of students with disabilities are in private or alternative schools, residential schools, hospitals, or correctional facilities. Per his recommendation, Vermont needs to know where these students are placed and ensure they are receiving the proper resources.

Finally, Barrows gave several recommendations for creating a community of inclusion in schools around the State. First, he suggested that peer-to-peer mentoring be implemented to instill a spirit of inclusion and belonging among students with disabilities and the rest of the school community. Further, Barrows advocated for initiatives that focus on and highlight everyone’s strengths, because “you never know what people are capable of.”

Karen Price – Vermont Family Network

Karen Price explained that the Vermont Family Network (VFN) is a federally mandated center that “provides parents with information and resources to help them advocate for the provision of a free and appropriate public education, to which their children with disabilities are entitled.” Last academic year, VFN heard 57 complaints from families regarding suspensions and expulsions.

Price focused her testimony on a significant problem that she has encountered frequently in her career at the VFN namely the practice of schools not formally suspending children, but not welcoming them back into the school. This leaves the children in “educational limbo” while also not counting them in any disciplinary data available. For example, Price discussed the circumstances of one student who was asked not to return to school “until he was ready to learn,” after exhibiting challenging behaviors. After ten days out of school, the parents requested a tutor but were told that assigned tutors only pertain to suspensions or expulsions.

Price further highlighted the lack of well-written or effectively implemented behavioral support plans for children. These preventative plans could stop problematic behavior from occurring or escalating but are unfortunately often not implemented correctly or adjusted sufficiently. In order for these plans to be implemented effectively, Price contended that classroom teachers should have to undergo disability-specific behavioral training programs. Further, having more robust systems of support would be beneficial for addressing challenging behaviors early on.

Infinite Culcleasure – Community Organizer

Infinite Culcleasure is a community organizer who testified about the discipline of students with disabilities—an issue that is particularly important in his community” . He organized a public meeting in Burlington with the Superintendent in order to open up dialogue and foster communication between school officials and parents in the community. Culcleasure was critical of how the Burlington School District has implemented restorative justice practices due to their failure to include families that are the most significantly impacted in the process. Further, Culcleasure took issue with the lack of accountability for school officials in the disciplinary process, particularly those who are not formally suspending or expelling students but not allowing them to come back. He said that “if a parent decides that they’re not going to send their kid to school, they can wind up in court for that...That same amount of accountability is not on the school side...”