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**Testimony – Senate Education Committee – S. 16**  
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Thank you for the opportunity to speak with you this afternoon about proposed legislation relative to school discipline and the creation of a School Discipline Advisory Council. I am a Staff Attorney with Vermont Legal Aid's Disability Law Project. For over 25 years, I have represented children and adults with legal problems arising from their disabilities in a variety of legal matters including special education, guardianships, access to public benefits, employment, and housing discrimination, etc. Relative to special education, I have extensive experience in representing students at IEP and 504 meetings, have assisted families in filing administrative complaints with the Agency of Education, and filed for due process, a more formal dispute resolution process established by the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400 et seq., and Section 504 of the Rehabilitation Act (Section 504), 29 U.S.C. §794. I am also a member of the Census-based Funding Advisory Group and Chair of the Disability Law Committee of the Vermont Bar Association. Over thirty percent of the Disability Law Project's case load involves complaints about students' education, including complaints involving students who have been restrained and secluded at school, and suspended or excluded for behavior related to their disability. We have also represented students who have been arrested for disability-related behavior at school.

There are three primary areas I would like to address today:

1. Exclusionary discipline has a tremendous impact on our students, and it is important to understand what Vermont students experience.
2. Exclusionary discipline does not include solely formal suspensions and expulsions. Many students also experience informal exclusions, which violate their rights and are not consistently addressed across the state.
3. We have significant concerns about relying on the Agency of Education to collect and disseminate this data.

### **Impact of Exclusionary Discipline on Students.**

Exclusionary discipline has a profound and long-lasting impact on students and their families. The "Kicked Out!" report authored by my former colleague, Jay Diaz, Esq. in 2015 documents both the scope and the impact of the problem. Indigenous and students of color are disciplined at a substantially higher rate than white students; students with disabilities are more likely to be

excluded than their peers without disabilities. Over the past six years, the problem has remained – students with disabilities and students of color are more likely to experience restraint and seclusion, suspension, and expulsion than their non-disabled and white peers.

Research documents that suspension and expulsion cause significant stress and have long-term negative consequences for students and their families, including poorer health outcomes, higher school drop-out rates and increased incarceration rates. Regarding students with disabilities, it also strongly suggests that these students may not be receiving appropriate behavioral interventions and supports in their IEP and 504 plans.<sup>1</sup> Vermont is not immune. Our school districts discipline students at comparable rates to the rest of the nation.

Examples:

- Sixteen-year-old student with significant anxiety, attention deficit disorder and significant learning disability was suspended for 10 days in November 2019. The student has yet to return to school and likely never will. Between the start of the school year, and his suspension in early November, the student had more than 50 disciplinary referrals for insubordination, wandering the halls without a pass, and defiant behavior. The incident that led to his suspension involved an interaction with the school resource officer who had seized his backpack and without probable cause proceeded to search it. The student became agitated which ultimately led to his being transported by ambulance to the local hospital for a mental health screening and citation to juvenile court. The student has not been successful in off-site tutoring, has become despondent, and suicidal. His mother is concerned that he will drop out and never graduate.
- 16-year-old student with anxiety, depression and a social communication disorder was expelled for three-quarters of the school year after traces of marijuana were discovered in her backpack. Prior to seizure of her backpack, the student was in the park across the street from the administration building where she received off site tutoring. The school resource officer crossed the street and escorted her to the building. Because he claimed to smell marijuana, the police officer accompanied her to the administrator who searched her backpack, dumping the contents of the bag and using scotch tape to lift trace amounts of marijuana from the bottom of the bag. The student was subsequently expelled. This was not the student's first expulsion. The previous year, the student was expelled for multiple violations of the school's tobacco policy. Following her second expulsion, the student effectively dropped out of school.
- 5-year-old student with a suspected Autism Spectrum Disorder began exhibiting extreme sensory seeking behaviors, including climbing on and under unstable structures, and interacting in ways the school described as making other students uncomfortable. Parents requested 1:1 support. Shortly thereafter, the student was suspended for 10 days for an incident involving other students. The student was suspended for 10 days, despite a finding the behavior was a manifestation of the student's disability. Thereafter, the student's placement was changed. He was provided with 2 hours of tutoring per day pending further evaluation. Student remained on tutoring program for five months before

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<sup>1</sup> DOJ August 2016 Dear Colleague, available at: <https://sites.ed.gov/idea/files/dcl-on-pbis-in-ieps-08-01-2016.pdf>

an alternative program was offered. Following a comprehensive evaluation, student was diagnosed with severe ADHD.

- 10-year-old student with PTSD was placed in a prone restraint just prior to the end of the school year that restricted his ability to breath. [Prone restraints are prohibited by S.B.E. Rule 4500 with the narrow exception where size/severity of behavior and other restraint has failed]. Student's treating psychologist worked extensively with the student over the summer, and determined the restraint caused further trauma. Student's return to school was challenging but largely without incident until he returned from winter break. Due to illness, upon return from break, student's regular staff person was unavailable to support him. Student was supported by a substitute with whom the student was known to have difficulty. Student became triggered by the substitute, escalated, and was again placed in prone restraint. The restraint triggered student's trauma. Less than one week later, the substitute was again assigned to support the student. When the student saw the substitute, he became escalated and attempted to escape. The school resource officer intervened which triggered the student further. In the ensuing altercation, the student struck the substitute. Despite a manifestation determination that the behavior was a manifestation of the student's disability, he was suspended and cited to juvenile court. Because of a lack of appropriate alternative placements, the student received only two hours of tutoring per day from January and June.

We applaud the effort by Vermont law makers to address the inequities and tragedy that result from exclusionary discipline. We support the creation of an advisory council and request that the composition include a broader array of stakeholders, including parents of students with disabilities, students with disabilities, people of color, including indigenous groups, and local mental health agencies that support students. According to 2011-2012 data from the U.S.D.O.E. Office of Civil Rights, American Indian students in Vermont were 16% more likely to experience out of school suspension than their white peers (7%); Black and African American students experienced out of school suspension at a rate of 15%. In the past 11 years, likely these trends have not changed. Based on the data we do have, and the documented negative consequences on students, we recommend the advisory council be charged not just with updating the data, but in moving swiftly to address the policies, practices, and procedures needed to eliminate exclusionary discipline except in the rarest of circumstances.

The students in our schools need you to act quickly.

### **Concerns with data collection.**

The bill as proposed tasks the AOE with data collection. As the Committee may be aware, in June 2020, the Federal Office of Special Education Programs (OSEP) released its determination that, relative to our IDEA-B programs, *e.g.*, special education for students 3-21, Vermont is in Needs Intervention status. This represents an escalation from Vermont's prior Needs Assistance status. According to the AOE, this Needs Intervention status reflects a number of factors including "long standing challenges that Vermont [AOE] and field partners have had with data infrastructure and personnel levels to support that infrastructure."

<https://education.vermont.gov/news/message-educators-re-vermonts-idea-b-determination>. A

possible consequence of failing to correct this problem is a corrective action plan and/or withholding of federal funding.

In 2017, the DLP undertook an investigation into allegations of abuse by a local school district in its alternative program for students with disabilities. This investigation stemmed from multiple reports of incidents of restraint and seclusion. We were alarmed to learn that despite the data collection requirements of S.B.E. Rule 4500, the AOE had no data on the restraint and seclusion incidents despite documentation that the data had been reported to the Agency by the district.

While we agree the data on exclusionary discipline should be comprehensive, and updated, we have concerns about the AOE's ability to collect this data and to require school districts to report the data in a timely fashion. Additionally, we have concerns about transparency by the Agency. In 2020, when \$35 million of CARES Act funds were allocated to Vermont to support our elementary and secondary schools, the DLP met with the AOE and asked for a transparent process for use of those funds at the state and local level. No such process emerged. We learned late last year that \$14 million of that money went unspent. Forty percent of the money Vermont educational agencies received from the federal government went unused at a time when we know students, particularly, marginalized students, had greatly increased needs that could have been met with the federal emergency funding.

#### **Scope of data to be collected.**

S.16 notes that school discipline data is largely unavailable and incomplete, including documentation of the number of school days students miss by suspension and exclusion. In addition to collecting data on the number of days students serve in out of school suspensions, districts must be required to collect and report on the number of instances where students experience shortened school days, *e.g.*, are not formally suspended, but sent home for disability-related behavior. In reviewing student files, we have seen multiple instances where parents are called to pick up their students. For students with disabilities this is a violation of the IDEA and Section 504. Title 16, Section 1161a(7) and the State Board of Education Rules, require due process prior to suspensions of 10 days or less, and impose greater protections for suspensions of more than 10 days. Informally sending students home mid-day, or not allowing them to return the next day, is a violation of the student's rights under state and federal law. This data should be collected and reported.

Data also needs to be collected explicitly on the use of restraint and seclusion on our students. These incidents are often the precursors to formal and informal exclusionary discipline, and, as we have noted can be incredibly traumatic for the child.

Finally, the policies underlying these practices must be addressed to substantially reduce exclusionary discipline in Vermont schools. Data is important to understanding the scope of the problem but is not a predicate to amending Title 16 to prohibit disciplinary exclusion except in rare instances and requiring schools to provide educational services during periods of exclusion. Additionally, the AOE must ensure that school districts have strong school-wide positive behavioral intervention supports for students, access to mental health treatment, programs for addressing social and emotional learning, a robust array of general education and special

education settings to avoid extended periods of home tutorial following disciplinary removal and adopt best practices for restorative justice programs within the school environment.

Thank you.