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The Honorable Senator Ann Cummings
Chair, Senate Education Committee
Vermont Legislature
Montpelier, Vermont

RE: S.194- An Act Related to School Discipline

Dear Senator Cummings and Members of the Committee:

Thank you for the opportunity to provide testimony on the above bill. The Human Rights Commission is very concerned about exclusionary practices given the exclusion data showing serious over-representation of students in protected classes. It is imperative that there is equitable treatment for all Vermont students in this regard. We also recognize the school administrators' and teachers' responsibility and need to provide a safe learning environment for all students. We do not believe these goals are necessarily in conflict with one another.

In *Brigham v. State*, 166 Vt. 246, 249 (1997), the Vermont Supreme Court recognized that "[e]ducation is perhaps the most important function of state and local governments... It is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity for an education." The Court went on to state that "where the state has undertaken to provide an education, it is a right that must be made available to all on an equal basis."

Secretary Holcombe in her Exclusionary Discipline Response dated January 2015 [sic] concludes that, "[h]owever within this larger success [relatively low rates of exclusion] it is clear that our shared goal of equity for all students is threatened by over-representation of particular subgroups of students in relation to student discipline." This over-representation includes both protected classes (sex (male), non-

Caucasian, English Learners and those with disabilities) as well as "non-protected" students (low income students identified by their participation in the free and reduced lunch program). As the Secretary further notes, "[t]hese groups are historically most at risk of adverse outcomes and limited educational opportunity and most dependent on their attendance at school to achieve proficiency as students." At p. 38. [emphasis added].

Despite recognition of a serious problem, data confirming the problem and national data from other states showing that changes such as those proposed in S.194 have drastically reduced exclusion, there remains serious disagreement about what would effectively resolve the problem. What seems clear to me is that the status quo will simply perpetuate it.

The representative from the Vermont School Boards Association accurately pointed out, that with the exception of low income status, the other groups of students that are over-represented are already protected by anti-discrimination laws. As the agency charged with enforcing these laws at the state level, I can tell you that remedy is largely an illusion.

First, in order to prove a discriminatory discipline case, be it disparate treatment (one student is treated differently than another based on a protected category) or disparate impact (a particular discipline policy or its administration impacts a protected class more heavily), one needs access to data. None of the data necessary to prove a case is available due to the state and federal privacy protections referenced repeatedly in the Secretary's recent Report. As she notes, "[t]he vast majority of our schools are simply too small to show reportable data. At p. 13. In addition, low income students are not protected under anti-discrimination laws. Thus this vulnerable group has no protection from discriminatory treatment under any other laws.

Given the data limitations and lack of legal protections for low income students, the protections from discrimination under state and federal law are inadequate to address the problem. Thus the premise of those working to tighten up the criteria for exclusion in 16 V.S.A. §1162 is that if we reduce overall exclusions through positive behavior approaches like PBIS (positive behavioral intervention systems/services) and restorative justice (RJ), we will reduce inequitable exclusions or at least be able to see more clearly where the problems lie.

When we look at the data provided by the Secretary, I see a number of places where we could make a positive difference by finding ways to encourage schools down a different path:

- As the Secretary indicated, schools that implement PBIS show less over-all exclusion;
- The number of truly egregious and dangerous behaviors (weapons, illegal drugs) is very small so despite the examples provided by school administrators and boards, these are the exception not the rule and in any event, exclusion for such behaviors is in no way prohibited under this bill (see subsection (c));
- There are more out-of-school than in-school suspensions (56% vs. 42%) despite acknowledgement by school professionals that out-of-school suspension/expulsion is harmful and in-school at least allows for continuation of educational services;
- 52% or 18,809 of the reported exclusions were for school policy/conduct violation and we don't really know what kinds of infractions are represented in this large category because of the lack of consistent definitions;
- Students with disabilities, arguably the most vulnerable of our school population, are excluded at very high rates.

So what can we do? How do we encourage schools to do what we know works?

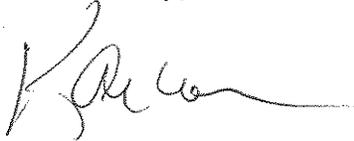
- Change the criteria for exclusion. "Harmful to the welfare of the school" gives administrators broad, unfettered discretion. If the language in S.194 as currently drafted is not what we want, something much less discretionary should be acceptable if we want to reduce inequitable exclusions;
- Encourage schools to adopt positive rather than negative behavioral supports. The intent in S.194 of requiring non-exclusionary methods to be employed is to encourage what we know works (PBIS, RJ, etc.). If not this language, then what would provide the incentive? If for example schools were required to reduce exclusionary discipline by a certain percent each year, then seeking out PBIS or other practices and training would be more of a priority;
- Charge the AOE with oversight of schools that show high rates of exclusion of protected groups or low income students and give it the resources to increase training and provide technical assistance through their existing PBIS program;

- Charge the AOE with development of a common set of definitions for violations so we have a better idea of what conduct results in exclusionary discipline;
- Charge the AOE with publishing resources for positive behavior programs on its website;
- Change the language around expulsions from 90 days or the end of the school year whichever is MORE to whichever is LESS;
- Develop additional incentives and resources to encourage in-school suspension and limit out-of-school suspension and expulsion;
- Train school administrators and staff on implicit/unconscious bias. The HRC would be willing to work with the AOE or any of the professional organizations to develop a training of trainers, an on-line module or a webinar.

Throwing up our hands and doing nothing should not be an option. We owe it to ALL of Vermont's children regardless of their sex, race, English language ability, disability or income status to provide equitable access to education. The cost of doing nothing—prison beds, public assistance, addiction, homelessness, unprepared workers, and fewer taxpayers, etc.-- is much higher in the long run.

Thank you for your consideration of this very important and admittedly complicated issue.

Sincerely,



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