

# KICKED OUT!

## Unfair and Unequal Student Discipline in Vermont's Public Schools



What's Happening, Why  
It Matters, and What We  
Can Do to Stop It



Jay Diaz, Esq.  
Vermont Legal Aid  
January 2015

We gratefully acknowledge the generous support of the Vermont Developmental Disabilities Council (VTDDC), whose funding has made it possible to provide printed versions of this report.

Please visit [www.ddc.vermont.gov](http://www.ddc.vermont.gov) to learn more about the VTDDC and its mission to help build connections and supports that bring people with developmental disabilities and their families into the heart of Vermont communities.

*The client stories presented in this report are real. Names and some details have been changed and stock photos have been used to protect the privacy and confidentiality of our clients.*

# Table of Contents

Executive Summary .....1

I. Introduction.....3

    Why We Decided to Write a Report on School Discipline in Vermont .....4

II. Vermont Law on School Discipline .....5

    Key Terms .....5

    State Laws.....6

    Regulations .....7

    School District Policies.....8

    Federal Laws and School Discipline .....8

III. Methodology .....9

IV. Major Findings..... 10

- Finding 1: Vermont Public School Students were Suspended for More Than 8,000 Days in 2011-2012 10
- Finding 2: Students with Disabilities were Nearly Three Times More Likely to be Suspended than Students without Disabilities..... 11
- Finding 3: Where Substantial Populations Exist, Black/African-American and Native American Students were Two to Three Times More Likely to be Suspended than White Students..... 13
- Finding 4: The Use of Exclusionary Discipline, Restraint, Seclusion, Referral to Law Enforcement, and School-related Arrest Varies Widely. .... 15
- Finding 5: Valuable Data on Vermont’s School Discipline Actions is Largely Unavailable, but is Necessary to Understand What Works. .... 18

V. Moving Forward – Recommendations for Changing Student Discipline and Improving Student Outcomes..... 19

- Recommendation 1: Vermont Must Limit Disciplinary Exclusion and its Collateral Effects ..... 19
- Recommendation 2: Allow Students to Continue to Learn During Suspension and Provide the Necessary Resources ..... 20
- Recommendation 3: Ensure and Upgrade Students’ Constitutional and Civil Rights ..... 21
- Recommendation 4: Find Positive Examples by Ensuring Accurate and Timely Reporting of School Discipline Data..... 21

VI. Conclusion ..... 22

The Authors ..... 23

Appendices ..... 24

Endnotes..... 36



## Executive Summary

Over the course of the last decade, Vermont policymakers have shown great concern about the widening achievement gap between low-income students and their upper-income peers.<sup>1 2</sup> This achievement gap is closely connected to disability, race, and poverty.<sup>3 4</sup> Because kids with disabilities, of color, and from low-income families do worse in school, they are more likely to grow up to be poor adults.<sup>5</sup> Not only does this outcome violate our sense of justice as Vermonters, it also weakens our faith that education is the great equalizer. If our state is to create and maintain a stable, productive, and vibrant society, we must do something to ensure that all students are able to succeed.

To that end, Vermont is making strides to reduce child poverty and ensure educational equality. We fund our schools through a system that promotes equal access to quality public education no matter the town's property values or income levels. We are also moving toward universal pre-K and healthcare, improving access to early childcare for low-income families, and raising the minimum wage.

However, we have shied away from coming up with policy solutions to reduce other continuing inequities in our education system. While Vermont's education system ranks high nationally,<sup>6</sup> we continue to see gaps in achievement, skills,<sup>7</sup> aspiration for post-secondary attendance,<sup>8</sup> and direct college attendance.<sup>9 10</sup> Why?

*"...an overreliance on suspensions, expulsions, and arrest has been shown as counterproductive to achieving many of a school's goals..."*

Across the country, educators, policymakers, advocates, parents, and students are finding some of the answers. In a 2014 report, The Council of State Governments found large disparities between the rates of exclusionary discipline for students with disabilities, students of color, and students from low-income families when compared with other students.<sup>11</sup> The report emphasized that "an overreliance on suspensions, expulsions, and arrests has been shown as counterproductive to achieving many of a school's goals and has had tremendously negative consequences for youth." For instance, a Johns Hopkins study showed that students suspended just one time in grade 9 had double the risk of dropping out.<sup>12</sup> Other studies have shown that disciplinary removal increases the likelihood of contact with the juvenile justice system by threefold.<sup>13</sup> Myriad other studies connect drop-out rates to a greater likelihood of incarceration as an adult and higher poverty rates.<sup>14</sup> Furthermore, the issue is seen as having such great importance that the U.S. Departments of Justice and Education jointly released legal guidance on the need to improve school discipline and climate.<sup>15</sup>

Thankfully, the Council also found that intentionally correcting these disparities by lowering exclusionary discipline not only improved school climate, safety, and order, but also kept students engaged in learning and increased their chances for life-long success.<sup>16 17</sup> According to the Discipline Disparities Research Collaborative, numerous studies show that the use of positive behavior interventions and supports, non-punitive response protocols, restorative justice, and associated professional development for school staff have effectively improved school climate and academic achievement for all students.<sup>18</sup>

This report seeks to provide Vermont's policymakers, educators, advocates, parents, and students with the information necessary to assess school discipline in Vermont and to identify where we must go from here.

Sadly, when it comes to school discipline rates and disparities, Vermont is not faring better than most other states. A comprehensive review of Vermont's school discipline data submitted to the 2011-2012 US Department of Education's Civil Rights Data Collection (CRDC) shows that we suspend students at a rate similar to most other states.<sup>19 20</sup> During 2011-2012, 5-10% of Vermont's public school students were suspended, losing at least 8,000 days of school. In addition, Vermont's students with disabilities and students of color were two to three times more likely to be excluded from school through suspension and expulsion. These disparities persisted for restraint, seclusion, and referral to law enforcement.

Worse, these strategies lead to poor outcomes for affected students down the road: high drop-out rates, lost earnings, and incarceration are among the increased risks of exclusionary discipline. In sum, too often getting “kicked out” of school is a recipe for being locked out of the American Dream. Although studies on the connection between suspension, school failure, and incarceration have not been done in Vermont, the connection has been demonstrated in studies across the country.<sup>21</sup>

Also, Vermont PBiS found that achievement scores go up<sup>22</sup> and office referrals go down when positive behavior interventions are implemented.<sup>23</sup> In addition, a 2008 Vermont Department of Corrections study stated that 90 percent of Vermont’s inmates under 22 years old were high school dropouts prior to incarceration,<sup>24</sup> and Disability Rights Vermont found that up to 90% of the youth in the Woodside Juvenile Rehabilitation Center are students with disabilities.

*In sum, too often getting “kicked out” of school is a recipe for being locked out of the American Dream.*

The Vermont school discipline data and the effects of school discipline that are presented in this report should give us pause, but also give us cause to act. States across the nation are passing laws to keep kids in the classroom,<sup>25</sup> improve school climate,<sup>26</sup> and improve data collection on exclusion.<sup>27</sup> It is time that Vermont considers new ways to keep our schools safe and ensure that all students have an equal opportunity to learn and succeed.

This report is the result of months of research and analysis and presents a comprehensive snapshot of school discipline in Vermont. In Section I, we introduce the topic of exclusionary discipline and why this issue is important for Vermont schools, communities, parents, and children. In Section II, we review the laws and regulations governing school discipline in Vermont. In Section III, we discuss the report’s Methodology and data collection issues. Section IV details the report’s major findings under the following headings:

- **Finding 1:** Vermont Public School Students Were Suspended for More Than 8,000 Days in the 2011-2012 School Year.
- **Finding 2:** Students with Disabilities Were Nearly Three Times More Likely than Students without Disabilities to be Suspended.
- **Finding 3:** Black/African-American and Native American Students Were Two to Three Times More Likely than White Students to be Suspended.
- **Finding 4:** The Use of Exclusionary Discipline, Restraint, Seclusion, Referral to Law Enforcement, and School-related Arrest Varies Widely.
- **Finding 5:** Valuable Data on School Discipline in Vermont is Largely Unavailable, but is Necessary to Understand What Works.

And, finally, Section V proposes concrete recommendations for changing student discipline and improving student outcomes in Vermont under the following headings:

- **Recommendation 1:** Limit Disciplinary Exclusion and its Collateral Effects.
- **Recommendation 2:** Allow Students to Continue to Learn During Exclusion and Provide the Necessary Resources.
- **Recommendation 3:** Ensure and Upgrade Students’ Constitutional and Civil Rights in Disciplinary Proceedings.
- **Recommendation 4:** Find Positive School Discipline Program Examples in Vermont by Ensuring Accurate and Timely Reporting of School Discipline Data.

## I. Introduction

Why should we care about students who are kicked out of school? Aren't they the bad kids? Aren't they the ones who are dangerous? On the contrary, major studies have shown that reducing suspension and expulsion makes schools safer<sup>28</sup> and makes students less likely to drop out, become entangled in the juvenile justice system, and end up in jail as adults.<sup>29</sup> Furthermore, incidents of true danger are extremely rare,<sup>30</sup> victimization rates among youth have been declining for the last two decades,<sup>31</sup> and juvenile arrest rates have declined by nearly 50% since 1996.<sup>32</sup> Schools with higher suspension rates typically feel less safe to the students, teachers, and staff.<sup>33</sup> Of course, a student who causes serious injury or poses a threat to school safety may need to be removed from school or arrested temporarily. But, that should be the rare exception, not the rule.

Second, exclusionary discipline is expensive.<sup>34</sup>

Vermont spends about \$16,000 per year to educate a student,<sup>35</sup> an amount paid whether the student is suspended from school or not. Because frequently suspended students are more likely to end up in the juvenile justice system, the state pays more money for police, court hearings, and juvenile detention. Currently, it costs nearly \$40,000 per year to house a juvenile in the Woodside Juvenile Rehabilitation Center.<sup>36</sup> Children who are suspended, drop out, or end up in juvenile detention are more likely to be incarcerated as adults. Vermont spends up to \$50,000 per year for each inmate in the custody of the Department of Corrections.<sup>37</sup>



Dropping out of high school, which is much more likely for students who are suspended from school even once, also increases the chance that kids will not become net taxpayers as adults. According to the Alliance for Excellent Education, Vermont is losing \$147 million in lifetime economic output for each annual cohort of dropouts.<sup>38</sup> That's about \$120,000 lost per dropout. Another study suggested that the cost to the economy per dropout is \$240,000 over their lifetime.<sup>39</sup> And, nationwide, at least 73% of youth with emotional disabilities who drop out of school are arrested within five years.<sup>40</sup> This is unsustainable. We can improve Vermont's economy and supply a better educated workforce by helping all kids transition to productive adulthood.<sup>41</sup>

Third, exclusionary discipline is applied inequitably across Vermont. As detailed in Section IV's findings, students with disabilities and students of color are more likely to be suspended. These students deserve better from our schools, and other states are showing us how to reduce these disparities.<sup>42</sup>

Finally, suspension and expulsion do not have instructive value.<sup>43</sup> Since there is no correlation between these tactics and behavioral improvement<sup>44</sup> for students or added school safety,<sup>45</sup> exclusionary discipline should play a minimal role in our education system.

Students who are suspended from school for minor infractions gain nothing from suspensions. They only learn that school is not a place for them. They are isolated from their education, less likely to trust adults in the education system, and more likely to get into trouble while at home on their own. Our schools can do more for students by teaching appropriate behavior, helping them learn from mistakes, and maintaining a connection to their education even when exclusion from school may be necessary.

*Dropping out of high school, which is much more likely for students who are suspended from school even once, also increases the chance that kids will not become net taxpayers as adults.*



It is time for Vermont to join the national movement to end unnecessary exclusion, erase exclusion disparities, provide support to struggling students, and improve school safety. Keeping kids in the classroom and off the street creates safer, more productive learning opportunities and a brighter future for Vermont's children. Let's get started.

## Why We Decided to Write a Report on School Discipline in Vermont

The first provision of Vermont's education law guarantees each student "substantially equal access to a quality basic education" because it is vital to our constitutional government's promise of political and civil rights and to ensure that our children succeed in a global marketplace. Parents, teachers, school administrators, policy makers, advocates, and students all share the belief that our communities are better off when every child receives a quality education.

But, many students are not able to share in the benefits of that vision because they are excluded from public and independent schools for typical childhood behaviors. A disproportionate percentage of these students have disabilities, are students of color, or come from low-income families. The report's authors know these students because they and their parents come to Vermont Legal Aid for assistance.

For instance, there is Daniel, who suffered severe neglect as a child. He was suspended and removed indefinitely from school for non-violent disorderly conduct. There is Tasha, who was expelled for the entire school year for possessing marijuana paraphernalia on school grounds, or Simone, Alex, and Johanna who were all "asked to leave" nearly every day instead of being provided appropriate special education services. There is Allison, who was suspended for 10 days after getting into a fight with someone who had been taunting her brother for weeks, or Jonathan, who was almost expelled for bringing a small pocketknife to school because it reminded him of his favorite uncle. There is Julia, who was suspended indefinitely for cursing, or Jack, who was expelled because he urinated on the side of the school building. Students like these are typically in low-income families, struggle with issues at home, are students of color, have significant emotional/behavioral disabilities, or live with some combination of these factors.

*A disproportionate percentage of these students have disabilities, are students of color, or come from low-income families.*

Nationally, parents, school administrators, advocates, local police departments, and policymakers have started to record and address the stark association between exclusionary discipline and negative educational and personal outcomes for students. Exclusionary discipline removes students from the learning environment and includes in-school suspension (ISS), short-term out-of-school suspension (short-term OSS), and long-term out-of-school suspension (long-term OSS or expulsion).

Discipline reports from city, state, and national levels have documented the alarming increase in the use of exclusionary discipline. In 1974, there were 1.7 million reported OSS and expulsions nationwide (3.7% of the student population); in 2006, there were 3.3 million (6.8% of the student population).<sup>46</sup> Many attribute this rise to a wave of stricter, zero-tolerance-style discipline policies that encourage exclusion for minor or non-violent offenses.<sup>47</sup>

The growing use of exclusionary discipline has disproportionately affected certain groups of students. Many reports show an over-representation of low-income students, students of color - particularly Black/African-American students, and students with disabilities.<sup>48 49 50</sup>

Studies have demonstrated strong links between exclusionary discipline and an increased likelihood that a student will have to repeat the school year, experience hindered academic achievement, drop out of school, or become involved in the juvenile justice system.<sup>51</sup> Further, there is increasing evidence that students are



receiving unnecessary referrals to the juvenile justice system for minor or non-violent offenses, leading to distrust of school authorities and an increase in dropout rates.<sup>52</sup>

Despite the hard work of teachers in the classroom and a shared recognition by school administrators of the benefits of an educated and productive population, students (often the most vulnerable students) are increasingly excluded from Vermont schools. Beyond federal mandates, Vermont statutes addressing school discipline are largely suggestive and provide local schools great discretion in how they are implemented, contributing to inconsistent use and application of exclusionary discipline between districts.<sup>53</sup>

Many states and cities have started to successfully address these issues by providing tools and infrastructure at the district level to better address the needs of our students. These positive reforms emphasize exclusionary discipline as a “last-resort” and have been associated with drops in the occurrence and length of exclusion, reductions in disparity of application, and increases in graduation rates.<sup>54</sup> These reforms favor support and intervention and the use of positive behavioral models such as peer mediation, restorative justice, social-emotional learning, and, in some cases, referrals for psychological testing and independent services to better address the root causes of problematic behavior.<sup>55</sup>

## II. Vermont Law on School Discipline

Student discipline is governed by federal and state law, federal and state regulations, district policies, and school policies. However, the majority of discipline rules and consequent punishments are developed and administered by local schools. Thus, the treatment of a student for any given infraction can vary widely from district to district and even between schools in the same district or supervisory union. The following section details the landscape of laws, regulations, and local policies that govern Vermont students’ behavior and exclusion from school.

### Key Terms

- **Achievement Gap** – The common disparity in academic achievement and educational outcomes between different groups of students, most closely associated with different ethnic and socioeconomic backgrounds. Also known as the “opportunity gap.”
- **Agency of Education** – A Vermont state agency that oversees the state’s education system.
- **Alternative Education Program** – An educational program that specializes in serving students with particular disabilities and academic deficits, particularly those with emotional difficulties. The program can be within a school district or can be an independent school.
- **Civil Rights Data Collection (CRDC)** – A biennial survey required by the US Department of Education’s Office for Civil Rights (OCR). See <http://ocrdata.ed.gov/Overview> for further information.
- **Disciplinary Exclusion** – The removal of a student from the school building and exclusion from an opportunity to make academic progress as a response to behavior or a violation of a school’s conduct code. The most common forms of exclusion are in-school suspension, short-term out-of-school suspension, and long-term out-of-school suspension.
- **Disproportionality** - The over- or under-representation of a particular group as compared to the group’s proportion of the general population.
- **Individualized Education Plan (IEP)** – A document detailing the educational program for a student with disabilities that adversely affect their educational performance. The plan is created through collaboration with the parent(s), teachers, medical and disability professionals, and school administrators. The goal of an

IEP is to ensure that the school provides the necessary supports that enable the student to enjoy an equally free, appropriate public education.

- **Interim Alternative Education Setting (IAES)** – When a child 1) possesses a weapon, 2) uses/possesses drugs, or 3) inflicts serious bodily injury to another, at school, schools may remove students to an educational setting and program outside of the mainstream school for up to 45 days without regard for standard due process considerations. In the IAES, students with disabilities receive some level of educational instruction.
- **In-School Suspension (ISS)** – Removing a student from a classroom to an alternative room within the school building for at least half of the school day.
- **Long-term Out-of-School Suspension/Expulsion** – In Vermont, the removal of student for more than 10 consecutive school days as a consequence for unwanted behavior or a violation of the school’s conduct code. The student is excluded from all district classes, programs, events, and buildings.
- **Positive Behavioral Interventions and Supports (PBIS)** – A proactive multi-tiered approach to establishing the behavioral supports and social culture needed for all students in a school to achieve social, emotional, and academic success. In Vermont, it may also be called Multi-tiered System of Support (MTSS).
- **School-to-Prison-Pipeline** – The cumulative effect of various federal, state, and local school disciplinary policies that are associated with academic failure, dropout, and justice system involvement, particularly impacting students with disabilities, students of color, and students in low-income families.
- **Short-term Suspension** - In Vermont, the removal of a student for 10 consecutive school days or less as a consequence of unwanted behavior or a violation of the school’s conduct code. The student is excluded from all district classes, programs, events, and buildings.
- **State Board of Education** – A state body responsible for the establishment, advancement, and evaluation of public education policy. The Board’s powers and duties include making regulations governing student attendance, performance, independent schools, fund disbursement, and equal access to a quality education.

## State Laws

Vermont law requires all public and independent schools to adopt and implement a comprehensive plan for responding to student misbehavior. School plans must include detailed policies on classroom management tactics, responses to disruptive behavior, the manner in which the school will train students in conflict resolution, procedures for informing parents of student misconduct, the school’s safety plan for significant threats, training staff and contractors on how to keep the school safe, descriptions of behaviors that constitute misconduct, and standard due process procedures for suspension and expulsion.<sup>56</sup> Each school, for the most part, determines its own policies.

State law presents a basic framework for the permissible length of suspensions and expulsions. The law gives superintendents or principals the discretion to suspend a student out of school for up to 10 school days pursuant to the conduct policies adopted by their school board and the state board. There is little, if any, oversight

*Although the law authorizes and encourages principals, superintendents and school boards to provide alternative education services during suspension and expulsion, it does not require that they provide such services.*

of suspensions that are 10 days or less.<sup>57</sup> Students and parents have no appeal rights. Superintendents and principals may, with school board approval, also “expel” a student pursuant to their school’s discipline policies for the remainder of the school year or up to 90 school days, whichever is *longer*.<sup>58</sup>

Although the law authorizes and encourages principals, superintendents, and school boards to provide alternative education services during suspension and expulsion, it does not require that they provide such services.<sup>59</sup> In addition, state law allows other public or independent schools to continue the suspension or expulsion of any student who was expelled in another Vermont school, giving those students nowhere to receive an equal education for up to a full school year.<sup>60</sup>

State laws also require the state board and each school district to adopt specific policies for the education, discipline and referral for rehabilitation of students found to be abusing alcohol or drugs on school property or at school functions.<sup>61</sup> Finally, school districts are required to adopt policies regarding students who possess firearms at school.<sup>62</sup>

## Regulations

Pursuant to state law, Vermont’s State Board of Education has approved regulations that govern school discipline. These regulations mainly cover discipline for students with disabilities, but include general rules on discipline, restraint, and seclusion.

### General School Discipline Procedures

Rule 4311 specifies the procedures required for students who are suspended and who are not suspected of having a disability.<sup>63</sup>

- Short-term Suspension (10 consecutive days or less)
  - ▶ Student and parent/guardian receive an “informal hearing.” The “hearing must precede the suspension” unless the student is an immediate threat to himself, herself, others, property, or the educational environment.
  - ▶ At the informal hearing, the district shall provide: 1) notice of the charges, 2) explanation of the evidence, 3) an opportunity for the student to tell his or her side of the story, and 4) a decision in writing to the parent/guardian.
- Long-term Suspension (More than 10 consecutive days, unless the district establishes a shorter period)
  - ▶ Student and parent/guardian receive a “formal hearing.” The “hearing must precede the suspension” unless the student is an immediate threat to himself, herself, others, property, or the educational environment.
  - ▶ The district shall provide written notice of the following: 1) nature of the charges, 2) date, time, and place of hearing, 3) right to legal representation, and 4) possible penalties involved.
  - ▶ The district shall also provide: 1) opportunity to present evidence at the hearing, 2) opportunity to cross-examine witnesses at the hearing, and 3) a decision in writing to the parent/guardian.

### Discipline Procedures for Students with Disabilities

Rules 4312 and 4313 mirror federal special education regulations by requiring special procedures for students suspected of or identified as having a disability, when they are suspended for more than 10 consecutive or cumulative days in a school year.<sup>64</sup> For these students, schools are required to:

- Hold a special education team meeting to review the misconduct and make a determination as to whether the behavior was a manifestation of the student’s disability (known as a “Manifestation Determination Review”).
  - ▶ If the team agrees that the behavior was a manifestation or was the result of a failure to implement a special education plan, the student must be evaluated or an existing behavior plan must be updated.
  - ▶ If the team does not agree that the behavior was a manifestation of the student’s disability or the result of a failure to implement a special education plan, the student may be treated the same as any other student in disciplinary proceedings.
- Regardless of Rules 4312 and 4313, school personnel are permitted to remove students to an “interim alternative educational setting” for up to 45 days if the child with a disability: 1) possesses a weapon at school, 2) possesses, uses, sells, or solicits the sale of drugs at school, or 3) inflicts serious bodily injury upon another person while at school.

### The Use of Restraint and Seclusion in Schools

Rule 4500 prevents schools from using: 1) mechanical restraints, 2) chemical restraints, or 3) physical restraint, physical escort, or seclusion that restricts breathing or communication, causes pain, or is imposed without maintaining direct visual contact.<sup>65</sup> However, schools are permitted to use physical restraint and seclusion when less restrictive interventions have failed or would be ineffective. Permitted restraints can only be used in a manner that is safe, proportionate to, and sensitive to the particular child’s characteristics.

## School District Policies

Pursuant to state law, every school, school board, or supervisory union must adopt discipline policies detailing the requirements of student behavior and the consequences for misbehavior. District policies may vary greatly from school to school, but must comply with state and federal laws and regulations. Most schools or districts provide the student code of conduct in their student handbook, which is typically available on the school’s website and provided to parents upon request. Handbooks list the many types of infractions and the punishment associated with each infraction.

Frequently, if a child repeatedly violates the code of conduct, the school will increase the length of successive exclusions. Handbook policies can offer strict standards or broad discretion to school administrators in determining the length of a suspension. Codes of conduct allowing more discretion to administrators can create the opportunity for punishments that fit the exact offense and possibly result in disparate treatment.

## Federal Laws and School Discipline

### Gun Free School Act

“Each State receiving Federal funds under any title of this Act shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than 1 year a student who is determined to have brought a firearm to a school, or to have possessed a firearm at a school, under the jurisdiction of local educational agencies in that State, except that such State law shall allow the chief administering officer of a local educational agency to modify such expulsion requirement for a student on a case-by-case basis if such modification is in writing.”<sup>66</sup>

### **Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Individuals with Disabilities Education Act (IDEA)**

These federal laws provide extra protections for students with disabilities, most of which are incorporated into the state regulations cited above. Section 504 and the ADA prevent schools from discriminating against students because of their disability. Moreover, Section 504 and the IDEA ensure that students with disabilities are provided a Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE).<sup>67 68 69</sup>

### **Title IV of the Civil Rights Act of 1964**

Title IV protects students from discrimination based on race in connection with all academic, educational, extracurricular, athletic, and other programs and activities of a school, including programs and activities a school administers to ensure and maintain school safety and student discipline. When schools respond to student misconduct, Title IV requires that the school's response be undertaken in a racially nondiscriminatory manner. Recent federal guidance from the Department of Education and Department of Justice outlines the Nondiscriminatory Administration of School Discipline.<sup>70</sup>

## **III. Methodology**

This report presents a rounded picture of statewide trends and experiences of individual students by using both publicly available quantitative data and narratives of students' experiences. All data in the report was retrieved from the Civil Rights Data Collection (CRDC) of the federal Office for Civil Rights (OCR) and the Vermont Agency of Education's (AOE) databases of information recorded in the 2011-2012 school year.

The majority of the data used was publicly available from the CRDC. The CRDC is a federally mandated data collection from every public school in the nation. The collection features many measurements to review equality among our nation's schools such as student enrollment and educational services disaggregated by race/ethnicity, sex, limited English proficiency, and disability. The data includes recorded and published counts of in-school suspension (ISS), out-of-school suspension (OSS), expulsion (long-term suspension), school-related arrests, referrals to law enforcement, incidents of restraint (both physical and mechanical), incidents of seclusion, demographic information, and disability status. For definitions of CRDC terms, please see [Appendix A](#).

The Vermont AOE's data and documents were also used to identify districts and high schools with data that was not available in the CRDC database. Publicly available information from the Burlington School District's Equity and Inclusion Report was also reviewed and cited in this report.

In the CRDC data matrices, counts of ISS, OSS, and expulsion show the number of students receiving each type of discipline one or more times, *not* the total number of incidents. This allows the report to show the risk of discipline for certain groups by comparing the number of students in a group receiving a type of discipline (ie: number of suspended students with disabilities) by the total number of students in that group (ie: total number of students with disabilities). Because there are relatively few expulsions recorded in the CRDC and Vermont law does not delineate between suspension and expulsion as the CRDC definitions do, data for out-of-school suspension and "expulsion" have been combined.

Counts for school-related arrests, referrals to law enforcement, restraint, and seclusion represent the total number of incidents. In these categories, one student could account for one or more of the reported incidents.

The report supplements this data with the narratives of students in Vermont schools during the 2012-2013 and 2013-2014 school years. These stories are real accounts of Vermont Legal Aid clients' experiences with school discipline systems, though identification information has been changed to protect their identities.

Finally, this report only used race data for districts and schools where the total number of students of a particular race or ethnicity was more than 20. For instance, if a school/district had more than 20 students who identified as Native American, the report's authors collected and analyzed that school/district's disciplinary treatment of Native Americans. If a school/district did not have more than 20 students who identified as a given race, the report's authors did not collect or analyze that school/district's disciplinary treatment of that group.

### Data Limitations

Due to limitations in VT AOE recordkeeping, this report is unable to create a complete picture of school discipline in Vermont. The Agency was unable to fulfill a number of the authors' public records requests because the data was either not maintained or was not readily available in the format requested.

- Data not maintained included:
  - ▶ Achievement, suspension, or other data (other than enrollment demographics) for students with disabilities served only under Section 504 plans, but not eligible for IEPs under IDEA
  - ▶ Indication of whether educational services were provided or not provided to students during suspensions or expulsions beyond the federal requirements for students served under IDEA
  - ▶ Data for instances of disciplinary referrals to alternative programs
  - ▶ Education data for students who have been at Woodside Juvenile Rehabilitation Center
- Data not readily available included:
  - ▶ Discipline data for students receiving Free or Reduced Price Lunches (FRL)
  - ▶ Discipline and achievement data for students in the custody of the Department for Children and Families (DCF)
  - ▶ Total number of school days missed due to suspension/expulsion by all students suspended or expelled

Our review of the CRDC data is incomplete because some schools, districts, and supervisory unions were not included in the CRDC's available data, presumably because they failed to report their data. Moreover, 38 Vermont schools, districts, and supervisory unions reported zero incidents of suspension, expulsion, referral to law enforcement, school-related arrest, restraint, or seclusion to the CRDC. For instance, no school in Bennington County reported data on a disciplinary incident. While it is possible that no incidents occurred in these schools, it is at least equally possible that the data was either not recorded or not reported accurately. For this reason, and because we compare county data, Bennington County school data has not been included in this report's data compilations.

Finally, students who receive public tuition to attend independent schools in Vermont are not included in this report because independent schools are not required to report to the federal data collection.

## IV. Major Findings

### ■ Finding 1: Vermont Public School Students were Suspended for More Than 8,000 Days in 2011-2012

According to the CRDC, during the 2011-2012 school year, Vermont public schools suspended or expelled 3,982 students out of school for at least one day. Vermont public schools also officially suspended 3,861 students in school for at least one day.<sup>71</sup> The number of students suspended constitutes the minimum number of days lost because many children were suspended both in and out of school more than once during the year. Because many students are suspended for more than one day in a school year, it is likely



that Vermont students lost many more than 8,000 days of class time to suspension. See *Appendix B* for the state’s school discipline numbers for students with IEPs and without IEPs.

As detailed below in Finding 5 and above in the Methodology Section, it is unclear whether all schools accurately reported their suspension statistics. Some schools reported no suspensions at all. Other schools simply did not submit reports to the federal data collection. Other students may have been moved out of school to interim alternative education settings without being considered suspended or expelled.



### Student Story | Dominic

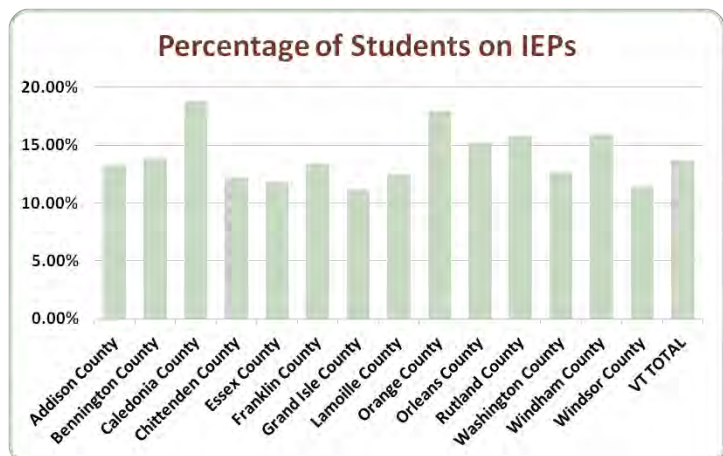
Dominic was a bright student and a good athlete. But after the death of a parent, he experienced difficulty in school. He began to show signs of anxiety, depression, and self-harming behaviors. He also began to have conflicts with peers. He was suspended several times because of conflicts, with escalating lengths of suspension for each incident. He became more and more disconnected from school and started failing classes.

His remaining parent communicated his mental health difficulties to the school. After another fight, Dominic was told he could not return to school. When Dominic had been excluded from school for more than a month without due process, the family contacted Vermont Legal Aid. Vermont Legal Aid attorneys advised the family, assisted his swift return to school, and advocated for appropriate reintegration and disability-based education plans.

## ■ Finding 2: Students with Disabilities were Nearly Three Times More Likely to be Suspended than Students without Disabilities.

### ► Overall Enrollment

Of the 77,419 children in Vermont public schools included in this data, 10,590 (13.7%) were eligible under the IDEA for special education plans. Vermont’s rate of students on IEPs closely matches the national average of 13%.<sup>72</sup> For a chart of each Vermont county’s enrollment rates for each category, please see *Appendix B*.<sup>73</sup>

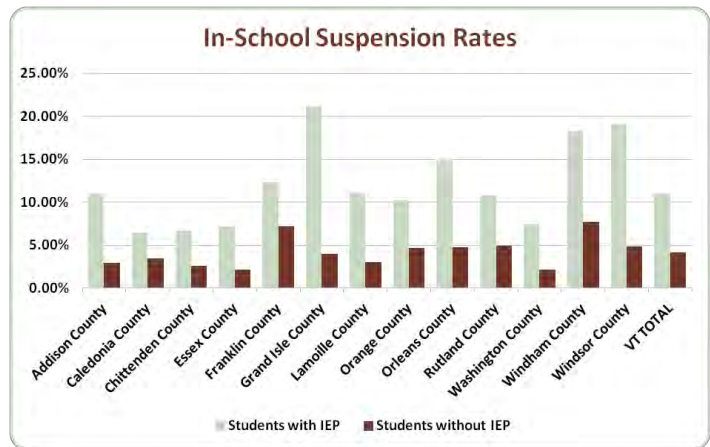




► **In-School Suspension (ISS)**

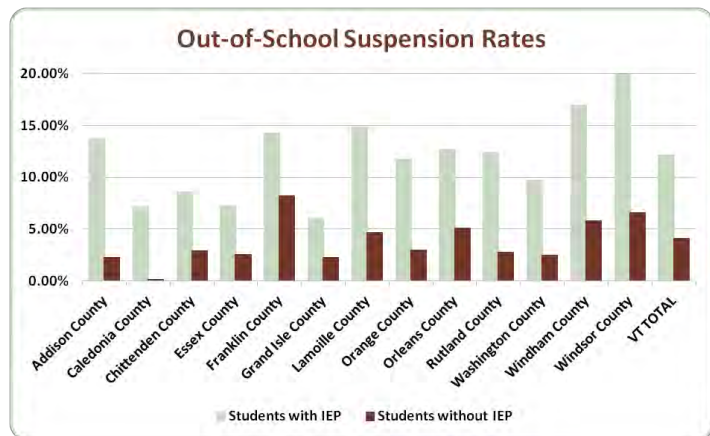
According to the CRDC, 3,861 Vermont children in public school received ISS for at least one day. Based on the total enrollment numbers cited above, 11% of students on IEPs received ISS, while only 4.1% of students without IEPs received ISS. This means students on IEPs were nearly 3 times more likely than students not on IEPs to receive ISS. For a chart of Vermont’s ISS numbers and rates, please see *Appendix C*.

Vermont’s overall suspension rates as analyzed for 2011-2012 are slightly less than the national average [IEP suspension (13%), non-IEP suspension (6%)<sup>74</sup>], but the disparity is greater. Also, several counties suspended IEP or non-IEP students in school at higher rates than the state and national averages. For instance, Windsor County had an IEP ISS rate of 19.1%, but a non-IEP ISS rate of only 4.9%— meaning students on IEPs in Windsor County were nearly 4 times more likely than non-IEP students to receive ISS. And, although Franklin County’s students on IEPs had a lower than national average ISS rate of 12.3%, non-IEP students had a higher than the national average ISS rate of 7.1%.



► **Out-of-School Suspension (OSS)**

Vermont’s OSS rates display similar patterns. Statewide, 12.2% of students on IEPs were suspended out of school. That rate is about three times higher than the 4.1% OSS rate for non-IEP students. Again, several counties suspended students with and without IEPs at higher rates than the national averages. For instance, in Windham County, 17% of students on IEPs received OSS, while non-IEP students had an OSS rate of 5.8%. Similarly, Lamoille County suspended about 15% of its students on IEPs out of school, but only 4.7% of its students not on IEPs. For a chart of Vermont’s OSS numbers and rates, please see *Appendix D*.



► **Suspension Rate Disparities**

While the statewide suspension rate for students on IEPs was three times the rate for non-IEP students, many counties had wider disparities. For instance, Addison County suspended out of school at least 80 of its approximately 580 students on IEPs, an OSS rate of about 14%. Non-IEP students were suspended at a rate of only about 2%. This means Addison students on IEPs were about 7 times more likely to be suspended than those not on IEPs. And, students on IEPs made up nearly half of all students suspended out of school.

Even when the overall OSS rate was lower for a given county, the disparity was sometimes greater. For instance, Washington County suspended only 9.8% of students on IEPs and 2.5% of students not on IEPs. Thus, students on IEPs were nearly 4 times as likely to be suspended out of school than their non-IEP peers.

Similarly, there were wider disparities for certain counties' ISS rates. Students on IEPs in Windsor and Addison County were about four times as likely to receive an in-school suspension as their non-IEP peers.

▶ **Statewide Disproportionate Suspension**

Although only representing 13.7% of overall student population, students on IEPs represented 29.7% of ISS, more than twice as many as expected with equitable treatment. Additionally, IEP students made up 31.9% of Vermont's students receiving OSS. The OSS ratio is about 2.5 times greater than expected with equitable treatment.

### Student Story | Susannah

Susannah has had an IEP since elementary school for a learning disability, anxiety, and ADHD. She changed schools several times in her young life. She was also removed from one parent's home at nine years old because she was rarely provided food, appropriate clothes, or bathing. She was eventually placed with her other parent who offered stability. During middle school, Susannah began to have trouble keeping up. She started acting out, challenging authority, and cursing in school. School representatives agreed she needed additional help and counseling.

Despite the best efforts of the parent, for two years her school failed to complete an updated IEP that was needed to ensure that she receive appropriate services. One day, Susannah became very upset, yelled at several teachers, and stormed away from them. The school called the police, who forced her out of the school. She was suspended indefinitely. She was eventually offered tutoring for two hours a day at a local community center for two months. Through Vermont Legal Aid's representation, Susannah was reintegrated into the mainstream school, provided with an adequate IEP and behavior intervention plan, and had a charge of disorderly conduct dismissed.

■ **Finding 3: Where Substantial Populations Exist, Black/African-American and Native American Students were Two to Three Times More Likely to be Suspended than White Students**

▶ **Chittenden County**

**Overall Enrollment**

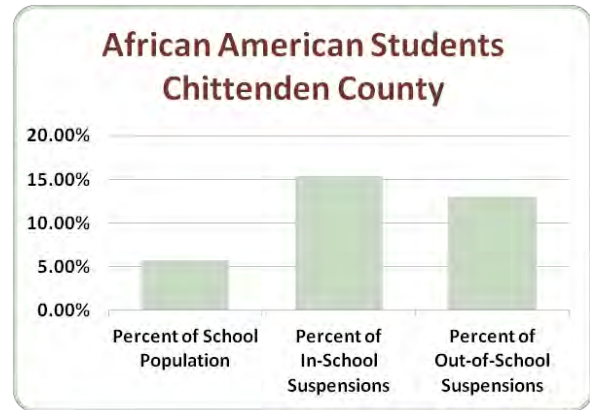
Of the 16,926 children in Chittenden County's public schools that had more than 20 students who identified as African-American, 14,288 (84.4%) identified as White and 964 (5.7%) identified as Black/African-American. For a chart of Chittenden County's numbers and enrollment rates for each category, as analyzed for this section, please see *Appendix I*.

**In-School Suspension**

In 2011-2012, 76 Chittenden County students who identified as Black/African-American received more than one in-school suspension -- that's 7.9% of the county's Black/African-American students and 15.4% of all Chittenden students who received ISS. In the same year, 369 students who identified as White received ISS -- that's 2.6% of the county's White students and 74.5% of its overall ISS population. By comparing these two sets of data, we can conclude that nearly three times as many Black/African-American students received ISS than would be expected based on the enrollment.

**Out-of-School Suspension**

In 2011-2012, 79 Chittenden County students that identified as Black/African-American received OSS – that’s 8.2% of the county’s Black/African-American students and 13.1% of all Chittenden students who received OSS. In the same year, 527 students who identified as White received OSS – that’s 3.2% of the county’s White student population and 75.7% of Chittenden students who received OSS. Again, these numbers show a disproportionate rate of suspension for students identifying as Black/African-American – more than twice as many Black/African-American students received OSS than would be expected based on enrollment.



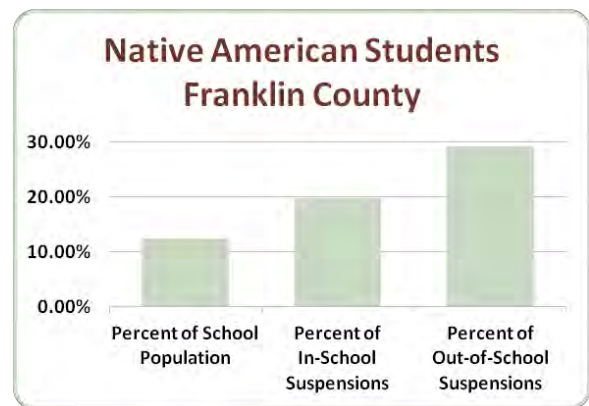
▶ **Franklin County**

**Overall Enrollment**

Of the 3,422 students in Franklin County’s public schools that had more than 20 students who identified as Native American, 2,696 (78.8%) identified as White and 425 (12.4%) identified as Native American. For a chart of Franklin County’s numbers and enrollment rates for each category, as analyzed for this section, please see *Appendix J*.

**In-School Suspension**

In 2011-2012, 62 Franklin County students who identified as Native American received ISS – that’s 14.6% of Franklin’s Native American students and 19.7% of all Franklin students who received ISS. These numbers show a disproportionate rate of suspension for students identifying as Native American with nearly twice as many Native American students receiving ISS than would be expected based on enrollment.



**Out-of-School Suspension**

In 2011-2012, 63 Franklin County students who identified as Native American received an out-of-school suspension -- that’s 14.8% of Franklin County’s Native American students and 29.2% of all Franklin students receiving OSS. These numbers show a disproportionate rate of suspension for students identifying as Native American with Native American students receiving about 2.5 times more OSS than would be expected based on enrollment.

### Student Story | Allison

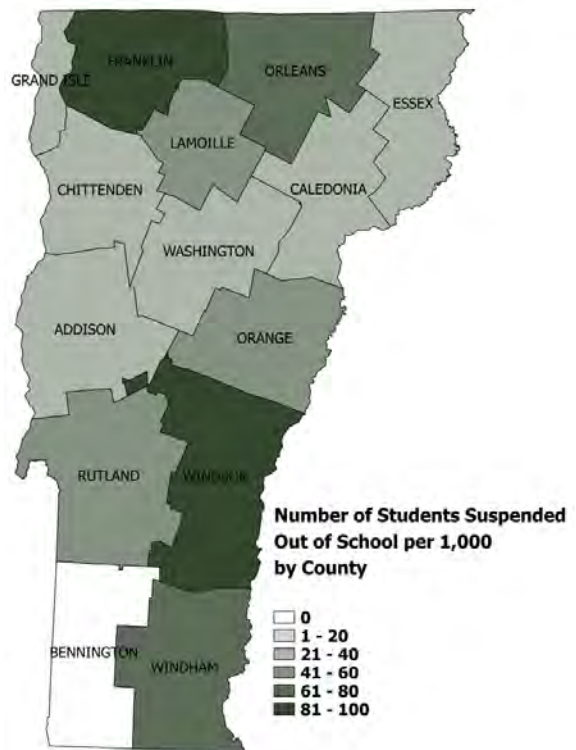
Allison was a student facing many social challenges. She had been homeless, had difficulty attending school regularly, and was far behind her grade level in all subjects. But, she was also a mild-mannered teenager doing her best. She and her brother were new students at a school after a period of homelessness.

For several weeks, without cause, she was taunted by another student who kept bad-mouthing her brother. She was very upset about this, but did nothing. Eventually, she got into an argument with the other girl. The other student came at her, so Allison struck first. School officials quickly broke up the scuffle, and there were no serious injuries. However, Allison received a two-week suspension. Through intervention by Vermont Legal Aid, Allison's suspension was shortened and she was allowed to participate in a local conflict resolution program.

#### ■ Finding 4: The Use of Exclusionary Discipline, Restraint, Seclusion, Referral to Law Enforcement, and School-related Arrest Varies Widely.

##### ▶ School Exclusion

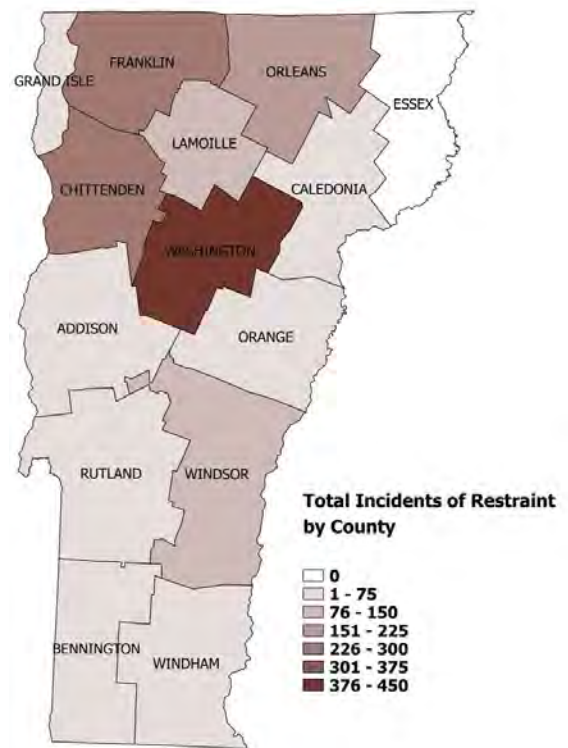
As shown by the rates of in- and out-of-school suspension in *Appendix C* and *Appendix D*, many counties with similar rates of IDEA enrollment nevertheless have widely different discipline rates for students with and without disabilities. For instance, Rutland has an IEP population of 15.8% and Orleans has an IEP population of 15.3%. But, Rutland's IEP OSS rate is 10.8% while Orleans's IEP OSS rate is 15%. Similarly, Chittenden County has 87.8% non-IEP population and Franklin County has 86.6% – nearly identical proportions. Nevertheless, Chittenden County's non-IEP OSS rate is 2.6% while Franklin County's is 7.2% – nearly three times greater. Clearly, different schools are applying discipline in very different ways.



► **Restraint and Seclusion Incidents**

The number of students restrained or secluded also shows disparities based on location, despite similar rates of students on IEPs. For example, in Franklin County, 16.8 of every 1000 students were secluded and 33.7 of every 1000 were restrained. However, in neighboring Chittenden County, with a similar rate of students on IEPs, only 9 students per 1000 were secluded and 13.6 students per 1000 were restrained. Other counties with comparable demographics show similar disparities in the use of restraint and seclusion.

The widely varying data reported by Vermont’s counties is a clear indication that there is no consistency in when and how often restraint and seclusion are used across the state. For charts of the restraint and seclusion rates in each county, please see *Appendix E* and *Appendix F*.

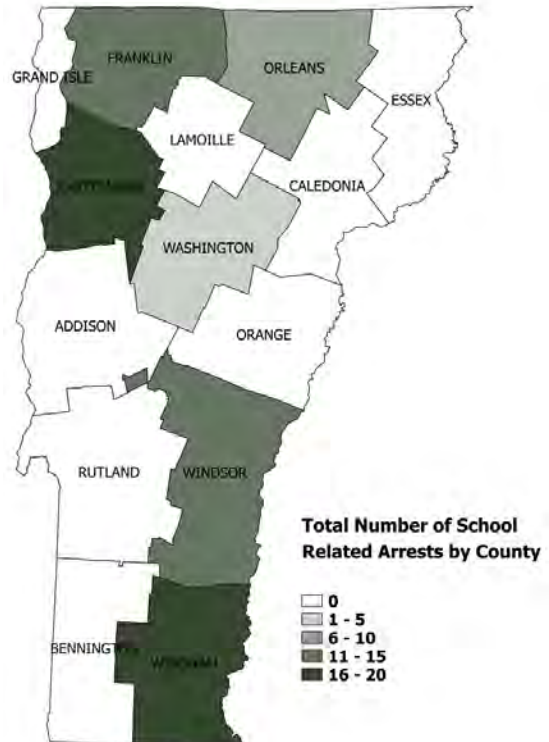
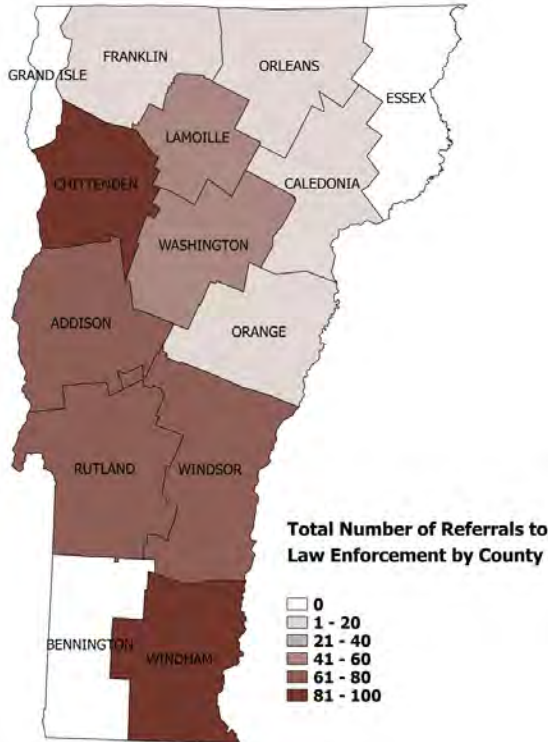




► Referral to Law Enforcement

The number of students in Vermont public schools who were referred to law enforcement or experienced school-related arrest also varied widely depending on where the student lived. Per 1000 students, 18 Addison County students were referred to the police, while only 5 were referred in Chittenden County. About 4 Franklin County students per 1000 were referred to law enforcement, while 20 per 1000 were referred in Windham County.

Again, the variability based on where a student lives demonstrates a possible lack of consistent statewide policies and/or procedures. For charts detailing incidents of referral to law enforcement and school-related arrest in each county, please see *Appendix G* and *Appendix H*.

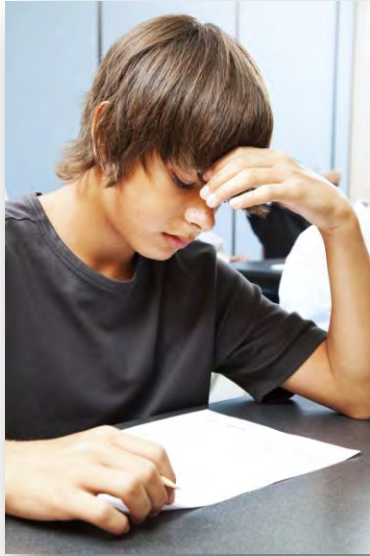


**Student Story | Alex**

Alex was a 12 year old in a rural school district. He had been a good student, but had consistently had trouble in class. When faced with a difficult subject that he didn't understand or an uncomfortable situation that he didn't like, he would shut down. He would refuse to do work or communicate with school staff. At times he would sit down outside the classroom and bang his head against the lockers or wall. Each time this happened, the school would call his mother to have him picked up. The mother explained that her son had been diagnosed with anxiety, depression, and oppositional defiant disorder.

After 16 instances of forced absences, the school filed a truancy action in Family Court. Through Vermont Legal Aid's representation and collaboration with the Office of Juvenile Defender, the truancy action was dismissed and the school was required to evaluate Alex for disabilities. The evaluation determined that Alex had mental health disabilities and required specific accommodations and services to access his education.

■ **Finding 5: Valuable Data on Vermont’s School Discipline Actions is Largely Unavailable, but is Necessary to Understand What Works.**



Limitations in record keeping and reporting make it impossible to say that this report presents a complete picture of how many students were suspended or expelled in 2011-2012 or any other year. As discussed below, despite significant improvements in many schools’ data collection and reporting systems, important school discipline data points are neither collected nor reported. These data points must be collected and accurately reported to ensure we know what is and is not working for Vermont’s children, wherever and wherever they may be. And, if particular populations are found to be more likely to be excluded from school, such as students with disabilities and students of color, we will know how to target our efforts to address these inequities.

As noted in the Methodology Section, the authors contacted the Vermont Agency of Education to find out what data is collected and in what form it is maintained. The information presented below regarding the lack of collection or aggregation criteria is based on the responses of AOE to our data requests.

► **Possible Lack of Reporting and Inaccuracy of Federally Mandated Data Collection**

The 2011-2012 data analyzed for this report featured 50 schools or districts across the state reporting zero incidents of suspension or expulsion. In addition, 38 schools or districts featured zero incidents for every discipline-related indicator collected by the CRDC.

In addition, several schools and districts were not included in the collection’s published data. While many of these were alternative education programs, independent schools, or small schools, larger districts such as Springfield were not reflected in the data collection because they did not certify that their data was accurate.

► **Data Not Reported, Collected, or Aggregated in Vermont**

Although the CRDC is a valuable tool to ensure that certain data is kept by our state’s schools, it does not include a variety of data points that would help Vermont target its planning and actions to the needs of children. For instance, Vermont has many effective alternative education programs for students with emotional/behavioral disabilities. But, the state does not record the number of students transferred to these programs or the reason for their transfer. Vermont does not yet track the educational data of students in the custody of the Department for Children and Families, the number of students excluded into an IAES (Interim Alternative Education Setting), the length of time students are in an IAES, the discipline incidents of students on 504 plans only, the extent to which students receive educational services during suspensions, and the number of suspended days in a year for a given student.

Moreover, Vermont does not aggregate disciplinary data for students related to family income, even though AOE collects and publishes achievement data related to family-income. Although this report’s authors cannot comment on what this data would indicate, other states collecting discipline data related to family-income have shown highly disproportionate rates of suspension and expulsion for children in low-income families. In Vermont, the Burlington School District annually publishes disciplinary data related to family-income. Burlington’s most recent report noted that its low-income students were 4-5 times more likely than upper-income students to be suspended. The district’s 2011-2012 report noted



that while low-income students make up 50% of its students, they represented 90% of the students suspended.

Recommendations for collecting these and other data points are listed in Section V.

### Student Story | Rhonda

Rhonda was a senior in high school, attending an Approved Independent School through publicly provided tuition from her town. Rhonda was excited to finish high school because she hoped to join the military and serve in the Air Force. She was a fairly good student and had never been suspended.

One day she was accused of pulling a small prank on another student. The prank resulted in no injuries or damage to the school or personal property. Rhonda insisted that she had nothing to do with the prank, but she could not prove she was not involved.

The headmaster at the private school expelled her for the prank. When Rhonda's mother asked for a hearing, the headmaster refused, stating that he was under no obligation to provide her a hearing on the expulsion and that the school board did not have any authority over his decisions.

Rhonda contacted Legal Aid. Unfortunately, we were forced to tell her, based on the law, that the independent school can suspend and expel students as it wishes. Independent schools do not have to follow the same procedures for expulsion as public schools, even when public funds pay for the student to attend the school.



## V. Moving Forward – Recommendations for Changing Student Discipline and Improving Student Outcomes

### ■ Recommendation 1: Vermont Must Limit Disciplinary Exclusion and its Collateral Effects

Policy makers must work with school districts to reexamine discipline policies and reach a statewide consensus around approaches to reduce exclusionary discipline, particularly for non-violent offenses, address the disparities in application of exclusionary discipline, and improve academic outcomes for all students. The following reforms will bring our school discipline laws in line with other states that have passed progressive reforms to make schools safer and help all students succeed. Please see *Appendix K* for information about school discipline legislative reforms in other states.

#### ▶ General

- Require all schools to implement a universal and targeted strategy to improve school climate and reduce exclusionary discipline through PBIS, restorative justice, conflict resolution, peer mediation, non-punitive response protocols, social-emotional learning, or similar evidence-based programs.

- Require all schools to conduct professional development training in a universal and targeted strategy to improve school climate and reduce exclusionary discipline.
- Provide adequate resources for all schools to conduct professional development training and implement a universal and targeted strategy to improve school climate and reduce exclusionary discipline.
- Ensure that students receiving Free or Reduced Price Meals at school can continue to access their meals when suspended.

▶ **In-School Suspension**

- Define in-school suspension in statute.
- Cap the number of consecutive and cumulative days that a student may be suspended in-school without triggering long-term suspension due process procedures.
- Require written notice to parents when a student receives in-school suspension.

▶ **Short-term Out-of-School Suspension**

- Cap short-term suspension at five school days.
- Require that superintendents be notified and give final approval regarding the out-of-school suspension of students in kindergarten through 6<sup>th</sup> grade.

▶ **Long-term Out-of-School Suspension**

- Cap long-term suspension at 45 consecutive school days.
- Define in statute the grounds for long-term suspension.
- Before excluding a student for a long-term suspension, require superintendents or designees to attempt other remedies and consequences and to consider the student's particular needs.
- Require school superintendents to contact the families of students out on long-term suspension every 15 days regarding reentry and educational progress.
- Require schools to develop reentry plans for students that have been out of school for more than 5 consecutive days, including terms for how they can mitigate their long-term suspension.
- Provide a path to have suspensions expunged from students' educational records.

■ **Recommendation 2: Allow Students to Continue to Learn During Suspension and Provide the Necessary Resources**

Whether suspended in school or out of school, students must be provided appropriate educational opportunities when experiencing exclusion from the classroom. Exclusionary discipline should not impede a students' ability to work toward high school graduation.

▶ **In- or Out-of-School Short-term Suspension**

- Provide opportunities for students to make academic progress while excluded and offer them a reasonable amount of time to make up homework, tests, quizzes, projects, or other required work that was missed.

▶ **Long-term Suspension**

- Provide opportunities for students to make academic progress while excluded and offer them a reasonable amount of time to make up homework, tests, quizzes, projects, or other required work that was missed.

- Require an Educational Service Plan for excluded students that offers educational options for their families to choose. Options could include tutoring, after-school classes, alternative placement, Saturday school, online/distance learning, or others. And, provide schools with reimbursement options for the cost of providing these services.
- Require reentry plans for students returning from long-term suspension that include reasonable schedules and strategies for how students will receive instruction and make up assignments missed due to exclusion.

### ■ Recommendation 3: Ensure and Upgrade Students' Constitutional and Civil Rights

When students are excluded from school, they are deprived of the right to an education. In the 1980s, the US Supreme Court mandated that publicly funded students are guaranteed certain procedures to challenge their exclusion. However, the exact procedures are left to the states to define. By ensuring and improving the rights of students, we will better guarantee fairness and prevent unnecessary exclusions.

- ▶ Investigate schools with significant discipline disparities based on race, gender, income, and ability on an annual basis, and work with them to design and implement plans to eliminate their discipline disparities.
- ▶ Update standards of due process in statute to ensure that school personnel explain the procedures and rights when students and families appeal long-term suspensions.
- ▶ Trigger due process protections when the long-term suspension threshold is met with consecutive or cumulative days in a single school year.
- ▶ Allow students receiving long-term suspension to appeal the school board's decision to the Secretary of Education.
- ▶ Conduct periodic random investigations into whether schools are providing due process, adhering to students' civil rights, and tracking data appropriately.
- ▶ Require approved independent schools that receive publicly funded tuition for local students to adhere to the same due process rules that state law and regulations require public schools to follow.

### ■ Recommendation 4: Find Positive Examples by Ensuring Accurate and Timely Reporting of School Discipline Data

Data can show us which schools have reduced their suspension rates, lengths, and repeat occurrences. Understanding which schools are doing well will provide positive examples to schools seeking model programs. Accurate data will also help us have a complete picture of how we are treating the students we can least afford to exclude from school and improve compliance with federal data collection requirements.

- ▶ Provide opportunities for school districts to share information about their data and approaches to keeping schools safe while lowering school discipline rates.
- ▶ Ensure that all data collection definitions in laws and school collection software conform with the CRDC's data definitions.
- ▶ Collect and publish disaggregated and cross-tabulated data about student offenses, frequency of suspensions, expulsions, arrests, referrals to law enforcement, restraint, and seclusion by race/ethnicity, age, offense type, family income, gender, disability, English-Language Learner, foster care, homeless, and immigration status.
- ▶ Track school safety, climate, achievement, and attendance data with discipline data to allow stakeholders to identify correlations and progress.

- ▶ Require schools and local police departments to coordinate the data collection for classroom removals, searches, seizures of property, tickets, court summons, police restraint, and other interactions between police and students.
- ▶ Require approved independent schools that receive publicly funded tuition for local students to adhere to the same data requirements that state law and regulations require public schools to follow.

## VI. Conclusion

All Vermonters want students to have a chance at long-term success. For students to reach post-secondary opportunities and have successful careers, they must be provided a complete public education. Our research shows that some of Vermont's children are being excluded from school at alarming rates. They are also being excluded at disparate rates based on their disability and race. In addition, they are being treated differently depending on the town they live in because each school has its own policies. Students receiving public tuition to attend independent schools are not even receiving the basic due process required at public schools.

Problems with exclusionary discipline persist because our state has not kept tabs on what is happening to these students. Schools are largely not held accountable for their disciplinary data, and some have not submitted confirmed data to the federally required data collection. This lack of accountability has contributed to a policy resulting in unfair student exclusion from school for days, weeks, and months – many times for infractions as minimal as insubordination, running from kindergarten class, and cursing.

The recommendations offered in this report mirror action taken in other states to ensure that students remain connected to school and are excluded only when necessary. They include the need to limit exclusionary discipline, update due process procedures, improve data collection, and enhance accountability. We urge Vermont to change its school discipline policies to support the goal of providing all of Vermont's children an equal opportunity to achieve lifetime success.

## The Authors

### **Jay Diaz, Esq.** **Staff Attorney**

Jay Diaz is a staff attorney with Vermont Legal Aid's Disability Law Project and Vermont Law Help Hotline. He was the 2012-2014 Vermont Bar Foundation's Poverty Law Fellow, for which he created an education law project representing low-income families to ensure access, stability, and equity in Vermont's education system. Jay is Vermont Legal Aid's representative on the Vermont Child Poverty Council and the Children's Justice Act Task Force, and he is a member of the Special Education Advocates Coalition. Jay is a 2012 graduate of Boston College Law School.

### **Tristan Sullivan-Wilson** **Youth Law and Policy Intern**

Tristan Sullivan-Wilson was the 2014 Youth Law and Policy Intern at Vermont Legal Aid. She graduated from the University of Vermont in 2014. Prior to interning with Vermont Legal Aid, she worked as a Legal Intern at Women Helping Battered Women and as a Public Policy Intern with Zatz and Renfrew Consulting. Tristan is currently serving as an AmeriCorpsVISTA Community Partnership Coordinator at ReSOURCE in Burlington, Vermont.

### **Authors' Acknowledgements**

The authors would like to thank the organizations and people who made this report possible. Most importantly, the Vermont Bar Foundation, Vermont Bar Association, and attorneys across Vermont who donated to the Vermont Poverty Law Fellowship deserve special recognition. The ongoing support for the Vermont Poverty Law Fellowship allowed Jay to spend two years representing low-income and disabled students in education matters and researching the issues discussed in this report. Also, special thanks to the attorneys and staff at Vermont Legal Aid and Legal Services Law Line of Vermont who have helped craft this report. Special thanks to Sam Abel-Palmer, Eric Avildsen, Nancy Breiden, Sherrie Brunelle, Jane Callahan, Christopher Curtis, Laura Gans, Tom Garrett, Erika Gleason, Sandra Gluck, Marilyn Mahusky, Sandy Paritz, Barb Prine, Julia Shaw, and Sara Zeno.

## Appendices

### Appendix A

#### Definitions of Data Categories

(taken from the U.S. Department of Education's Civil Rights Data Collection [CRDC])

The following are the definitions used by the CRDC's data collection:

|   |   |
|---|---|
| <b>Expulsion with educational services</b>    | An action taken by the local educational agency removing a child from his/her regular school for disciplinary purposes, with the continuation of educational services, for the remainder of the school year or longer in accordance with local educational agency policy. Expulsion with educational services also includes removals resulting from violations of the Gun Free Schools Act that are modified to less than 365 days.   |
| <b>Expulsion without educational services</b> | An action taken by the local educational agency removing a child from his/her regular school for disciplinary purposes, with the cessation of educational services, for the remainder of the school year or longer in accordance with local educational agency policy. Expulsion without services also includes removals resulting from violations of the Gun Free Schools Act that are modified to less than 365 days.   |
| <b>In-school suspension</b>                   | Instances in which a child is temporarily removed from his or her regular classroom(s) for at least half a day but remains under the direct supervision of school personnel more than once in the year. Direct supervision means school personnel are physically in the same location as students under their supervision.  |
| <b>Mechanical Restraint</b>                   | <p>The use of any device or equipment to restrict a student's freedom of movement. The term does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed, such as:</p> <ul style="list-style-type: none"> <li>• Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;</li> <li>• Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;</li> <li>• Restraints for medical immobilization; or</li> <li>• Orthopedically prescribed devices that permit a student to participate in activities without risk of harm.</li> </ul> |
| <b>Out-of-school suspension</b>               | <p>For students with disabilities (IDEA):</p> <p>Out-of-school suspension is an instance in which a child is temporarily removed from his/her regular school for disciplinary purposes to another setting (e.g., home, behavior center). This includes both removals in which no IEP services are provided because the removal is 10 days or less as well as removals in which the child continues to receive services according to his/her IEP.</p> <p>For students without disabilities and students with disabilities served solely under Section 504:</p> <p>Out-of-school suspension means excluding a student from school for disciplinary reasons for one school day or longer. This does not include students who served their suspension in the school.</p>  |
| <b>Physical Restraint</b>                     | A personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term physical restraint does not include a physical escort. Physical escort means a temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a student who is acting out to walk to a safe location.   |

|   |  |
|---|--|
| <p><b>Race and ethnicity</b></p>          | <p>In October 2007, the Department adopted new guidance for disaggregating counts by race and ethnicity. Education units must adopt the new methodology by SY 2010-11, and are encouraged to adopt the new methodology as early as possible following the publication of the October 2007 guidance. For the 2011-12 CRDC, all LEAs are subject to the requirements of the Department’s 2007 Final Guidance on Maintaining, Collecting, and Reporting Racial and Ethnic Data to the U.S. Department of Education.</p> <p>The following is a simplified overview of the new method, but is not the official regulation. For full official information, see the October 2007 guidance at:<br/> <a href="http://www.ed.gov/legislation/FedRegister/other/2007-4/101907c.html">http://www.ed.gov/legislation/FedRegister/other/2007-4/101907c.html</a></p> <p>The new method has a procedure for collecting racial and ethnic data and a procedure for reporting racial and ethnic data.</p> <p>To collect the data, the agency must ask a two part question:</p> <ul style="list-style-type: none"> <li>A) Are you Hispanic/Latino (Yes/No)</li> <li>B) Select one or more races from the following five racial groups:             <ul style="list-style-type: none"> <li>(a) American Indian or Alaska Native</li> <li>(b) Asian</li> <li>(c) Black or African American</li> <li>(d) Native Hawaiian or Other Pacific Islander</li> <li>(e) White</li> </ul> </li> </ul> <p>Once the data are collected, the education unit tabulates as follows.</p> <p>There are 7 reporting categories.</p> <ul style="list-style-type: none"> <li>1) Hispanic/Latino of any race</li> </ul> <p>And for individuals who are non-Hispanic/Latino:</p> <ul style="list-style-type: none"> <li>2) American Indian or Alaska Native</li> <li>3) Asian</li> <li>4) Black or African American</li> <li>5) Native Hawaiian or Other Pacific Islander</li> <li>6) White</li> <li>7) Two or more races</li> </ul> <p>--If a student answered the first question “Yes” then that student is tabulated as Hispanic, even if the student checked one or more categories in response to the second question.</p> <p>--If a student answered the first question “No” and checked a single category for the second question, then that student is tabulated as the checked category from the second question.</p> <p>--If a student answered the first question “No” and checked more than one category for the second question, then that student is tabulated as “Two or more races.”</p> <p>Note that the new method does not employ a practice of allowing the student to check a box labeled “two or more races.” Collections that employ such a method do not meet the Department’s October 2007 Guidance.</p> |
| <p><b>Referral to law enforcement</b></p> | <p>Referral to law enforcement is an action by which a student is reported to any law enforcement agency or official, including a school police unit, for an incident that occurs on school grounds, during school-related events, or while taking school transportation, regardless of whether official action is taken.</p>  |



|   |   |
|---|---|
| <p><b>School-related arrest</b></p>                         | <p>A school-related arrest is an arrest of a student for any activity conducted on school grounds, during off-campus school activities (including while taking school transportation), or due to a referral by any school official.</p>   |
| <p><b>Seclusion</b></p>                                     | <p>The involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.</p>  |
| <p><b>Students with disabilities (IDEA)</b></p>             | <p>Children (students) having mental retardation, hearing impairment including deafness, speech or language impairment, visual impairment including blindness, serious emotional disturbance (hereafter referred to as emotional disturbance), orthopedic impairment, autism, traumatic brain injury, developmental delay, other health impairment, specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, are eligible to receive special education and related services under the Individuals with Disabilities Education Act (IDEA) according to an individualized education program, individual family service plan, or service plan.</p> <p>The “Students with Disabilities (IDEA)” column in survey items always refers to students with disabilities who are receiving services under the Individuals with Disabilities Education Act (IDEA).</p> |
| <p><b>Students with disabilities – Section 504 only</b></p> | <p>An elementary or secondary student with a disability who is being provided with special education and/or related aids and services under Section 504 of the Rehabilitation Act of 1973, as amended, and is NOT being provided with services under the Individuals with Disabilities Education Act (IDEA).</p> <p>The “Section 504 only” column in survey items always refers to students with disabilities who are being provided with related aids and services under Section 504 of the Rehabilitation Act of 1973, as amended, and are NOT being provided with services under the Individuals with Disabilities Education Act (IDEA).</p>   |

## Appendix B

| County            | With IEP       |                 | Without IEP    |                 | Enrollment |
|-------------------|----------------|-----------------|----------------|-----------------|------------|
|                   | Enrollment (~) | Enrollment Rate | Enrollment (~) | Enrollment Rate |            |
| Addison County    | 580            | 13.29%          | 3785           | 86.71%          | 4365       |
| Bennington County | 180            | 13.78%          | 1126           | 86.22%          | 1306       |
| Caledonia County  | 517            | 18.75%          | 2240           | 81.25%          | 2757       |
| Chittenden County | 2490           | 12.22%          | 17891          | 87.78%          | 20381      |
| Essex County      | 83             | 11.86%          | 617            | 88.14%          | 700        |
| Franklin County   | 1137           | 13.43%          | 7328           | 86.57%          | 8465       |
| Grand Isle County | 66             | 11.15%          | 526            | 88.85%          | 592        |
| Lamoille County   | 464            | 12.46%          | 3260           | 87.54%          | 3724       |
| Orange County     | 518            | 17.97%          | 2365           | 82.03%          | 2883       |
| Orleans County    | 739            | 15.26%          | 4103           | 84.74%          | 4842       |
| Rutland County    | 1257           | 15.77%          | 6712           | 84.23%          | 7969       |
| Washington County | 963            | 12.70%          | 6620           | 87.30%          | 7583       |
| Windham County    | 857            | 15.94%          | 4519           | 84.06%          | 5376       |
| Windsor County    | 739            | 11.41%          | 5737           | 88.59%          | 6476       |
| <b>VT TOTAL</b>   | 10590          | 13.68%          | 66829          | 86.32%          | 77419      |

**Note:** The 2011-2012 CRDC did not show any reported disciplinary incidents in Bennington County public schools. While it is possible that no incidents occurred in Bennington schools, it is at least equally possible that the data was not recorded, not reported accurately, or not certified. Bennington County students also represent a very small fraction of the overall total numbers, and thus have little affect on the results of this report. For these reasons, and because we compare county data throughout the remainder of the appendices, Bennington County school data has not been included in this report's data calculations going forward.

## Appendix C

| In-School Suspensions (ISS) |           |          |             |                         |             |             |                         |
|-----------------------------|-----------|----------|-------------|-------------------------|-------------|-------------|-------------------------|
| County                      | Total ISS | With IEP |             |                         | Without IEP |             |                         |
|                             |           | # of ISS | Rate of ISS | Percentage of Total ISS | # of ISS    | Rate of ISS | Percentage of Total ISS |
| <b>Addison County</b>       | 176       | 64       | 11.03%      | 36.36%                  | 112         | 2.96%       | 63.64%                  |
| <b>Caledonia County</b>     | 110       | 33       | 6.38%       | 30.00%                  | 77          | 3.44%       | 70.00%                  |
| <b>Chittenden County</b>    | 630       | 167      | 6.71%       | 26.51%                  | 463         | 2.59%       | 73.49%                  |
| <b>Essex County</b>         | 19        | 6        | 7.23%       | 31.58%                  | 13          | 2.11%       | 68.42%                  |
| <b>Franklin County</b>      | 665       | 140      | 12.31%      | 21.05%                  | 525         | 7.16%       | 78.95%                  |
| <b>Grand Isle County</b>    | 35        | 14       | 21.21%      | 40.00%                  | 21          | 3.99%       | 60.00%                  |
| <b>Lamoille County</b>      | 149       | 52       | 11.21%      | 34.90%                  | 97          | 2.98%       | 65.10%                  |
| <b>Orange County</b>        | 164       | 53       | 10.23%      | 32.32%                  | 111         | 4.69%       | 67.68%                  |
| <b>Orleans County</b>       | 306       | 111      | 15.02%      | 36.27%                  | 195         | 4.75%       | 63.73%                  |
| <b>Rutland County</b>       | 469       | 136      | 10.82%      | 29.00%                  | 333         | 4.96%       | 71.00%                  |
| <b>Washington County</b>    | 214       | 72       | 7.48%       | 33.64%                  | 142         | 2.15%       | 66.36%                  |
| <b>Windham County</b>       | 504       | 157      | 18.32%      | 31.15%                  | 347         | 7.68%       | 68.85%                  |
| <b>Windsor County</b>       | 420       | 141      | 19.08%      | 33.57%                  | 279         | 4.86%       | 66.43%                  |
| <b>VT TOTAL</b>             | 3861      | 1146     | 11.01%      | 29.68%                  | 2715        | 4.13%       | 70.32%                  |

## Appendix D

| Out-of-School Suspension/Expulsion (OSS) |             |             |               |                         |             |              |                         |
|--|-------------|-------------|---------------|-------------------------|-------------|--------------|-------------------------|
| County                                   | Total OSS   | With IEP    |               |                         | Without IEP |              |                         |
|  |             | # of OSS    | Rate of OOS   | Percentage of Total OSS | # of OSS    | Rate of OOS  | Percentage of Total OSS |
| Addison County                           | 167         | 80          | 13.79%        | 47.90%                  | 87          | 2.30%        | 52.10%                  |
| Caledonia County                         | 64          | 37          | 7.16%         | 57.81%                  | 27          | 0.15%        | 42.19%                  |
| Chittenden County                        | 742         | 214         | 8.59%         | 28.84%                  | 528         | 2.95%        | 71.16%                  |
| Essex County                             | 22          | 6           | 7.23%         | 27.27%                  | 16          | 2.59%        | 72.73%                  |
| Franklin County                          | 768         | 163         | 14.34%        | 21.22%                  | 605         | 8.26%        | 78.78%                  |
| Grand Isle County                        | 16          | 4           | 6.06%         | 25.00%                  | 12          | 2.28%        | 75.00%                  |
| Lamoille County                          | 223         | 69          | 14.87%        | 30.94%                  | 154         | 4.72%        | 69.06%                  |
| Orange County                            | 132         | 61          | 11.78%        | 46.21%                  | 71          | 3.00%        | 53.79%                  |
| Orleans County                           | 305         | 94          | 12.72%        | 30.82%                  | 211         | 5.14%        | 69.18%                  |
| Rutland County                           | 342         | 156         | 12.41%        | 45.61%                  | 186         | 2.77%        | 54.39%                  |
| Washington County                        | 262         | 94          | 9.76%         | 35.88%                  | 168         | 2.54%        | 64.12%                  |
| Windham County                           | 410         | 146         | 17.04%        | 35.61%                  | 264         | 5.84%        | 64.39%                  |
| Windsor County                           | 529         | 148         | 20.03%        | 27.98%                  | 381         | 6.64%        | 72.02%                  |
| <b>VT TOTAL</b>                          | <b>3982</b> | <b>1272</b> | <b>12.22%</b> | <b>31.94%</b>           | <b>2710</b> | <b>4.12%</b> | <b>68.06%</b>           |

## Appendix E

| Seclusion  |     |      |    |            |                        |       |
|------------|-----|------|----|------------|------------------------|-------|
| County     | 504 | IDEA | WO | Enrollment | Rate per 1000 Students | Total |
| Addison    | 0   | 1    | 2  | 4365       | 0.68%                  | 3     |
| Caledonia  | 0   | 0    | 0  | 2757       | 0%                     | 0     |
| Chittenden | 1   | 149  | 30 | 20381      | 9%                     | 177   |
| Essex      | 0   | 0    | 0  | 700        | 0%                     | 0     |
| Franklin   | 13  | 93   | 36 | 8465       | 16.8%                  | 142   |
| Grand Isle | 0   | 2    | 1  | 592        | 5.1%                   | 3     |
| Lamoille   | 2   | 142  | 4  | 3724       | 39.7%                  | 148   |
| Orange     | 1   | 6    | 4  | 2883       | 3.8%                   | 11    |
| Orleans    | 0   | 0    | 0  | 4842       | 0%                     | 0     |
| Rutland    | 0   | 23   | 0  | 7969       | 2.9%                   | 23    |
| Washington | 1   | 56   | 40 | 7583       | 12.8%                  | 97    |
| Windham    | 0   | 0    | 0  | 5376       | 0%                     | 0     |
| Windsor    | 1   | 4    | 1  | 6476       | 0.9%                   | 6     |

**Appendix F**

| <b>Restraint</b>  |            |             |           |                   |                               |              |
|-------------------|------------|-------------|-----------|-------------------|-------------------------------|--------------|
| <b>County</b>     | <b>504</b> | <b>IDEA</b> | <b>WO</b> | <b>Enrollment</b> | <b>Rate Per 1000 Students</b> | <b>Total</b> |
| <b>Addison</b>    | 0          | 26          | 4         | 4365              | 6.8%                          | 30           |
| <b>Caledonia</b>  | 0          | 33          | 13        | 2757              | 16.7%                         | 46           |
| <b>Chittenden</b> | 5          | 222         | 51        | 20381             | 13.6%                         | 278          |
| <b>Essex</b>      | 0          | 0           | 0         | 700               | 0%                            | 0            |
| <b>Franklin</b>   | 11         | 235         | 39        | 8465              | 33.7%                         | 285          |
| <b>Grand Isle</b> | 0          | 7           | 11        | 592               | 30.4%                         | 18           |
| <b>Lamoille</b>   | 3          | 98          | 2         | 3724              | 27.7%                         | 103          |
| <b>Orange</b>     | 5          | 42          | 6         | 2883              | 18.4%                         | 53           |
| <b>Orleans</b>    | 0          | 218         | 2         | 4842              | 45.4%                         | 220          |
| <b>Rutland</b>    | 0          | 34          | 2         | 7969              | 4.5%                          | 36           |
| <b>Washington</b> | 6          | 355         | 69        | 7583              | 56.7%                         | 430          |
| <b>Windham</b>    | 6          | 39          | 20        | 5376              | 12.1%                         | 65           |
| <b>Windsor</b>    | 12         | 102         | 11        | 6476              | 19.3%                         | 125          |

**Appendix G**

| Referral   |     |      |    |            |                        |       |
|------------|-----|------|----|------------|------------------------|-------|
| County     | 504 | IDEA | WO | Enrollment | Rate per 1000 Students | Total |
| Addison    | 5   | 13   | 62 | 4365       | 18.33%                 | 80    |
| Caledonia  | 0   | 4    | 0  | 2757       | 1.45%                  | 4     |
| Chittenden | 6   | 25   | 60 | 20381      | 5.45%                  | 91    |
| Essex      | 0   | 0    | 0  | 700        | 0%                     | 0     |
| Franklin   | 4   | 4    | 11 | 8465       | 3.9%                   | 19    |
| Grand Isle | 0   | 0    | 0  | 592        | 0%                     | 0     |
| Lamoille   | 0   | 19   | 27 | 3724       | 12.35%                 | 46    |
| Orange     | 2   | 4    | 10 | 2883       | 5.55%                  | 16    |
| Orleans    | 0   | 4    | 8  | 4842       | 4.13%                  | 20    |
| Rutland    | 0   | 21   | 44 | 7969       | 8.16%                  | 65    |
| Washington | 2   | 14   | 28 | 7583       | 6.07%                  | 44    |
| Windham    | 21  | 35   | 40 | 5376       | 20.83%                 | 96    |
| Windsor    | 4   | 29   | 29 | 6476       | 11.9%                  | 62    |



**Appendix H**

| <b>Arrest</b>     |            |             |           |                   |              |
|-------------------|------------|-------------|-----------|-------------------|--------------|
| <b>County</b>     | <b>504</b> | <b>IDEA</b> | <b>WO</b> | <b>Enrollment</b> | <b>Total</b> |
| <b>Addison</b>    | 0          | 0           | 0         | 4365              | 0            |
| <b>Caledonia</b>  | 0          | 0           | 0         | 2757              | 0            |
| <b>Chittenden</b> | 2          | 8           | 10        | 20381             | 20           |
| <b>Essex</b>      | 0          | 0           | 0         | 700               | 0            |
| <b>Franklin</b>   | 4          | 4           | 6         | 8465              | 14           |
| <b>Grand Isle</b> | 0          | 0           | 0         | 592               | 0            |
| <b>Lamoille</b>   | 0          | 0           | 0         | 3724              | 0            |
| <b>Orange</b>     | 0          | 0           | 0         | 2883              | 0            |
| <b>Orleans</b>    | 0          | 4           | 4         | 4842              | 8            |
| <b>Rutland</b>    | 0          | 0           | 0         | 7969              | 0            |
| <b>Washington</b> | 0          | 0           | 2         | 7583              | 2            |
| <b>Windham</b>    | 4          | 6           | 6         | 5376              | 16           |
| <b>Windsor</b>    | 2          | 7           | 6         | 6476              | 15           |

**Appendix I – Chittenden County Schools with more than 20 African-American Students**

|                         | In-School Suspension (ISS) |          |                       | Out-of-School Suspension (OSS) |          |                       | Total Enrollment | Enrollment Rate |
|-------------------------|----------------------------|----------|-----------------------|--------------------------------|----------|-----------------------|------------------|-----------------|
|                         | Total                      | ISS Rate | ISS Rate of ISS Total | Total                          | OSS Rate | OSS Rate of OSS Total |                  |                 |
| <b>African-American</b> | 76                         | 7.9%     | 15.4%                 | 79                             | 8.2%     | 13.1%                 | 964              | 5.7%            |
| <b>White</b>            | 369                        | 2.6%     | 75%                   | 458                            | 3.2%     | 75.7%                 | 14288            | 84.4%           |
| <b>Total Students</b>   | 495                        | 2.9%     | N/A                   | 605                            | 3.6%     | N/A                   | 16926            | N/A             |

**Appendix J – Franklin County Schools with more than 20 Native American Students**

|                        | In-School Suspension (ISS) |          |                       | Out-of-School Suspension (OSS) |          |                       | Total Enrollment | Enrollment Rate |
|------------------------|----------------------------|----------|-----------------------|--------------------------------|----------|-----------------------|------------------|-----------------|
|                        | Total                      | ISS Rate | ISS Rate of ISS Total | Total                          | OSS Rate | OSS Rate of OSS Total |                  |                 |
| <b>Native American</b> | 62                         | 14.6%    | 19.7%                 | 63                             | 14.8%    | 29.2%                 | 425              | 12.4%           |
| <b>White</b>           | 242                        | 9%       | 77.1%                 | 145                            | 5.4%     | 67.1%                 | 2696             | 78.8%           |
| <b>Total Students</b>  | 314                        | 9.2%     | N/A                   | 216                            | 6.3%     | N/A                   | 3422             | N/A             |

## Appendix K

### Recent School Discipline Legislation from Other States

- Maine LD 1503 (2012)
  - ▶ Update due process standards for expulsions to require meeting between superintendent and family to explain procedures of hearing and rights.
  - ▶ Re-entry procedures after expulsions must include a plan with conditions that student can meet to gain early reentry, must be provided to parents.
  - ▶ Written notice to parents required for all suspensions, including those that occur in school.
  - ▶ Before referring students to truancy court, school teams must first refer to “student assistance team or designated personnel” to develop an intervention plan.
  
- Massachusetts HB 4332 (2012)
  - ▶ Limit school exclusion to a maximum of 90 days.
  - ▶ Before excluding for more than 10 days, superintendent must attempt other remedies/consequences.
  - ▶ Due process rights triggered by more than 10 days consecutively or cumulatively out of school in one school year.
  - ▶ Superintendent must be notified when a student in kindergarten through 3<sup>rd</sup> grade is suspended out of school; such a suspension does not start until the superintendent approves.
  - ▶ Provide educational services to excluded students.
    - Suspension of 10 days or fewer = schools must provide opportunity for student to make academic progress and make up assignments, tests, quizzes, etc.
    - Suspension of more than 10 days = same as above, plus provide “educational service plan” (schools eligible for reimbursement).
      - Educational Service Plan - may include tutoring, alternative placement, Saturday school, online/distance learning, etc. Parent must receive list of alternative educational services and be given the option to choose from the list.
      - Reimbursement for educational service plan will be studied to review costs and implementation, with reporting to the legislature.
    - Any school with “significant number of students suspended out of school more than 10 cumulative days in year shall be investigated.” Investigation results made public.
  
- Illinois SB 2793 (2014)
  - ▶ Require data submission from all schools, including charter schools, to the Agency of Education for a comprehensive statewide school discipline report to include cross-tabulated and disaggregated data. Report will be published on the Agency’s website.
  - ▶ Require investigation of schools meeting a certain threshold data for school discipline.
  - ▶ Require school improvement plan for districts exceeding certain discipline thresholds.
  
- Colorado HB 12-1345 (2012)
  - ▶ Declaration regarding the School to Prison Pipeline.
  - ▶ Require considerations before suspending a student out of school for more than 10 days.

- ▶ Require school disciplinary plans to include plans for Restorative Justice, Peer Mediation, Counseling, or other PBIS approaches.
  - ▶ School Resource Officer (school-based police officers) must be familiar with school district's disciplinary code.
  - ▶ Require police data collection and reporting to the Secretary of Education for school-related arrests, summons, tickets, trespass orders.
  - ▶ Expulsions by district can be appealed to Head of State Education Agency w/in 10 days of local district decisions.
  - ▶ Opportunity to make up school work during suspensions.
  - ▶ Define what may be grounds for suspension/expulsion.
  - ▶ School Resource Officer training required.
  - ▶ Define "In-School Suspensions" and places limits.
  - ▶ During expulsion, student's family must be contacted every 50 calendar days.
- Washington SB 5946 (2013)
- ▶ Suspensions/Expulsions must be for specific period of time.
  - ▶ "Emergency expulsions" must be converted to another form of corrective action w/in 10 school days.
  - ▶ Reentry Plans required for all students suspended for more than 10 consecutive days.
  - ▶ Annual reporting requirements with disaggregated and cross-tabulated data for gender, foster care, homeless, school district, infraction, bullying, in/out suspension, race, income, sped, LEP, immigrant made available to the public without request.

## Endnotes

<sup>1</sup> Vermont State Board of Education October 16, 2012 - Approved Minutes

<sup>2</sup> Vermont Blueprint to Close the Achievement Gap - January 17, 2012

<sup>3</sup> Vermont Public School Dropout and High School Completion Report - 2013

<sup>4</sup> Bridging the Gap, Pathways to Success for all VT Students - December 2009

<sup>5</sup> Vermont Digger - Latest Poverty Numbers Reveal the Most Challenged Populations - September 23, 2013

<sup>6</sup> Vermont Digger - Vermont has top US High School Graduation Rate - January 22, 2013

<sup>7</sup> Burlington Free Press Archives - Vermont graduation rates are high, but students may be lacking in basic academic skills - April 29, 2012

<sup>8</sup> VSAC Special Report - Gaps in postsecondary education aspiration - A report on disparities among Vermont's high school graduates - April 2014

<sup>9</sup> NCHEMS Information Center - College-Going Rates of High School Graduates, Directly from High School - 2010

<sup>10</sup> Vermont icolleges - CHEF benchmarks, Vermont Commission on Higher Education Funding - December 19, 2008

<sup>11</sup> CSG Justice Center - School Discipline Consensus Report

<sup>12</sup> Center for Civil Rights Remedies and the Research-to-practice Collaborative, National Conference on Race and Gender Disparities in Discipline - Sent Home and Put off-Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the Ninth Grade - December 21, 2012

<sup>13</sup> CSG Justice Center - Breaking School's Rules: A Statewide Study on how School Discipline Relates to Student's Success and Juvenile Justice Involvement

<sup>14</sup> Indiana.Edu - Discipline Disparities - A Research to Practice Collaborative

<sup>15</sup> U.S. DOJ and DOE School Climate and Discipline Package, January, 2014

<sup>16</sup> CSG Justice Center - School Discipline Consensus Report

- <sup>17</sup> *Indiana.Edu - Discipline Disparities - A Research to Practice Collaborative - Eliminating Excessive and Unfair Exclusionary Discipline in Schools Policy Recommendations for Reducing Disparities*
- <sup>18</sup> See id.
- <sup>19</sup> *US Dept of Education Office for Civil Rights - Civil Rights Data Collection - Data Snapshot: School Discipline – March 2014*
- <sup>20</sup> *Civil Rights Data Collection - 2009-2010 & 2011-2012 District or School Reports*
- <sup>21</sup> *National Clearinghouse on Supportive School Discipline - Exclusionary Discipline - Breaking School's Rules: A Statewide Study on how School Discipline Relates to Student's Success and Juvenile Justice Involvement*
- <sup>22</sup> *VTPBiS Annual Report (2012-2013)*
- <sup>23</sup> *VTPBiS Annual Report (2013-2014)*
- <sup>24</sup> *Public Assets Institute - Community High School of Vermont*
- <sup>25</sup> *Examiner.com - New Mass. Law on School Suspension and Expulsion - August 17, 2012*
- <sup>26</sup> *The New York Times - Real Discipline in School - February 16, 2014*
- <sup>27</sup> *League of Education Voters - Implementing the New Discipline Law*
- <sup>28</sup> *All 4 Ed - Webinar Event - December 5, 2013*
- <sup>29</sup> *Indiana.Edu - Discipline Disparities - A Research to Practice Collaborative - Eliminating Excessive and Unfair Exclusionary Discipline in Schools Policy Recommendations for Reducing Disparities*
- <sup>30</sup> *United States Secret Service and United States Department of Education - Preventing Attacks Report - July 2004*
- <sup>31</sup> *Bureau of Justice Statistics - Indicators of School Crime and Safety, 2013*
- <sup>32</sup> *Office of Juvenile Justice and Delinquency Prevention - Juvenile Arrest Rate Trends 1980-2011*
- <sup>33</sup> *School Safety in Chicago Public Schools - What Jeopardizes Conditions and Support Safety in Urban Schools - December 2012*
- <sup>34</sup> *The Civil Rights Project - The Economic Effects of Exclusionary Discipline on Grade Retention and High School Dropout - April 5, 2013*
- <sup>35</sup> *Vermont Digger - Vermont Hangs on to Fifth Place in Per-Pupil Spending - May 23, 2012*
- <sup>36</sup> *VT Coalition of Runaway and Homeless Youth Programs- Annual Report 2013*
- <sup>37</sup> *National Institute of Corrections - Vermont Overview of Correctional System*
- <sup>38</sup> *Alliance for Excellent Education - The High Cost of High School Dropouts - November 2011*
- <sup>39</sup> *Trends in High School Dropout and Completion Rates in the US 1972-2008*
- <sup>40</sup> *National Agenda for Achieving Better Results for Children and Youth with Serious Emotional Disturbance, Center for Effective Collaboration and Practice, 1994 ; Pipeline to Prison: Special Education Too Often Leads to Jail for Thousands of American Children, Juvenile Justice Information Exchange, October 2014*
- <sup>41</sup> *The New York Times - The Opinion Pages - The True Cost of High School Dropouts - January 25, 2012*
- <sup>42</sup> *Minn Post - MPS' Suspension ban for youngest students part of effort to reduce glaring racial disparities in discipline - September 9, 2014*
- <sup>43</sup> *Call to Action: A critical Need for Designing Alternatives to Suspension and Expulsion*
- <sup>44</sup> *Time.com - Does Suspending Students Work? - December 5, 2012*
- <sup>45</sup> *American Psychological Association - Are Zero Tolerance Policies Effective in the Schools? - December 2008*
- <sup>46</sup> *CSG Justice Center - Breaking School's Rules: A Statewide Study on how School Discipline Relates to Student's Success and Juvenile Justice Involvement*
- <sup>47</sup> *American Psychological Association - Are Zero Tolerance Policies Effective in the Schools?- December 2008*
- <sup>48</sup> *Team Child.org - Reclaiming Students: The Educational & Economic of Exclusionary Discipline in Washington State*
- <sup>49</sup> *US Dept of Education - Suspension and Expulsion patterns in six Oregon school Districts - May 2014*
- <sup>50</sup> *Keeping Kids in School and Out of Court - Report and Recommendations - NYC School Justice Partnership Taskforce - May 2013*
- <sup>51</sup> See id.
- <sup>52</sup> *Economic Effects of Exclusionary Discipline - Grade Retention and High School Dropout*

<sup>53</sup> *The Vermont Statutes Online - Title 16: Education 1161a - 1167*

<sup>54</sup> *The New York Times - A Mission to Transform Baltimore's Beaten Schools - December 2, 2010*

<sup>55</sup> *Discipline Disparities: A Research-to-Practice Collaborative - How Educators Can Eradicate Disparities in School Discipline: A Briefing Paper on School-Based Interventions - March, 2014*

<sup>56</sup> 16 V.S.A. 1161a, *The Vermont Statutes Online - Title 16: Education 1161a - Discipline*

<sup>57</sup> 16 V.S.A. 1162(a), *The Vermont Statutes Online - Title 16: Education 1162 - Suspension or expulsion of students*

<sup>58</sup> See id.

<sup>59</sup> See id.

<sup>60</sup> 16 V.S.A. 1163(a), *The Vermont Statutes Online - Title 16: Education 1163 - Transfer of suspension or expulsion to other schools*

<sup>61</sup> 16 V.S.A. 1165(a), *The Vermont Statutes Online - Title 16: Education 1165 - Alcohol and drug abuse*

<sup>62</sup> 16 V.S.A. 1166, *The Vermont Statutes Online - Title 16: Education 1166 - Possession of a firearm at school*

<sup>63</sup> *Vermont Department of Education - Rule 4300: Disciplinary Action*

<sup>64</sup> See id.

<sup>65</sup> *Vermont Department of Education - Rule 4500: State Rules for the Use of Restraint and Seclusion in Schools*

<sup>66</sup> *U.S. Department of Education - Gun-Free Schools Act*

<sup>67</sup> *U.S. Department of Education - Americans with Disabilities Act (ADA) - 2006*

<sup>68</sup> *U.S. Department of Education - Protecting Students With Disabilities: Frequently Asked Questions About Section 504 and the Education of Children with Disabilities - 2013*

<sup>69</sup> *Building the Legacy: IDEA 2004*

<sup>70</sup> *U.S. Department of Education - School Climate and Discipline*

<sup>71</sup> As stated in the CRDC's definition, students given in-school suspension are counted when there is more than one half-day in-school suspension. Therefore, each counted student was suspended for at least 2 half-days in school. We have combined these two half-days into 1 full day for simplicity's sake.

<sup>72</sup> *U.S. Department of Education - National Center for Education Statistics - 2013*

<sup>73</sup> Please note, the 2011-2012 CRDC did not show any reported disciplinary incidents in Bennington County schools. While it is possible that no incidents occurred in Bennington schools, it is at least equally possible that the data was not recorded, not reported accurately, or not certified. For this reason, and because we compare county data throughout the report, Bennington County school data has not been included in this report's data calculations going forward.

<sup>74</sup> *U.S. Department of Education Office for Civil Rights - Civil Rights Data Collection Data Snapshot: School Discipline - March 2014*







**Vermont Legal Aid**  
Working for Justice