

Educate Every Child

Promoting Positive Solutions to School Discipline in Virginia

A report by the Legal Aid Justice Center's JustChildren Program

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Authors

Angela A. Ciolfi, Crystal Shin, and Jeree Harris

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About JustChildren

JustChildren is a program of the Legal Aid Justice Center that provides free legal services to low-income children in the areas of education, juvenile justice, and foster care. Through community organizing, policy advocacy, and impact litigation, JustChildren also works to improve the systems that serve the Commonwealth's most vulnerable children.

Angela Ciolfi is the attorney responsible for this material. This report does not contain legal advice and should not be used as a substitute for obtaining professional legal advice.

Questions? Call 434-977-0553 or write to the Legal Aid Justice Center, 1000 Preston Ave., Suite A, Charlottesville, VA 22903.

Executive Summary

Too many students are suspended for minor misbehavior.

Over **90,500 individual students** were suspended or expelled from a Virginia school in 2010-2011, many of them more than once. Most suspensions are for relatively minor misbehavior, such as disorderly conduct, minor insubordination, or misuse of electronics. Yet the evidence suggests that suspension and expulsion do not make schools safer.

School exclusion hurts everyone.

High suspension rates are associated with low student achievement, high dropout rates, and increased contact with the juvenile justice system. Failure to maintain a positive school climate for all students can lead to teacher dissatisfaction and turnover. We can reduce the costs to society of high dropout, crime, and teacher attrition by adopting more effective approaches to managing challenging behavior in schools.

Virginia should replace school exclusion with more effective alternatives.

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| Promote effective practices. | The General Assembly should require local schools to develop evidence-based alternatives to school exclusion and provide the resources necessary to support these programs. |
| Limit school exclusion. | The General Assembly should limit the length of time that students may be suspended for minor offenses and require that schools provide educational services during any period of suspension or expulsion. |
| Reward schools that reduce disciplinary referrals. | The Virginia Board of Education should use its Virginia Incentive Program (VIP) to reward schools that reduce disciplinary referrals, suspension, and expulsion. |
| Collect and report useful data. | The Virginia Department of Education should collect and publicly report disciplinary data, including alternative program placement, disaggregated by race/ethnicity, gender, poverty level, and disability status. |

Keep reading . . .

This Report will discuss the impact of school exclusion in Virginia. It will also demonstrate how school exclusion negatively affects all Virginians and make recommendations for making our schools safer, stronger, and more conducive to learning for all students.

Introduction

Picture this: A student misbehaves in school and disrupts a class. The teacher sends the student to the principal's office. The principal sends the student home. What happens next? Who supervises the student while he or she stays home? Who helps the student catch up with his studies? Who teaches the student how to replace bad behavior with good?

Or picture this: A mother finds marijuana hidden in her middle school child's room. Upon confronting her child and finding out that another student placed the marijuana in her child's backpack, the mother goes to the school and informs school officials. Citing the school's zero tolerance policy for drug possession, the principal informs the mother that the child will be expelled. Following extensive advocacy, the student is involuntarily transferred to another regular middle school.

Incidents like these represent thousands of suspensions and expulsions that could be handled through alternative disciplinary methods.

Nationally, 3.3 million students are suspended annually,¹ resulting in students falling behind in their classes, lower student achievement, and a negative school climate in which students view administrators, faculty, and staff as adversaries, rather than ambassadors to careers and higher education.

Without adequate supports for students, educators struggling to manage challenging behaviors understandably resort to short-term solutions such as suspension and expulsion. Schools have increased class sizes and cut support staff in response to budget cuts at the state level and the end of the federal stimulus payments. These cuts mean there are fewer adults in schools to support struggling students and deal with misbehavior.

But school exclusion creates more problems than it solves. High suspension rates are associated with low student achievement, high dropout rates, and increased contact with the juvenile justice system. Failure to maintain a positive school climate for all students can lead to teacher dissatisfaction and turnover. Schools should adopt more effective ways to prevent and respond to challenging behavior, and they need support from the General Assembly and the Virginia Department of Education in implementing those measures. The state should take a leading role in replacing a failed exclusionary model with programs that keep students in classrooms and on track to graduate.

In September of 2011, a fourteen year old student with autism ran down a football field during halftime in a banana costume. A sheriff grabbed him, cuffed him, and placed him in a police car. Stafford County school administrators suspended the student for 10 days and recommended suspension for the entire year. After public outcry, the student was readmitted to school.

Source: The Free-Lance Star

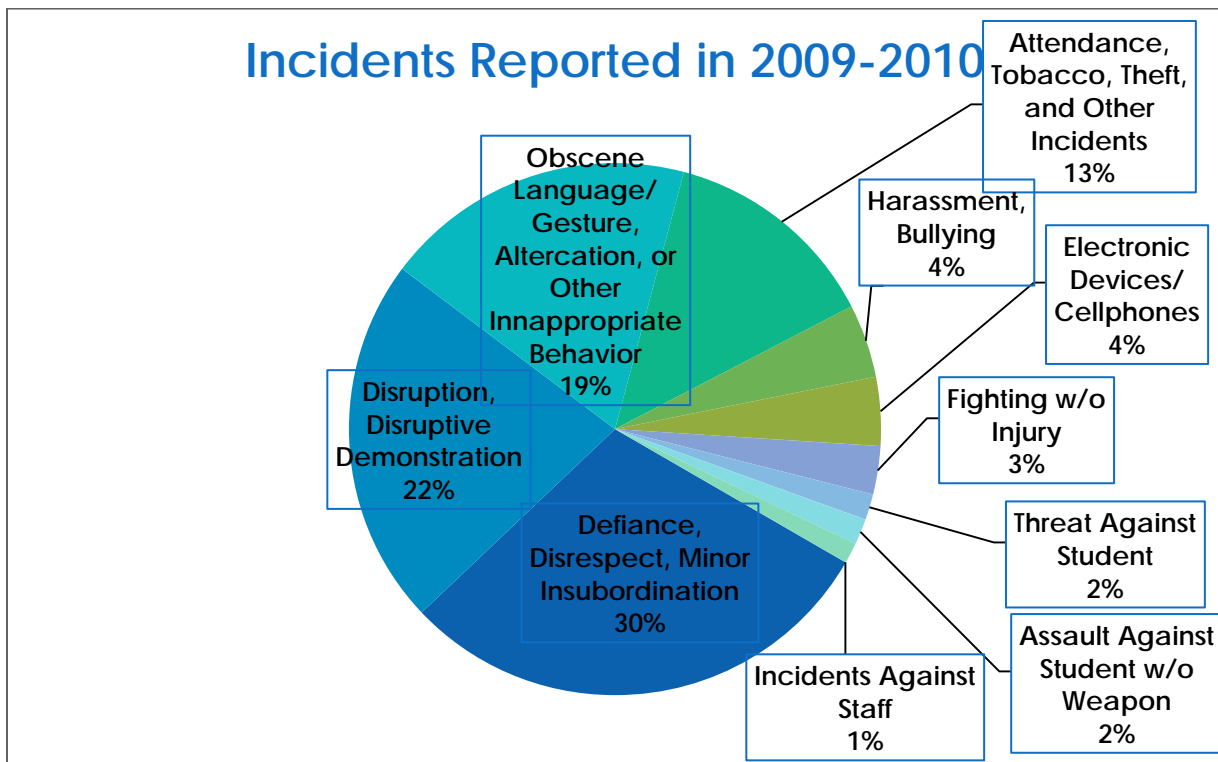
The Data in Virginia

The Virginia Code authorizes schools to suspend or expel students for “sufficient cause.”² Students are frequently suspended without educational services.³ Teachers also have authority to remove a student from a particular class, but schools must continue to provide educational services.⁴ Students may not be suspended for truancy.⁵

- **Too many students are suspended, expelled, or placed in alternative programs.**

Last year, more than **90,500 individual students** were suspended or expelled, many of them more than once.⁶ These students would fill over 4,500 classrooms.

Most disciplinary incidents are for minor misbehavior that do not involve weapons, drugs, or injury to others. In 2009-10, the top four incidents reported by Virginia school divisions were defiance, classroom/campus disruption, making obscene/inappropriate language or gestures, and disrespect.⁷ These incidents alone made up nearly half of all incidents reported.⁸ Incidents involving weapons constituted only 1.04% of all incidents, while drug offenses comprised 1.6% of all disciplinary outcomes.⁹ Incidents perpetrated by students against other students represented 5.24% of all incidents reported, while incidents of aggression against staff represented only 1.23% of all incidents.¹⁰



In Virginia,

A ***short-term suspension*** is any suspension for 10 days or fewer.

A ***long-term suspension*** is any suspension longer than 10 days, but shorter than 365 days.

An ***expulsion*** is for 365 days.

By the Numbers

In 2010-11, Virginia schools administered:

- 708 expulsions
- 5,761 long-term suspensions or modified expulsions
- 152,648 short-term suspensions

This is a rate of 884 suspensions or expulsions per school day.

Last year, over 27,700 short-term suspensions were issued to elementary school students.

Source: Va. Dep't of Educ'n Safe Schools Information Resource

Students are frequently suspended out of school for relatively minor misbehavior. **In 2009-2010, approximately 75% of all short-term suspensions were for minor acts of misconduct.**¹¹ In 2009-10, at least 1,544 students were suspended for more than ten days for behavior that did not involve weapons, drugs, or injury or threat to a person.¹²

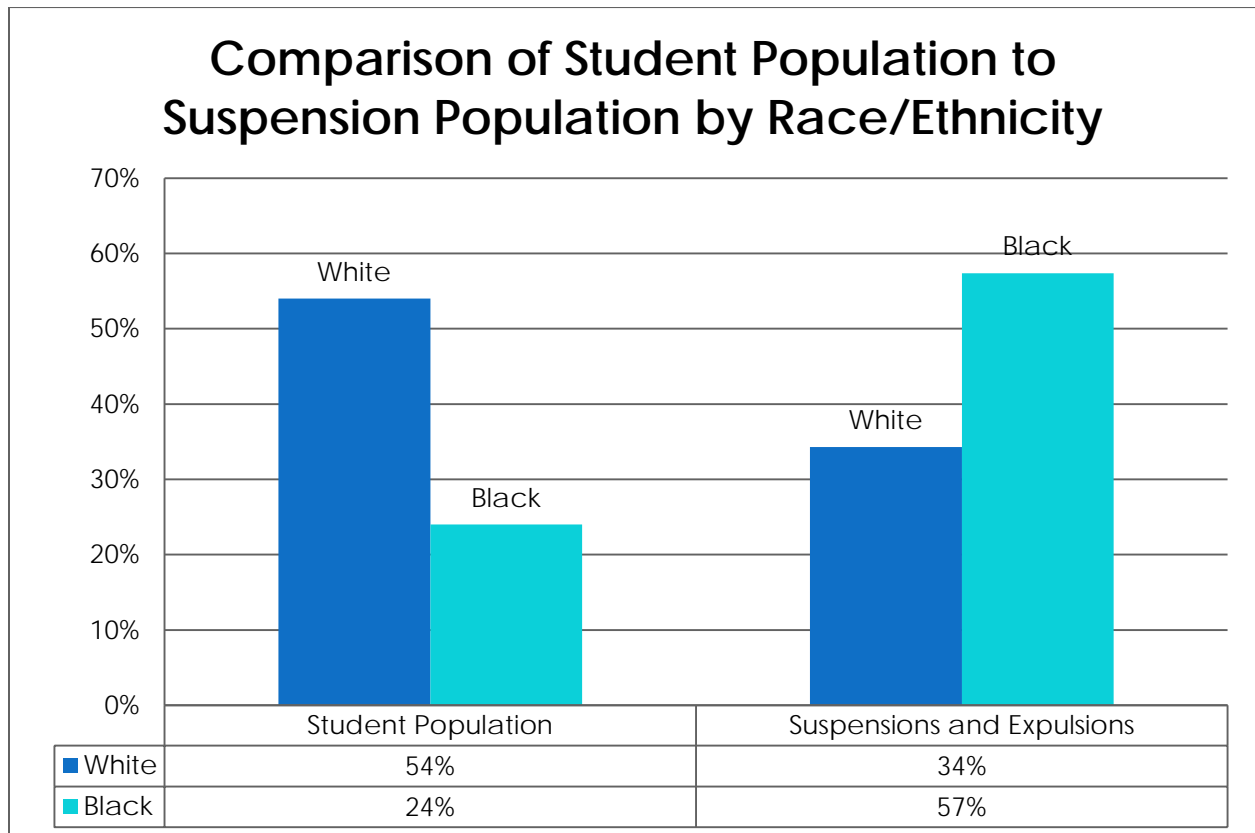
Students may be placed in alternative education for serious or repeated violations of school board policy, including any violations that result in long-term suspension or expulsion, and for being charged with or found not innocent of select criminal offenses.¹³ It is not clear how many suspended students receive alternative education. The Virginia Commission on Youth found that in 2006, Virginia's 153 alternative education programs served almost **20,000 students** who were suspended, expelled, or in danger of dropping out.¹⁴

Many alternative education programs provide valuable services to students who would otherwise drop out or be suspended without services, but they vary in quality, curriculum, and even length of school day. Indeed, the Commission found that one in five local programs does not offer students opportunities to earn verified credits and one in four operates fewer than twenty hours per week.¹⁵ Although regional alternative programs must file an annual report to the Virginia Department of Education, there is virtually no regulation or state oversight of local alternative education programs, which serve approximately three-quarters of all alternative education students.¹⁶ Students who exit alternative education programs are not tracked to see whether time spent in alternative education successfully reduces discipline referrals and increases graduation rates.

- **Virginia’s students with disabilities and students of color disproportionately suffer the effects of harsh discipline policies.**

Suspensions and expulsions disproportionately affect students from economically disadvantaged backgrounds, students with emotional and behavioral disabilities, and minority students.¹⁷ Students of color, particularly black males, are disciplined at greater rates and receive harsher punishments than white students exhibiting similar behaviors.¹⁸ Black students are sent to the office, suspended, and expelled at higher rates than white students even though researchers have found no support for the hypothesis that black students misbehave more often.¹⁹ Black students are typically disciplined for more subjective reasons, such as disrespect, excessive noise, threats, and loitering than for more objective reasons, such as smoking, leaving without permission, and vandalism.²⁰

Virginia’s black students are far more likely to be suspended than other racial or ethnic groups. **While black students make up only 24% of Virginia’s student body, they received 57% of the total suspensions and expulsions in 2010-2011.**²¹



In 2009-10, 16% of black students had received at least one suspension or expulsion, compared with 5% of white students.²² These numbers are even higher for high schools. The average Virginia high school had a black suspension rate of 24%, more than double

the white suspension rate of 11%.²³ In 2010-11, black students were almost four times as likely to be suspended or expelled than white students, in comparison to their proportion in the total student population.²⁴ Black males, in particular, are disproportionately impacted by school exclusion. **While black male students make up 12% of the population, they received 40% of all suspensions and expulsions in 2010-11.**²⁵

Virginia's students with disabilities are also more likely to be suspended and expelled than other students.²⁶ In 2010-2011, they received short-term suspensions at a rate that was 2.4 times as high as the rate for non-disabled students.²⁷ All but one of Virginia's 132 school divisions had a higher short-term suspension rate for students with disabilities than for non-disabled students, including eighty divisions that used short-term suspension twice as often and fourteen divisions that used short-term suspension four times as often as it is used for non-disabled students. There are also significant discrepancies in long-term suspensions and expulsions.²⁸ Earlier this year, the Virginia Department of Education was cited by the U.S. Department of Education for failure to review the policies, procedures, and practices of school divisions with significant discrepancies in suspension and expulsion rates.²⁹

- **There is too much we do not know about school discipline practices.**

Although Virginia maintains the Safe Schools Information Resource (SSIR), a database dedicated to making school discipline data accessible to the general public,³⁰ there is a lot of data and information that is not publicly reported or is not collected at all.

The Virginia Department of Education collects but does not publicly report disciplinary incidents and outcomes by race/ethnicity, disability status, type of disability, or gender. Some of this data can be obtained upon request, but its usefulness to researchers, advocates, and policymakers is limited by the Department's strict rules against releasing any data set composed of fewer than ten students. Collecting and reporting disaggregated data would highlight challenging areas for schools and inform best practices going forward. Several states already publish disaggregated data, including Colorado, Florida, Maryland, Minnesota, North Carolina, Texas, and Wisconsin.³¹

The Department does not collect:

- The number of students in each school division suspended or expelled without educational services;
- The number of students placed in local alternative education programs, the length of their stays, performance on SOL tests, or graduation rates;
- Disciplinary incidents and outcomes for economically disadvantaged students and students with limited English proficiency; or
- Data for students who are arrested or referred to juvenile court for school-based misconduct.

Four Reasons Why School Exclusion Hurts Everyone

Reason #1: Excluding students from school does not improve their behavior.

Zero tolerance policies were adopted by school systems in the 1990s, following sensational national media coverage of the Columbine school shootings. The term “zero tolerance” refers to school or district policies that are meant to “send[] a message that certain behaviors will not be tolerated by punishing all offenses severely, no matter how minor.”³² It is important to remember that in Virginia, local school boards always have the authority to examine the circumstances related to a particular incident and impose an appropriate disciplinary sanction. Even in cases involving weapons and drugs, where expulsion must be entertained as a matter of federal law, schools may impose less severe consequences or no punishment at all after considering special circumstances.³³

Research shows that “[z]ero tolerance policies are often associated with higher levels of student fear at school, increased rates of school suspension, and loss of instructional time, with little if any evidence of a positive effect on reducing school violence.”³⁴ Indeed, scholars have even found that the psychological effects of zero tolerance are counter-productive and inconsistent with the development of healthy children.³⁵ A 2006 report by the American Psychological Association concluded that “[z]ero tolerance policies are related to student shame, alienation, rejection and breaking of healthy adult bonds...there are a number of reasons to be concerned that such policies may create, enhance, or accelerate negative mental health outcomes for youth.”³⁶

According to the Virginia Department of Education, traditional approaches to student discipline have not been effective in reducing disruptive behavior, vandalism, or the dropout rate.³⁷ In other words, suspension and expulsion do not make schools safer. If anything, suspension and expulsion are predictive of higher rates of future disciplinary problems.³⁸ In fact, students with similar behavioral records are more likely to be referred to the office if they have received a past suspension, suggesting that suspension acts as a reward rather than a punishment.³⁹ As stated by the American Bar Association:

“For disengaged students, exclusion rewards the desire not to attend school, and the practice results in students missing important classroom instruction, falling even further behind in their work, and ultimately dropping out of school.”⁴⁰

Dropouts are expensive.

Using Virginia-specific data, *The Commonwealth Institute* calculates that each new high school graduate represents a cost savings to the state of **\$111,586** over the graduate's lifetime.

Adding social benefits, such as crime rate reductions, a more educated workforce, and increases in private income, the total benefits to the Commonwealth of each new graduate is estimated to be greater than **\$582,000.***

*Michael Cassidy & Sara Okos, "A New Lesson Plan: How Increasing Graduation Rates Boosts Virginia's Economy," *The Commonwealth Institute* (2008)

Although some suspensions are justified as a response to dangerous behavior, most are issued for minor non-dangerous misbehavior. There is little reason to believe, however, that removing children from school will improve their behavior or have a deterrent effect on other youth.⁴¹

Reason #2: Today's suspended and expelled youth are more likely to become tomorrow's dropouts.

Students drop out for a variety of reasons, over many of which schools have no control. But schools do have control over how they prevent and respond to challenging behavior. How many students abandon school because of a cycle of academic and behavioral failure compounded by missed instructional time? Suspension breaks the relationship of trust between students and adults in the school and reinforces a student's detachment. Students who become disengaged from school and develop disciplinary problems are more likely to drop out of school altogether.⁴²

The University of Virginia's Curry School of Education found that Virginia high schools that use suspension most frequently tend to have high dropout rates, even after controlling for student demographics and attitudes.⁴³ **Similarly, the Virginia Department of Education found that students were more likely to drop out if they repeated grades, attended multiple schools, or were frequently absent.**⁴⁴ By forcing students to miss instruction, school exclusion aggravates the circumstances most closely linked to dropping out in Virginia.

Reason #3: Poor school climate leads to lower student achievement and increased teacher turnover.

When students miss instruction and have negative perceptions of their schools, their achievement suffers. Moreover, as a recent report by the National Education Policy Center surmises, if suspending disruptive students were a successful tool to create an improved learning environment for others, we would expect to see higher rates of academic achievement in schools where suspension was used more frequently.⁴⁵ Research indicates, however, that high suspension rates are related to lower student achievement scores, even after controlling for race and poverty.⁴⁶ States with higher suspension rates have lower average scores on the National Assessment of Educational Progress (NAEP) in mathematics, writing, and reading.⁴⁷ A study of Indiana schools found that schools with higher suspension rates are associated with lower passing rates on the state accountability test, regardless of the demographic, economic, or racial makeup of the school.⁴⁸

Many studies have found that teacher turnover is related to a school's behavioral climate. Schools with substantial disciplinary problems are more likely to lose teachers.⁴⁹ Poor behavioral climate is second only to low compensation as a reason for teacher dissatisfaction.⁵⁰ A 2004 study of new public school teachers found that "new teachers in schools with higher rates of behavioral problems and in which they felt they had less influence over their work, less support, and less effective leadership reported lower rates of satisfaction with teaching."⁵¹ Positive school climate promotes students' achievement and motivation to learn, reduces disciplinary problems, and increases teacher retention.⁵²

*In 2003, Judge Teske, a juvenile court judge in Clayton County, Georgia, noticed that school-based arrests had jumped from 46 arrests to 1,200 arrests in eight years. Judge Teske observed that 90% of the arrests were for misdemeanors. Working with schools, community agencies, and law enforcement, Judge Teske designed a system to divert low-level offenses from juvenile court to workshops and mediation. As a result, **school-based referrals to juvenile court fell more than 70%**. Serious weapons incidents dropped nearly 80%, probation caseloads have decreased dramatically, and graduation rates have risen more than 20 percentage points.*

Source: Donna St. George, Judge Steve Teske seeks to keep kids with minor problems out of court, Wa. Post, Oct. 17, 2011.

Reason #4: Harsh penalties for minor misbehavior do not make communities safer.

When students are suspended or expelled without educational alternatives, they have unsupervised time to make choices that are not positive for themselves or their communities. "Time out of school decreases educational opportunity and increases a student's contact with the juvenile system, thereby establishing a negative development trajectory for America's youth."⁵³ Failure to attend school is linked to delinquent behavior, including substance abuse, gang involvement, and daytime crime.⁵⁴ Between 1999 and 2003, 85% of youth committed to the Virginia Department of Juvenile Justice were not regularly attending school at the time of their commitment.⁵⁵ Students who become disengaged from school and eventually drop out earn less, pay fewer taxes, and are more likely to collect welfare and turn to a life of crime.⁵⁶ "High school dropouts are three and one-half times more likely than high school graduates to be arrested and more than eight times as likely to be incarcerated."⁵⁷

Virginia should also take steps to investigate the criminalization of misbehavior at school. A 2002 American Bar Association survey of Virginia juvenile court judges, prosecutors, defense attorneys, probation officers, and other court professionals indicated that Virginia's juvenile justice system was overloaded with inappropriate referrals, especially mental health and school-related cases. A 2006 study of national data found that court involvement has a detrimental effect on educational outcomes, particularly for youth with a low level of delinquency.⁵⁸ "Arrest doubles the probability of dropout even when controlling for arrest expectations, college expectations, prior and concurrent delinquency, grade retention, school suspension, middle school grade point average, and a number of demographic factors."⁵⁹

Solutions & Recommendations

Everyone is negatively affected by school exclusion. While students and teachers experience the immediate impact, the community ultimately suffers the consequences if students disengage, drop out of school, and turn to illegal activity. When students are suspended or expelled, we miss an opportunity to examine the root cause of their misbehavior and teach them replacement behaviors. Instead, the student is likely to repeat the same mistakes upon his or her return to school. Alternatively, everyone benefits from positive solutions to challenging behaviors. Schoolwide Positive Behavioral Intervention and Support (PBIS) is a framework that emphasizes teaching and rewarding positive behavior on a schoolwide, classroom, and individual basis. Virginia's version of PBIS is called Effective Schoolwide Discipline.

- **Virginia should increase the number of schools participating in its Effective Schoolwide Discipline Program.**

Effective Schoolwide Discipline (ESD) takes a holistic approach to improving school climate for students, teachers, staff, and administrators. Over 20 years of classroom research supports ESD's proven effectiveness as a way to improve student behavior and academic performance.⁶⁰ Since 2007, ESD has grown from 28 schools in 16 school divisions to 229 schools in 46 school divisions.⁶¹

In Virginia, ESD has significantly reduced office disciplinary referrals, in-school suspensions, and out-of-school suspensions, and has saved substantial amounts of administrative and instructional time. ESD has also reduced the disciplinary disparity between black and white students while lowering disciplinary rates for students overall. Schools participating in ESD have also seen increased SOL pass rates in math for students with and without disabilities as students missed less instructional time due to suspensions. ESD has had the greatest direct

Since 2007, Virginia schools implementing **Effective Schoolwide Discipline** have:

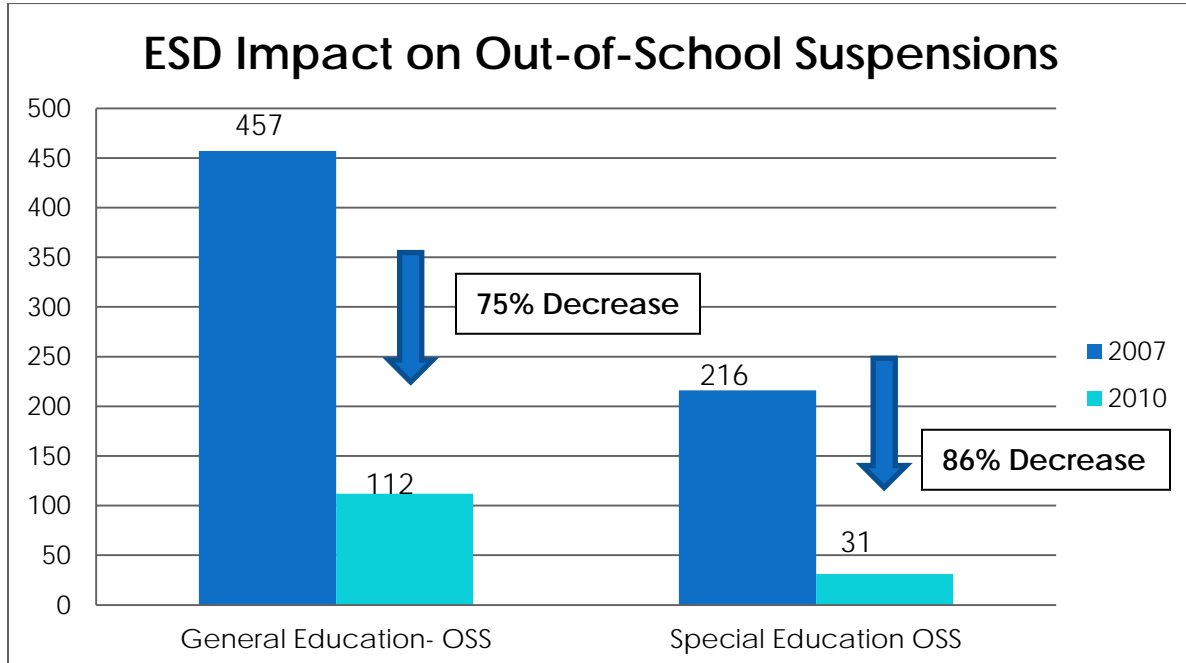
- Decreased office discipline referrals by 29% for general education students and 51% for special education students

- Decreased in-school suspensions by 45.3% for general education students and 64.8% for special education students

- Decreased out-of-school suspensions by 75% for general education students and 85.6% for special education students

- **Saved 9.2 hours of administrative time and 4.6 hours of instructional time weekly**

impact on out-of-school suspensions. From 2007 to 2010, ESD schools decreased out-of-school suspensions by 75% for general education students and by 85.6% for special education students.



How does it work? ESD’s approach is based on two common sense premises: 1) all students should be taught how to conform their behavior to a common set of expectations and 2) students who have greater difficulty meeting those expectations should be given a higher and more individualized level of intervention. Thus, school personnel implementing ESD “explicitly teach students what is expected of them, acknowledge appropriate behavior in ways that are valued by the students, and explicitly provide faculty and staff with staff development on behavioral interventions and effective strategies to address behavior problems.”⁶²

Support is provided in three tiers. First, all students participate in school-wide, universal interventions. These interventions include unique incentive programs that are tailored to the needs of the school. For example, in Prince William County, one school principal noticed that a number of disciplinary incidents occurred on buses, so he provided professional development and training for his bus drivers. He created a bus driver homeroom so that students would see their bus drivers during the school day and hear about behavioral expectations. He also recognized well-behaving buses through a “Bus of the Month” award in which students received small prizes.

Positive Behavior Intervention and Support (PBIS) programs are widely supported by many well-recognized organizations, including:

National PTA

American Bar Association

American Psychological Association

NAACP

National Association of Black School Educators

National Education Association

School Social Work Association of America

In the second tier, smaller groups receive more focused evidence-based interventions such as social skills groups, group counseling, or mentoring programs. In the third tier, the school provides intensive, individualized interventions to students who have the highest level of need.

The cost of implementing ESD is minimal for local schools. The Virginia Department of Education provides trainers and consultants supported by federal funds. The school-level cost varies by school, but can include the purchase of rewards, support for data entry, and substitutes for teachers who attend training events and team meetings scheduled during the instructional day. The initial investment in ESD is more than offset by the decreases in teacher turnover, increased time for classroom instruction, lower dropout rates, and higher academic performance.

Despite its impressive results, ESD is in only 12% of Virginia's 1,838 schools.

- **Virginia schools should expand alternatives for students who misbehave.**

For students who present challenging behaviors, there are a number of positive alternatives to school exclusion. These approaches are unlikely to be successful unless implemented as part of a school-wide positive behavior program like ESD.⁶³ Research-based alternatives to school exclusion include:

- Restorative justice and peer mediation programs provide direct mediation with the persons affected by the students' behavior.
- Individual counseling by a qualified practitioner addresses behavioral and emotional conditions that indicate psychopathology or limited coping skills.
- Self-management skills courses and conflict resolution training can reduce challenging behavior, particularly if provided before the student is in crisis.
- Effective classroom management practices that produce positive relationships between teachers and students are linked with improved learning and behavior.⁶⁴

RECOMMENDATIONS

In conclusion, too many students are suspended from school. Poor behavioral climates in schools are associated with low student achievement, high dropout rates, increased contact with the juvenile justice system, and high teacher turnover. We can reduce the costs to society of high dropout, crime, and teacher attrition by adopting more effective approaches to managing challenging behavior in schools.

Long-term deprivation of educational services for minor misbehavior is not just counterproductive policy; it may be a violation of the right to education under the state constitution. In a 1994 school finance case called *Scott v. Commonwealth*, the Virginia Supreme Court concluded that **“education is a fundamental right under the [Virginia] Constitution.”** Typically, a fundamental right can only be taken away in very limited circumstances. If there is a way to educate a child safely, either in the home or in an alternative setting, withholding educational services completely could be a violation of the child’s fundamental right.

Virginia’s policymakers should take steps to promote effective practices, limit school exclusion, reward schools that reduce disciplinary referrals, and collect and report data that can inform best practices going forward.

The General Assembly should:

- Require schools with high suspension rates to develop evidence-based alternatives to school exclusion;
- Provide the resources necessary to support positive behavioral supports and other dropout prevention programs;
- Require that schools provide educational services during any period of suspension or expulsion; and
- Prohibit out-of-school suspension for minor offenses or limit the length of time students may be suspended for such offenses.

The Board of Education should:

- Use its Virginia Incentive Program (VIP) to reward schools that implement Effective Schoolwide Discipline and/or reduce disciplinary referrals, suspension, and expulsion;
- Develop a Model School Discipline Policy that emphasizes non-punitive, effective practices; limits the use of suspension, expulsion, and referral to law enforcement; and establishes a graduated system of reasonable consequences for misbehavior;
- Require alternative education programs to meet appropriate student achievement benchmarks, while maintaining the current requirement that students assigned to alternative education be in the accountability system for their home schools;
- Publicly report disciplinary incident and outcome data disaggregated by race/ethnicity, gender, disability, language proficiency, and poverty status;

- Collect and publicly report information on all arrests occurring on school property and all petitions filed by school resource officers; and
- Use the individual student tracking system to collect and analyze achievement and graduation rate data for students who have been suspended, expelled, or placed in alternative education programs.

Local school boards should:

- Apply to participate in the Virginia Department of Education's Effective Schoolwide Discipline program;
- Develop comprehensive evidence-based plans for improving discipline and behavior in schools, including improving classroom management and positive behavioral supports, providing mental health services, addressing racial and disability disparities, and reviewing zero tolerance policies and discipline procedures;
- Enter into agreements with local courts, law enforcement, and other agencies to reduce juvenile court referrals for school-based misdemeanors; and
- Improve data collection and analysis to identify which students are getting suspended by whom and for what behaviors.

¹National Center for Education Statistics, *Contexts of Elementary and Secondary Education* (2009), available at http://nces.ed.gov/programs/coe/indicator_sdi.asp.

² VA. CODE ANN. § 22.1-277 (2010).

³ Based on a survey of school divisions, the Virginia Commission on Youth found that during the 2005-06 school year, at least 6,000 students were not offered any educational services during their period of suspension or expulsion. Leah D. Hamaker, *Virginia Commission on Youth Survey of Alternative Education Options for Suspended/Expelled Students: Second Year Presentation*, Va. Commission on Youth Meeting 13 (April 3, 2007).

⁴ VA CODE ANN. § 22.1-276.2 (2010).

⁵ VA CODE ANN. § 22.1-277 (A) (2010).

⁶ *Safe School Information Resource*, VA Dep't of Educ., available at <https://p1pe.doe.virginia.gov/pti/> (last visited Nov. 8, 2011).

⁷ Va. Dep't of Educ., *Discipline, Crime and Violence School Year 2009-2010*, 13 (May 2011).

⁸ *Id.* at 13.

⁹ *Id.* at 18-22, 24.

¹⁰ *Id.* at 23.

¹¹ *Id.* at 27. Minor acts of misconduct include Defiance/Refuses Request, Classroom/Campus Disruption, Obscene/Inappropriate Language/Gestures, Altercation/Confrontation/No Injury, Disrespect/Walking Away, Disruptive Demonstrations, Minor Insubordination, Other Inappropriate Behavior, Electronic Devices/Cellular Phones, and Harassment.

¹² *Id.* at 28.

¹³ Va. Code Ann. § 22.1-277.2:1. The student must be provided notice of the placement and of the right to a hearing. *Id.*

¹⁴ Leah D. Hamaker, *Virginia Commission on Youth Survey of Alternative Education Options for Suspended/Expelled Students: Second Year Presentation*, Va. Commission on Youth Meeting 13 (April 3, 2007).

¹⁵ Virginia Commission on Youth, *Study of Alternative Education Options*, 33 (Nov. 2009).

¹⁶ In 2006, local programs served over 15,000 students, while regional programs served just over 4,000. Leah D. Hamaker, *Virginia Commission on Youth Survey of Alternative Education Options for Suspended/Expelled Students: Second Year Presentation*, Virginia Commission on Youth Meeting 13 (April 3, 2007).

¹⁷ Matthew P. Steinberg et. al., *Student and Teacher Safety in Chicago Public Schools*, Consortium on Chicago School Research at University of Chicago Urban Education Institute (May 2011); see also Russell Skiba et al., *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*, 63 Am. Psychol. Ass'n 852, 855 (2008).

¹⁸ See Russell Skiba et al., *Achieving Equity in Special Education: History, Status, and Current Challenges*, 74 Exceptional Child. 264, 276 (2008).

¹⁹ Russell J. Skiba et al., *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, 34 Urb. Rev. 317, 322 (2002).

²⁰ *Id.* at 334. Studies have shown that school and non-behavioral student characteristics (e.g. race) are better predictors of school suspension than student behavior and attitude. Russell J. Skiba and M. Karega Rausch, *Zero Tolerance, Suspension, and Expulsion: Questions of Equity and Effectiveness*, Handbook of Classroom Management: Research, Practice, and Contemporary Issues (2006) (citing Wu et al., 1982).

²¹ Calculations are derived from data provided by the Virginia Department of Education.

²² Calculations are derived from data provided by the Virginia Department of Education. Students who were suspended multiple times were only counted once.

²³ Anne Gregory et. al., *The Relationship of School Structure and Support to Suspension Rates for Black and White High School Students*, 48 Am. Educ. Res. J. 4, 904, 915 (2011).

²⁴ Calculations are derived from data provided by the Virginia Department of Education. The suspension rate for both groups may count individual students more than once if they were suspended multiple times.

²⁵ Calculations are derived from data provided by the Virginia Department of Education.

²⁶ Special rules apply to the discipline of students with disabilities. Under federal law, if a school proposes to suspend a student with a disability for more than ten days, it must hold a hearing to determine whether the student's behavior was caused by or "substantially and directly related" to the child's disability. The school must also consider whether the incident was caused by the school's failure to provide the student with services in his or her Individualized Education Program (IEP). If the behavior was a manifestation of the child's disability, the child cannot be suspended or expelled for more than ten days. If the behavior was not a manifestation, the student may be suspended or expelled, but the school must continue to provide educational services that allow the child to participate in the general curriculum and make progress on the student's IEP goals. 20 U.S.C. 1415(k)(1)(E).

²⁷ All rates described in this paragraph were calculated using data provided upon request by the Virginia Department of Education. Suspension rates were calculated using the number of suspensions per 1000 students. This method does not take into account multiple suspensions of individual students.

²⁸ Virginia's most recent annual performance report indicates that in 2008-09, 22 school divisions had a significant discrepancy in the rate of long-term suspension of children with disabilities and that 15 school divisions had a significant discrepancy in the rate of expulsions.

²⁹ Press Release, *USED Rates Virginia on Implementation of Individuals with Disabilities Education Act*, Va. Dep't of Educ. (July 12, 2011).

³⁰ The SSIR is available at <https://p1pe.doe.virginia.gov/pti/>.

³¹ Daniel J. Losen, *Discipline Policies, Successful Schools, and Racial Justice*, National Educ'n Policy Ctr. (2011).

³² Russell Skiba, *Zero Tolerance: The Assumptions and the Facts*, Education Policy Briefs, Vol. 2 No. 1 (Summer 2004), available at http://www.indiana.edu/~ceep/projects/PDF/PB_V2N1_Zero_Tolerance.pdf.

³³ Va. Code Ann. §§ 22.1-277.07 and 22.1-277.08. See also Va. Code Ann. § 22.1-277.06 ("Nothing in this subsection shall be deemed to preclude a school board from considering any of these factors as "special circumstances" for purposes of §§ 22.1-277.07 and 22.1-277.08.").

³⁴ Matthew P. Steinberg, Elaine Allensworth, David W. Johnson, *Student and Teacher Safety in Chicago Public Schools*, Consortium on Chicago School Research at University of Chicago Urban Education Institute (May 2011).

³⁵ Alicia C. Insley, *Suspending and Expelling Children from Educational Opportunity*, 50 AM. UNIV. L. REV. 1039 (2001); see also Skiba & Edly, *The Disciplinary Practices Survey: How Do Indiana's Principals Feel About Discipline?*, Table 2 (98.8% of principals surveyed believe discipline should be scaled in proportion to the severity of the problem behavior, and more than half felt Zero Tolerance did not make a significant contribution to maintaining order in their schools.).

³⁶ Russell Skiba, et al., *Are Zero Tolerance Policies Effective in Schools? An Evidentiary Review and Recommendations*, Am. Psychological Ass'n., 10 (2006).

³⁷ H. Douglas Cox, *Effective Schoolwide Discipline (ESD) in VA*. Presentation at the Va Bd. of Educ. Meeting (Oct. 27, 2011).

- ³⁸ Russell Skiba, et al., *Are Zero Tolerance Policies Effective in Schools? An Evidentiary Review and Recommendations*, Am. Psychological Ass'n., 50 (2006).
- ³⁹ Tary Tobin et al., *Patterns in Middle School Discipline Records*, 4 J. of Emotional & Behavioral Disorders 3, 82-94 (1996).
- ⁴⁰ Am. Bar Ass'n., Report on the Comm'n. on Youth at Risk and Comm'n. on Homelessness and Poverty, Res. 118B (2009), available at <http://www.cleweb.org/sites/default/files/ABA.118B.RighttoRemaininSchool.pdf>.
- ⁴¹ Daniel J. Losen, *Discipline Policies, Successful Schools, and Racial Justice*, National Educ'n Policy Ctr. (2011).
- ⁴² Russell Skiba, et al., *Are Zero Tolerance Policies Effective in Schools? An Evidentiary Review and Recommendations*, Am. Psychological Ass'n., 50 (2006).
- ⁴³ UVA Curry School of Educ., *Practical Findings from the Virginia High School Safety Study, How are suspension rates related to dropout rates?* Issue 7, available at http://youthviolence.edschool.virginia.edu/high_school_safety/pdf/vhss-one-pager-issue-7.pdf.
- ⁴⁴ Charles Pyle, *83.2 Percent of Class of 2009 Graduate on Time*, VA Dep't of Educ., (Oct. 20, 2009), available at http://www.doe.virginia.gov/news/news_releases/2009/oct20.shtml.
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- ⁴⁸ See *id.*
- ⁴⁹ Matthew P. Steinberg et. al., *Student and Teacher Safety in Chicago Public Schools*, Consortium on Chicago School Research at University of Chicago Urban Education Institute (May 2011); see also Cassandra Guarino et. al., *Teacher Recruitment and Retention: A Review of the Recent Empirical Literature*, 76 Review of Educational Research No. 2, 173, 198 (Summer 2006) (citing Kelly, 2004).
- ⁵⁰ Xiaofeng Liu & Patrick J. Meyer, *Teachers' Perceptions of Their Jobs: A Multilevel Analysis of the Teacher Follow-Up Survey for 1994-95*, 107 Teachers College Record No. 5, 998 (May 2005).
- ⁵¹ Cassandra Guarino et. al., *Teacher Recruitment and Retention: A Review of the Recent Empirical Literature*, 76 Review of Educational Research No. 2, 173, 198 (Summer 2006) (citing Stockard & Lehman, 2004).
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- ⁵⁴ Charles Wall, *New Approaches to Truancy Prevention in Urban Schools*, ERIC Clearinghouse on Urban Education, Institute for Urban and Minority Education (2003).
- ⁵⁵ Dennis Waite Ph.D and Joan Neff Ph.D, *Profiles of Incarcerated Adolescents in Virginia's Juvenile Correctional Centers: Fiscal Years 1999-2003*, Dept. of Crim. Justice (2004).
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- ⁵⁷ *Id.*
- ⁵⁸ Gary Sweeten, *Who will graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 Justice Quarterly 462 (Dec. 2006).
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- ⁶⁰ H. Douglas Cox, *Effective Schoolwide Discipline (ESD) in VA*. Presentation at the Va Bd. of Educ. Meeting (Oct. 27, 2011).
- ⁶¹ See *id.*
- ⁶² Va Dep't of Educ., *An Introduction to Effective Schoolwide Discipline in Virginia: A Statewide Initiative to Support Postive Academic and Behavioral Outcomes for All Students*, 4th Edition 7 (2009), available at http://www.ttac.odu.edu/esd/documents/58953_book.pdf.
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- ⁶⁴ Each of these alternatives are described in Patrick H. Tolan et al., *Report on Alternatives to Suspension and Expulsion*, Youth-Nex at the University of Virginia (Dec. 2010), on file with author.