

**KEEPING KIDS IN SCHOOL:
THE URGENT NEED FOR REFORM OF SCHOOL
DISCIPLINE IN NH**

Juvenile Reform Project, a coalition of:

New Hampshire Legal Assistance

NH Children's Behavioral Health Collaborative

ACLU of New Hampshire

Disability Rights Center - NH

Waypoint

EXECUTIVE SUMMARY

Exclusionary discipline—defined as out of school suspension and expulsion—is an extreme consequence for student misbehavior. Not only does it cause already at-risk children to fall behind in their academics, but it often causes them to disconnect from their education and prosocial activities altogether. As discussed below, recent data collected through the United States Department of Education Office of Civil Rights (OCR) shows that:

- New Hampshire Schools rely heavily upon exclusionary discipline to address school misbehavior;
- Exclusionary school discipline has a disproportionate impact on New Hampshire’s students with disabilities and students of color; and
- New Hampshire’s use of exclusionary discipline is largely ineffective in managing student misbehavior.

This report begins with an overview of the harms of exclusionary discipline, current New Hampshire law and practices, and the need for reform. Second, the report discusses alarming New Hampshire data detailing the disproportionate use of out-of-school discipline against disadvantaged students and other problematic practices. Third, the report discusses the advantages of implementation of New Hampshire’s Multi-Tiered System of Supports for Behavioral Health and Wellness (MTSS-B) framework. Finally, the report provides recommendations for how the state can and should reform school discipline for the betterment of all.

THE PROBLEM WITH EXCLUSIONARY DISCIPLINE IN NEW HAMPSHIRE

Exclusionary discipline is harmful to students.

High rates of disproportionate out-of-school suspensions and expulsions are harmful to children, weaken our educational system as a whole, and perpetuate a cycle of poor academic achievement and school disengagement.¹ Students subjected to out-of-school suspensions “are at a significantly higher risk of falling behind academically, dropping out of school, and coming into contact with the juvenile justice system.”² While students in districts with high rates of exclusionary discipline fare worse academically across the board, research shows that even a single disciplinary exclusion in ninth grade is associated with a threefold increase in the likelihood that the suspended student will leave school prior to graduation.³

All of this is particularly concerning considering that out-of-school discipline is not reserved for the most egregious misconduct, but rather can be and is administered for minor offenses. Anecdotal evidence suggests that in schools with high rates of suspension for minor offenses, students and teachers often feel

¹Jones et al., *Disciplined and Disconnected: The Experience of Exclusionary Discipline in Minnesota and the Promise of Non-Exclusionary Alternatives*, July 11, 2018, available online at <http://gradnation.americaspromise.org/report/disciplined-and-disconnected>.

²The School Discipline Consensus Report, https://csgjusticecenter.org/wp-content/uploads/2014/06/The_School_Discipline_Consensus_Report.pdf

³Jones, Elizabeth et al., “Disciplined and Disconnected: How Students Experience Exclusionary Discipline in Minnesota and the Promise of Non-Exclusionary Alternatives.” *The Center for Promise*, June 2018, available at <http://gradnation.americaspromise.org/report/disciplined-and-disconnected>.

they are not safe or supported in their learning environments.⁴ Further, most students in New Hampshire do not receive any educational services during the time they are suspended, resulting in a self-defeating cycle of school failure and further disengagement.

New Hampshire lacks standards for use of exclusionary discipline.

In New Hampshire, the problem starts with RSA 193:13—New Hampshire’s school discipline statute. RSA 193:13 gives schools virtually limitless authority to impose out-of-school discipline.⁵ It enables schools to issue out-of-school sanctions for any code of conduct violation and for any length of time. Conduct violations resulting in out-of-school suspension can include minor offenses such as truancy and use of foul language or more egregious behavior such as violence and weapons possession. Further, current law enables school districts to avoid reporting lengthy exclusions as expulsions as long as the suspension has a definite end date, even if that end date is many months or even years away.

New Hampshire needs to reform state laws pertaining to out-of-school discipline. In our state, students have a constitutional right to an adequate education. Amongst other things, this must include a more transparent, effective, and accountable student discipline system. Effective, in this case, means a system that addresses a student’s behavior in the least disruptive way possible, both for the student and the classroom. Reform on this front starts by setting more clear parameters regarding what conduct warrants out-of-school discipline and specifying the number of school days for which a student may be suspended without educational services.

New Hampshire lacks support for alternatives to exclusionary discipline.

New Hampshire’s school discipline problem is compounded by, and may be in part a reaction to, the lack of support for school districts to adequately support students with complex needs. Schools are challenged with supporting the behavioral health needs of certain students while simultaneously promoting academic achievement for all students. However, research shows that addressing students’ social, emotional, and mental health needs through a prevention framework leads to improved student outcomes, improved school climate, and a reduced need for exclusionary discipline. The good news is that there is an evidence-based framework already used in some New Hampshire schools to address students’ social, emotional, and behavioral health needs. The bad news is that there is little incentive and financial support for school districts to adopt and implement the framework with fidelity.

It is imperative that the State, communities, and school districts come together to incentivize and support the expansion and state-wide implementation of the Multi-Tiered System of Supports for Behavioral Health and Wellness (MTSS-B), an evidence-based, prevention framework that blends research-based school mental health practices and social-emotional learning with positive behavioral interventions and supports. Supporting the behavioral health and wellness of New Hampshire students has never been more important, particularly for those children impacted by the ongoing mental health, substance misuse and child protection crises in the state.

⁴ Consensus Report, *supra* at ix.

⁵ RSA 193:13

THE 2016 CARSEY INSTITUTE REPORT

In 2016, the University of New Hampshire Carsey School of Public Policy released an issue brief analyzing exclusionary discipline practices in New Hampshire utilizing data spanning from 2010-2014. It found that while 10.1 percent of New Hampshire middle and high school students received out-of-school suspensions, New Hampshire's largest school districts carried out a disproportionate rate of those suspensions. Further, out-of-school suspensions disproportionately affected low-income students, students of color and students with disabilities.⁶

The Carsey School's analysis concluded by recommending that efforts be made to ascertain why exclusionary discipline was disproportionately used against certain students, noting that without such analysis and subsequent reform, such trends were likely to continue. It specifically highlighted two alternatives to exclusionary discipline that already had shown positive results in reducing the use of exclusionary discipline: restorative justice and positive behavior interventions. Both strive to reduce the time students are barred from the classroom.⁷

ANALYSIS OF THE MOST RECENT DATA: U.S. DEPARTMENT OF EDUCATION'S OFFICE OF CIVIL RIGHTS

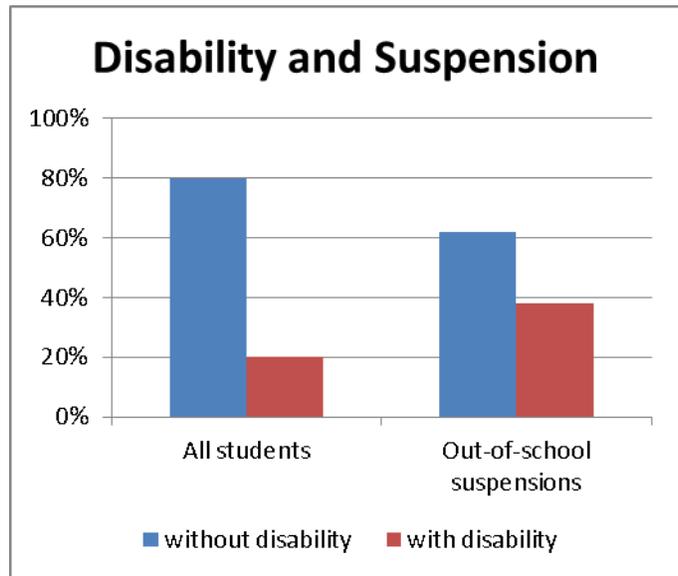
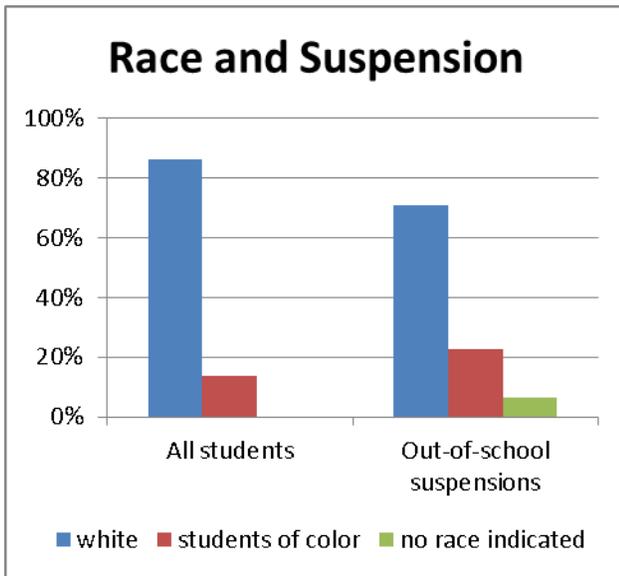
The Carsey School's analysis is supported by more recent data: exclusionary discipline continues to be used disproportionately against New Hampshire's students with disabilities and students of color. The OCR recently released school discipline data collected over the 2014-2015 school year. New Hampshire Legal Assistance analyzed the data collected on all of New Hampshire's public schools. Because it analyzed K-12 data, rather than restricting the data sets to New Hampshire's middle and high schools as the Carsey School did in its 2016 report, the overall rates of suspension in this analysis are proportionately lower but the disparities remain consistent and stark.

⁶ Exclusionary Discipline Highest in New Hampshire's Urban Schools, <https://scholars.unh.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1266&context=carsey>

⁷ Id.

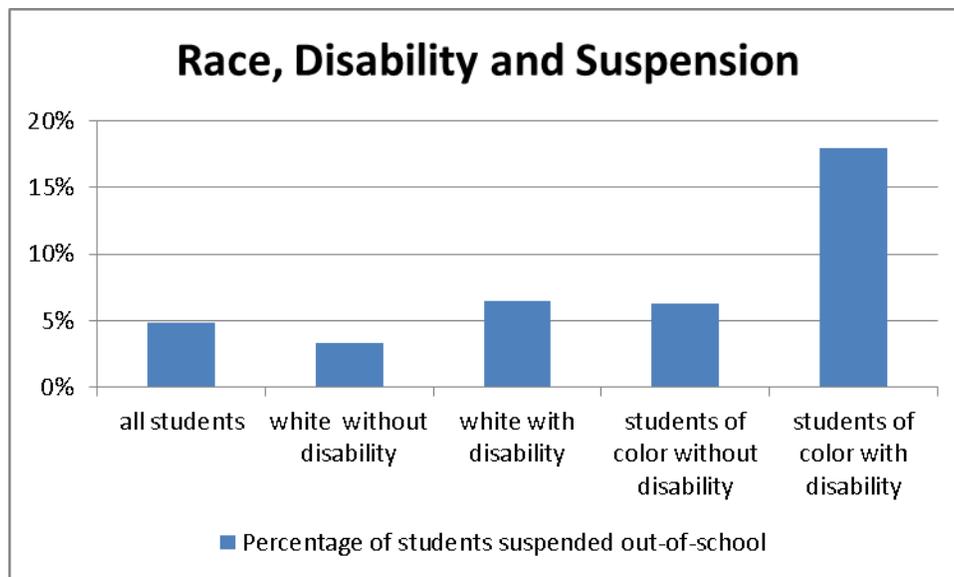
Schools suspend students of color and students with disabilities at disproportionately high rates.

In the 2014-2015 academic year 4.9% of New Hampshire students received some form of out-of-school suspension. However, these suspensions were not apportioned evenly. While students of color made up 13.9 percent of the student population, they comprised approximately 22.7 percent of students receiving out-of-school suspensions.⁸ Similarly, while students with disabilities made up 20.3 percent of the student population, they comprised approximately 38 percent of students receiving out-of-school suspensions.



⁸ The OCR data used for this analysis does not include a racial breakdown of the students with disabilities served under Section 504 of the Rehabilitation Act who received out-of-school suspensions.

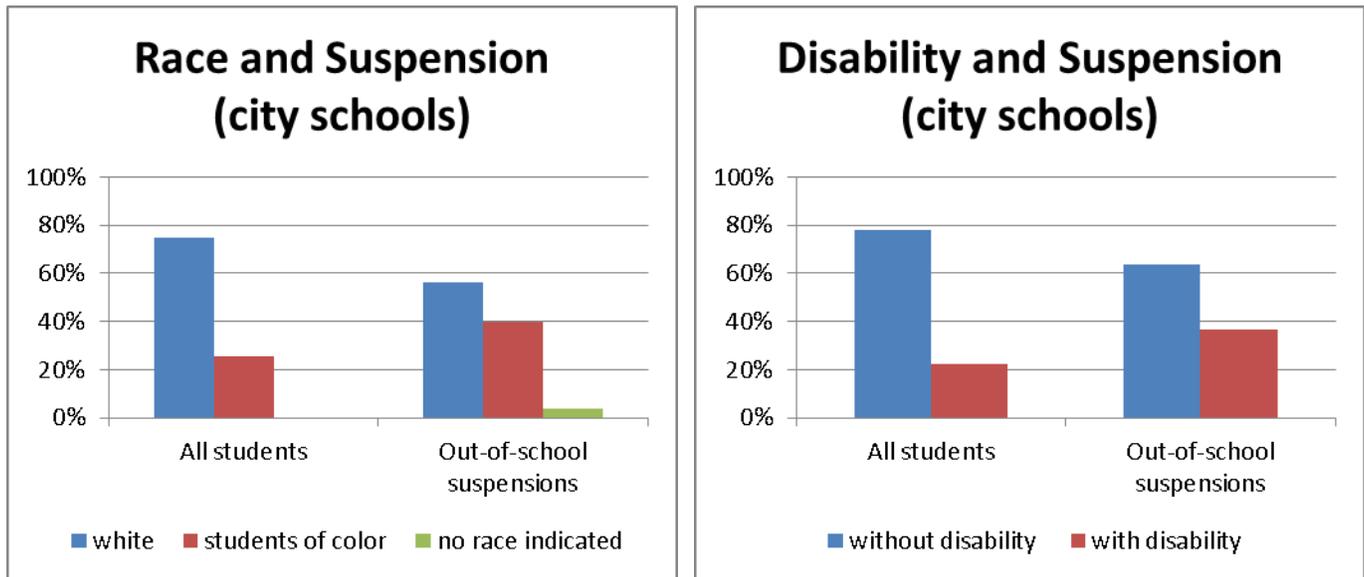
The data is even more alarming when broken down to analyze a student’s likelihood of out-of-school suspension based on the combination of race and disability. When looking at the data this way, both white students with disabilities and students of color without disabilities were nearly twice as likely to receive out of school suspensions as their non-disabled white peers. Most alarmingly, however, students of color with disabilities were 5.5 times more likely to be suspended out-of-school than their white, non-disabled peers. Multiple studies have found that disparities in the rates of suspensions for minority students are not due to disparities in student behavior.⁹ Instead, “[b]lack students are punished more harshly and more often for subjective minor offenses.”¹⁰



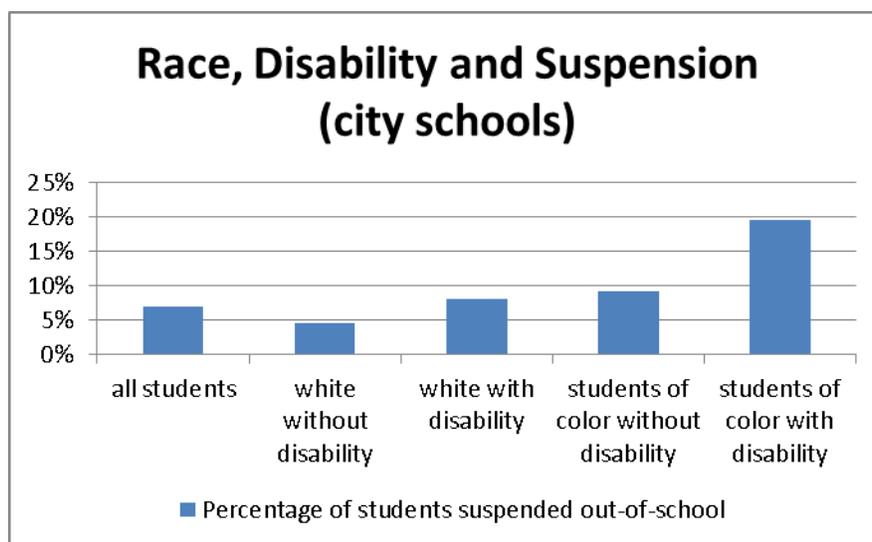
⁹ Losen, Daniel et.al., *Are We Closing the School Discipline Gap?*, The Center for Civil Rights Remedies (Feb. 2015), available at https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/are-we-closing-the-school-discipline-gap/AreWeClosingTheSchoolDisciplineGap_FINAL221.pdf.

¹⁰ Id.

The data for school districts serving New Hampshire’s ten largest cities shows similar results, although the overall rate of out-of-school suspensions is higher. In these districts 7% of students received some form of out-of-school suspension during the 2014-2015 academic year. While students of color made up 25.3 percent of the student population, they comprised approximately 39.6 percent of students receiving out-of-school suspensions. And while students with disabilities made up 22.1 percent of the student population, they comprised approximately 36.4 percent of students receiving out-of-school suspensions.

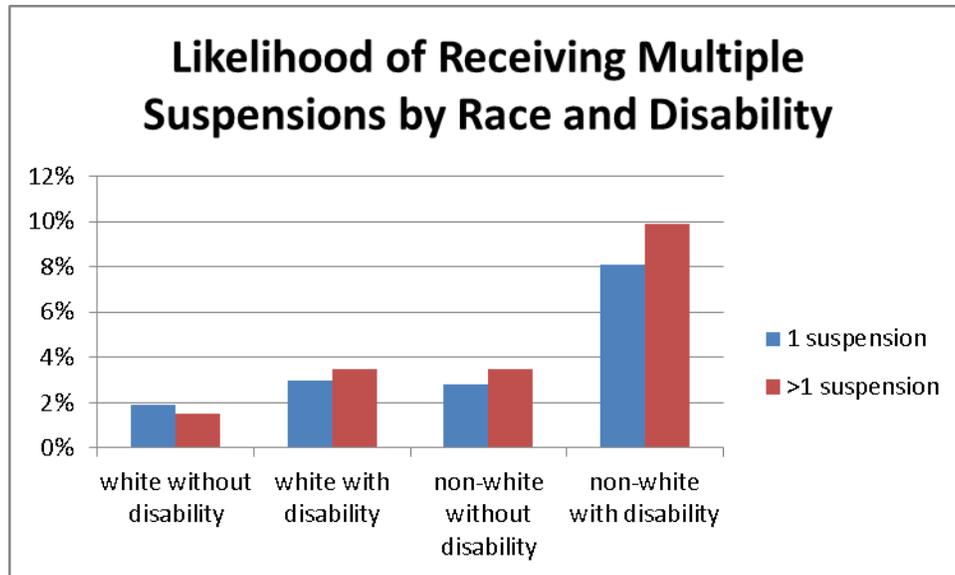


Again, students of color and those with disabilities were both approximately twice as likely to receive out-of-school suspensions as their non-disabled white counterparts. And students of color with disabilities were 4.4 times more likely to be suspended out-of-school than their non-disabled white peers.



Most students are suspended repeatedly and often for long periods of time.

In addition to disparate rates of school exclusion among students with disabilities and students of color, the OCR data provides clues into other problematic practices. By and large the behaviors invoking suspension are not isolated incidents. In nearly all cohorts, students have a greater likelihood of receiving more than one out of school suspension than a single suspension in the academic year. A more than 50% recidivism rate for out of school exclusion is alarming. Not only are New Hampshire children missing repeated and potentially large amounts of instructional time, the data shows that excluding children from school is not an effective tool to stop future misbehavior.



As previously discussed, New Hampshire law allows schools to report astonishingly lengthy suspensions as single suspensions without categorizing them as expulsions. Thus, the rates of suspension reported by the OCR alone do not reflect the severe impact on many of the students. While the data reported by the Office of Civil Rights does not reveal the median length of time students are suspended, it does include data on the total number of days students miss in a given year. By way of example, while one urban New Hampshire high school suspended 256 of its students in the 2014-2015 school year, those students missed 2,077 instructional days. That is an average of over 8 days per student, or nearly two full weeks per student. An urban middle school in a different city issued out-of-school suspensions to 152 of its students. Those middle school students missed 1,057 instructional days, averaging 7 days of missed instruction per student.

CURRENT NEW HAMPSHIRE LAW

New Hampshire's exclusionary school discipline law is contained within RSA 193:13. The law allows for three levels of out-of-school exclusions: (1) short term suspensions not to exceed 10 days; (2) long term suspensions in excess of 10 days; and (3) expulsion—an indefinite exclusion that lasts until the student is restored by the school board. While the process is different for each form of disciplinary exclusion, the basic legal standard for each type of discipline is identical—"gross misconduct or neglect or refusal to conform to the reasonable rules of the school."

A BETTER MODEL

New Hampshire should enact a tiered disciplinary statute emphasizing educational approaches to address student misbehavior.

Addressing New Hampshire's school discipline problem must start with statutory reform. Prior to 2011, the New Hampshire Department of Education (NHDOE) recognized the need for some form of disciplinary standards. Accordingly, NHDOE rules included a laddered disciplinary approach that created basic presumptions regarding which types of offenses would lead to the various disciplinary approaches available to school districts. In 2011, however, the New Hampshire Supreme Court held in *In re Keelin B.*, 162 N.H. 38 (2011), that while school districts must abide by their internal disciplinary policies, the laddered approach administered by the Department of Education exceeded statutory authority. Since the *Keelin B.* decision was issued, many school districts have removed laddered approaches from their disciplinary policies, instead citing to the exact language of the statute.

Like many states across the nation, New Hampshire should amend its statute to adopt a common sense approach to school discipline that creates clear standards for student behavior while emphasizing the use of educational approaches to address most school misbehavior. Such a framework would set basic guidelines for individual school district policies designed to reduce arbitrary disparities in administration of school discipline, improve school climate, and foster connections with at risk youth, rather than sending these youth into a cycle of social isolation and disengagement. Exclusionary discipline should be reserved for the most severe infractions and should be coupled with strategies to address the root of the problem upon the student's return to school.

New Hampshire should incentivize and support the expansion and state-wide implementation of the Multi-Tiered System of Supports for Behavioral Health and Wellness.

The good news for New Hampshire schools is that there is already an evidence-based prevention framework to address students' social, emotional, and behavioral health needs. It utilizes effective alternative behavior management practices to reduce classroom disruptions, to keep more students in the classroom (by avoiding out-of-school discipline), and to support schools. Through the state's system of care work, New Hampshire tailored the MTSS-B model for New Hampshire public school students.¹¹

MTSS-B blends research-based school mental health practices and social-emotional learning (SEL) with positive behavioral interventions and supports (PBIS). PBIS is an evidence-based framework for improving school safety, reducing behavioral problems, addressing the needs of students with emotional and behavioral challenges, and improving student outcomes. The MTSS-B framework offers schools a coordinated, strategic approach that consists of a school wide system of evidence-based behavioral practices for all students (Tier 1), a targeted system of practices for youth who need additional support and who are at-risk (Tier 2), and a tertiary system of intensive and individualized interventions for students with the greatest behavioral needs (Tier 3). The MTSS-B model does not prescribe a particular strategy or curriculum for school districts, but rather offers school districts the ability to choose what works for their own communities.

¹¹ NH Department of Education Office of Student Wellness, *NH MTSS-B Framework Description*, available online at https://www.nhstudentwellness.org/uploads/5/3/9/0/53900547/nh_mtss-b_decsription_osw_april_2017.pdf.

This prevention framework has been implemented in many school districts in New Hampshire and has demonstrated clear evidence that high-fidelity implementation of the model is directly correlated with reduced student discipline referrals, enhanced behavioral health, enhanced attendance, improved academic achievement, and enhanced school climate. This is consistent with firmly established national data showing the same results when similar frameworks are implemented and exclusionary discipline is reduced.¹² While the basic infrastructure to support a statewide expansion of the MTSS-B model is already present, widespread use is dependent upon buy-in and an investment by the state and by local school districts in building the human capacity to support widespread transition to this more effective and evidence-based model. This is despite clear evidence showing that high fidelity implementation of the model can save schools time and money.¹³

RECOMMENDATIONS

- I. **Reform New Hampshire’s school discipline statute to set clear standards regarding the use of exclusionary discipline:**
 1. The state should require school districts to set forth a graduated set of responses to misbehavior that emphasizes reliance on educational approaches to remediate the root cause of behavior and improve school climate;
 2. The state should create a clear framework clarifying the permissible grounds for short-term suspension, long-term suspension, and expulsion;
 3. The state should set parameters around the total number of days a child may be excluded at a time and within a school year without providing educational services.
- II. **Help schools implement MTSS-B:** The state should incentivize and support the expansion and state-wide implementation of the evidence-based prevention framework, Multi-Tiered System of Supports for Behavioral Health and Wellness (MTSS-B) proven successful in many New Hampshire schools.

¹² See, e.g., Catherine Bradshaw et al., *Effects of School-Wide Positive Behavioral Interventions and Supports on Child Behavior Problems*, *Pediatrics*, 130(5): 1136-1145 (Nov. 2012).

¹³ Megan Edwards et al., *State of New Hampshire Project AWARE Annual Evaluation Report*, Antioch University New England Center for Behavioral Health Innovation (January 27, 2017), available online at: <https://www.antioch.edu/new-england/wp-content/uploads/sites/6/2017/11/2015-16PAEvaluationReport2-9-2017.pdf>; see also Megan Edwards & Jim Fauth, *New Hampshire’s Multi-Tiered System of Supports for Behavioral Health & Wellness: Summary of Evaluation Outcomes*, Antioch University New England Center for Behavioral Health Innovation (January 2018).