



The Senate of the State of New Hampshire

107 North Main Street, Concord, N.H. 03301-4951

MEMORANDUM

DATE: November 1, 2019

TO: Honorable Chris Sununu, Governor
Honorable Stephen Shurtleff, Speaker of the House
Honorable Donna Soucy, President of the Senate
Honorable Paul C. Smith, House Clerk
Honorable Tammy L. Wright, Senate Clerk
Michael York, State Librarian

FROM: Senator Jay Kahn, Chairman
Representative Mel Myler
Representative David Luneau
Representative Donald Bouchard
Representative Dan Wolf

SUBJECT: Final Report of the *Committee to Study Violence in New Hampshire Schools - SB 141, Chapter 305, Laws of 2019*

On behalf of the Committee to Study Violence in New Hampshire Schools., please accept this report on our findings as well as recommendations for 2020 legislation.

If you have any questions or comments regarding this report, please do not hesitate to contact my office.

Respectfully,

A handwritten signature in black ink, appearing to read "J. Kahn".

Senator Jay Kahn

Enclosures:
Final Report
Committee Minutes

cc: Members of the Committee

SB 141,
Chapter 305, Laws of 2019
AN ACT establishing a committee to study violence in schools.

FINAL REPORT

Introduction

The above-named Joint Legislative Study Committee was created to study the incidents of violence in New Hampshire's public schools.

Duties of the Committee

The Committee's study shall include, but not be limited to, (a) The extent to which violence and other problematic student behavior are an issue in New Hampshire schools. (b) Changes over time in the rate and types of violent and other problematic student behavior. (c) The causes of such behavior. (d) The adequacy of existing laws, regulations, policies, and practices to address violence and its causes, effective interventions, and appropriate administrative responses (e) The availability of effective interventions to prevent and respond to dangerous and other problem student behaviors and improve school climate. During its examination, the committee shall: (a) Review available research and data. (b) Accept testimony from school personnel and advocacy organizations, along with experts in the fields of education, school climate and safety, and student behavioral interventions. In addition, the Committee shall report its findings and any recommendations for proposed legislation to the president of the Senate, the speaker of the House of Representatives, the Senate Clerk, the House Clerk, the Governor, and the State Library on or before November 1, 2019.

Findings

The committee received a great deal of testimony regarding the lack of reporting violent incidents to the Department of Education and found that there are three statutes that regulate reporting. Knowing that failure to report translates to inconsistent data on school violence we focused much of our attention on this issue. The absence of personnel in the Department of Education to oversee the reporting process and examine the results for possible improvements and support to schools has a lot to do with the unreliable reporting. Some schools report incidents and others do not. There is no standard of reporting across the state, which does not allow for effective data analysis. Testimony revealed that the Department of Labor recorded 1410 1st reports of injury to school employees by another person for the 2018 year. This Department of Labor data that shows a doubling in reported assault cases against school employees over 4 years, 2015-2018. The number of reported cases was significantly higher than figures the Department of Education had from required reports filed by schools. The lack of data reliability and analysis inhibits support or referral of resources for schools experiencing violence and unsafe environments for students and employees. In order to find solutions to school violence, there is a need for consistent data collection and personnel to examine it.

School Joint Loss Management Committees, under RSA 281-A:64, should be examining violent incidents in each school. Currently, JLMC's are looking at physical building safety issues. When it comes to schools, safety in the workplace now includes having a plan to prevent students with destructive behavior from injuring employees.

Schools are required to have safety plans and policies under the School Safety Zone law, RSA 193-D. School employees who have been injured by students may have been discouraged in reporting the incidents. In some cases, employees continue to work without a safety plan for future incidents which creates an unsafe climate in schools. Testimony from the NEA NH suggests that there is no process to follow up on violations of RSA 193:D-4, therefore there are no consequences for failure to report acts of theft, destruction, or violence in a safe school zone. An employee may report the violation to the DOE but there are no rules which direct the DOE on what to do with that report, other than collecting the data and preparing an aggregate summary of incidents in schools. Consequently, schools are not incentivized to assign resources to creating safety protocols or training employees on de-escalating situations leading to violent acts.

There is an inconsistent interpretation among school employees regarding the restraint law 126-U. Currently, some teachers are emptying the classrooms of all other students in order to avoid an injury or traumatic experience caused by the violent student. It appears that there is a misunderstanding that the law does not allow school employees to take hold of the student in crisis and move them out of the class. According to testimony from the NH Disability Rights Center, the law does allow a school employee to restrain and escort a student out of a classroom to de-escalate the disruption of the other students. Testimony also highlighted that this statute allows school employees and volunteers to defend themselves when a student becomes combative. The committee found it interesting that school administrators had a more restrictive interpretation of the law than did the NH Disability Rights Center. Injuries to employees, volunteers and visitors, may be avoided with a better understanding of the law through practical training.

School Resource Officers (SRO), play a vital role in both elementary and high schools by de-escalating potential violent situations. Testimony revealed that much of the officer's time is spent talking to students about family or peer issues. This added support for the student is sometimes enough to redirect their focus to education. It was the opinion of the SRO who testified before the committee that student violence usually stems from trauma suffered outside of school, within the child's family. The committee agreed that implementing a program such as a Multi-Tiered System of Supports for Behavior would benefit students, families, and schools with supports before any violent acting out becomes a problem.

Recommendations

1. The committee recommends that legislation be filed to amend RSA 281-A:64, paragraph II by adding the following language,

Where the employer is a public-school district, department, administrative unit, or chartered public school, the safety program shall contain a plan for responding to violent acts committed by students against employees, volunteers and visitors.

2. Continuing with RSA 281-A:64 and paragraph III, the committee recommends the addition of the following language,

For any public-school district, department, administrative unit, or chartered public school, in addition to the foregoing, the joint loss management committee shall address protocols for employees to follow in relation to workplace violence, inclusive of training, so all employees are aware of the protocols. The Department of Labor shall adopt rules, pursuant to RSA 541-A, relative to safety programs, joint loss management committees, and employee safety in public schools.

3. The committee recommends that legislation be filed to amend RSA 281-A:53 (Responsibility of Employer to Provide Vital Information) in paragraph I by adding the following language,

No employer shall discourage an employee from reporting such injuries to their employer or have the employee's material terms of employment adversely affected for doing so.

It is also recommended that language should be added to this paragraph that there is a penalty for any employer who

Is found to have discouraged employees from reporting such injuries to their employer

4. The committee recommends the following changes to RSA 193-D:2 (State Board Rulemaking Authority; Public School District Policies). In section I add letter e.

The state board of education shall adopt rules and procedures for reporting acts of violence against school employees, volunteers and visitors.

In 193-D:4 (Written Report Required) in section I, add letter c.

All assaults committed against school employees, volunteers and visitors, shall always be reported to the department of education for data collection and examination.

All public schools shall provide an annual incident report to their local school boards, included in the report must be all incidents of violence involving students against employees, volunteers and visitors.

In 193-D:6 (Penalties for Failure to Report) add the following language,

Shall be guilty of a violation of this statute. The state board of education shall adopt rules which outline a complaint procedure for those asserting that RSA 193-D has been violated, the possible sanctions and penalties to be issued by the department, and any other relevant rules for effectuating the statute.

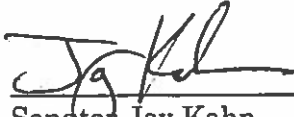
5. It is recommended that the Department of Education and the Department of Labor work cooperatively to develop consistent definitions and applications of the restraint law 126-U. One goal should be to inform school administrators and employees across the state of best practices regarding restraints in schools. The committee would further suggest that the Department of Education utilize additional grant funds that are available through the DOE OSW (office of student wellness), for trauma-responsive training/consultation, on de-escalating violent situations and proper uses of restraint.

Acknowledgements

The Committee would like to thank all of the stakeholders who contributed greatly to the work of this study. Their expertise gave the members invaluable insight into the issue of violence in NH schools and the possible legislative changes that can be made to provide support and oversight intended to reduce the number of incidents across the state.

Brian Hawkins	NH NEA
Esther Dickinson	Legal Counsel, NH NEA
Rachel Hawkinson	NH NEA
Dean Cascadden	Superintendent SAU 67
Jerry Frew	NH School Administrators Association
Michelle Wangerin	NH Legal Assistance
John DeJoie	Waypoint
Bridey Bellemare	NH Association of School Principals
Officer Kristen Guest	School Resource Officer, Alton School District
Michael Skibbie	NH Disability Rights Center
Kelly Untiet	NH Department of Education
Diana Fenton	Legal Counsel, NH Department of Education
Rudy Augdin	Deputy Commissioner, NH Department of Labor
Danielle Albert	Legal Counsel, NH Department of Labor

Respectfully submitted,



Senator Jay Kahn
Chair, District 10



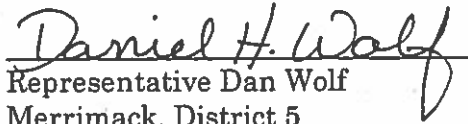
Representative Mel Myler
Merrimack, District 10



Representative David Luneau
Merrimack, District 10



Representative Donald Bouchard
Hillsborough, District 11



Representative Dan Wolf
Merrimack, District 5

TITLE XV EDUCATION

CHAPTER 193-D SAFE SCHOOL ZONES

Section 193-D:1

193-D:1 Definitions. –

In this chapter:

I. "Act of theft, destruction, or violence" means an act set forth in the following statutes regardless of the age of the perpetrator:

- (a) Any of the offenses enumerated in RSA 189:13-a, V.
- (b)(1) Any first or second degree assault under RSA 631.
- (2) Any simple assault under RSA 631:2-a.
- (c) Criminal mischief under RSA 634:2.
- (d) Unlawful possession or sale of a firearm or other dangerous weapon under RSA 159.
- (e) Arson under RSA 634:1.
- (f) Burglary under RSA 635.
- (g) Robbery under RSA 636.
- (h) Theft under RSA 637.
- (i) Illegal sale or possession of a controlled drug under RSA 318-B.
- (j) Criminal threatening under RSA 631:4.

II. "Safe school zone" means an area inclusive of any school property or school buses.

III. "School" means any public or private elementary, secondary, or secondary vocational-technical school in New Hampshire. It shall not include home schools under RSA 193-A.

IV. "School employee" means any school administrator, teacher, or other employee of any public or private school, school district, school department, or school administrative unit, or any person providing or performing continuing contract services for any public or private school, school district, school department, or school administrative unit.

V. "School property" means all real property, physical plant and equipment used for school purposes, including but not limited to school playgrounds and buses, whether public or private.

VI. "School purposes" means school-sponsored programs, including but not limited to educational or extra-curricular activities.

Source. 1994, 355:3. 1995, 231:2. 2007, 139:1, eff. Aug. 17, 2007. 2018, 254:1, eff. Aug. 11, 2018.

Section 193-D:2

193-D:2 State Board Rulemaking Authority; Public School District Policies. –

I. The state board of education shall adopt rules relative to safe school zones, under RSA 541-A, for public school pupils and public school employees regarding:

- (a) Disciplinary proceedings, including procedures assuring due process.
- (b)(1) Standards and procedures for suspension and expulsion of pupils, including procedures assuring due process.
- (2) Standards and procedures which shall require expulsion of a pupil for knowingly possessing a firearm in a safe school zone without written authorization from the superintendent or designee.
- (c) Procedures pertaining to discipline of pupils with special needs, including procedures assuring due process.
- (d) Procedures for reporting acts of theft, destruction, or violence under RSA 193-D:4.

II. Nothing in this chapter shall prohibit local school boards from adopting and implementing policies relative to pupil conduct and disciplinary procedures.

Source. 1994, 355:3, eff. June 8, 1994.

Section 193-D:3

193-D:3 Criminal Penalties. – Any person convicted of an act of theft, destruction, or violence as defined in RSA 193-D:1 committed in a safe school zone at any time of year may be subject to an extended term of imprisonment as provided in RSA 651:6.

Source. 1994, 355:3, eff. Sept. 1, 1994.

Section 193-D:4

193-D:4 Written Report Required. –

I. (a) Any public or private school employee who has witnessed or who has information from the victim of an act of theft, destruction, or violence in a safe school zone shall report such act in writing immediately to a supervisor. A supervisor receiving such report shall immediately forward such information to the school principal who shall file it with the local law enforcement authority. Such report shall be made by the principal to the local law enforcement authority immediately, by telephone or otherwise, and shall be followed within 48 hours by a report in writing. If the alleged victim is a student, the principal shall also immediately notify the person responsible for the victim's welfare, as defined in RSA 169-C:3, XXII, that a report was made to the local law enforcement authority.

(b) The provisions of subparagraph (a) shall not apply to any simple assault involving pupils in kindergarten through grade 12 if the local school board has adopted a discipline policy which sets forth circumstances under which parents shall be notified of simple assaults.

(c) Each school district, in conjunction with the local law enforcement authority, shall establish a memorandum of understanding for administering the provisions of RSA 193-D:4, I(a)-(c).

II. The report required under paragraph I shall include:

(a) The name and home address, if known, of any person suspected of committing an act of theft, destruction, or violence in a safe school zone.

(b) The name and home address, if known, of any witness to the act of theft, destruction, or violence in a safe school zone.

(c) Identification of the act of theft, destruction, or violence as defined in RSA 193-D:1 that was allegedly committed.

Source. 1994, 355:3. 1995, 231:3. 2000, 194:1, eff. Jan. 1, 2001.

Section 193-D:5

193-D:5 Waiver of Written Report Requirement. – The written report required under RSA 193-D:4 shall be waived by law enforcement officials when there is a law enforcement response at the time of the incident which results in a written police report.

Source. 1994, 355:3, eff. Sept. 1, 1994.

Section 193-D:6

193-D:6 Penalties for Failure to Report. – Any person who knowingly fails to comply with the reporting requirements under RSA 193-D:4 for acts of theft, destruction, or violence, unless such report is waived under RSA 193-D:5, shall be guilty of a violation.

Source. 1994, 355:3, eff. Sept. 1, 1994.

Section 193-D:7

193-D:7 Confidentiality. – Notwithstanding any other provision of law, it shall be permissible for any law enforcement officer and any school administrator to exchange information relating only to acts of theft, destruction, or violence in a safe school zone regarding the identity of any juvenile, police records relating to a juvenile, or other relevant information when such information reasonably relates to delinquency or criminal conduct, suspected delinquency or suspected criminal conduct, or any conduct which would classify a pupil as a child in need of services under RSA 169-D or a child in need of protection under RSA 169-C.

Source. 1994, 355:3, eff. Sept. 1, 1994.

Section 193-D:8

193-D:8 Transfer Records; Notice. – All elementary and secondary educational institutions, including academies, private schools, and public schools, shall upon request of the parent, pupil, or former pupil, furnish a complete school record for the pupil transferring into a new school system. Such record shall include, but not be limited to, records relating to any incidents involving suspension or expulsion, or delinquent or criminal acts, or any incident reports in which the pupil was charged with any act of theft, destruction, or violence in a safe school zone.

Source. 1994, 355:3, eff. Sept. 1, 1994.

Section 193-D:9

193-D:9 Liability for Reporting. – Any public or private school employee or employee of a company under contract to a school or school district who in good faith has made a report under RSA 193-D shall not be subject to liability for making the report.

Source. 2010, 155:5, eff. July 1, 2010.

TITLE X

PUBLIC HEALTH

CHAPTER 126-U

LIMITING THE USE OF CHILD RESTRAINT PRACTICES IN SCHOOLS AND TREATMENT FACILITIES

Section 126-U:1

126-U:1 Definitions. –

In this chapter:

- I. "Child" means a person who has not reached the age of 18 years and who is not under adult criminal prosecution or sentence of actual incarceration resulting therefrom, either due to having reached the age of 17 years or due to the completion of proceedings for transfer to the adult criminal justice system under RSA 169-B:24, RSA 169-B:25, or RSA 169-B:26. "Child" also includes a person in actual attendance at a school who is less than 22 years of age and who has not received a high school diploma.
- II. "Director" refers to the program director, school principal, or other official highest in rank and with authority over the activities of a school or facility.
- III. "Facility" includes any of the following when used for the placement, custody, or treatment of children:
- (a) The youth services center maintained by the department of health and human services, or any other setting established for the commitment or detention of children pursuant to RSA 169-B, RSA 169-C, or RSA 169-D.
 - (b) Child care agencies regulated by RSA 170-E.
 - (c) Any foster home, group home, crisis home, or shelter care setting used for the placement of children at any stage of proceedings under RSA 169-B, RSA 169-C, or RSA 169-D or following disposition under those chapters.
 - (d) Any hospital, building, or other place, whether public or private, which is part of the state services systems established under RSA 135-C:3 and RSA 171-A:4, including but not limited to:
 - (1) The Anna Philbrook center.
 - (2) The acute psychiatric services building.
 - (3) Any designated receiving facility.
 - (4) A community mental health center as defined in RSA 135-C:7, or any of its subdivisions or contractors.
 - (5) An area agency as defined in RSA 171-A:2, or any of its subdivisions or contractors.
 - (e) Any residence, treatment center, or other place used for the voluntary or involuntary custody, treatment or care of children with developmental, intellectual, or other disabilities under RSA 171-A or 171-B.
 - (f) Community living facilities for persons with developmental disabilities or mental illness as authorized by RSA 126-A:19, when used for the placement of children.
- IV. "Restraint" means bodily physical restriction, mechanical devices, or any device that immobilizes a person or restricts the freedom of movement of the torso, head, arms, or legs. It includes mechanical restraint, physical restraint, and medication restraint used to control behavior in an emergency or any involuntary medication. It is limited to actions taken by persons who are school or facility staff members, contractors, or otherwise under the control or direction of a school or facility.
- (a) "Medication restraint" occurs when a child is given medication involuntarily for the purpose of immediate control of the child's behavior.
 - (b) "Mechanical restraint" occurs when a physical device or devices are used to restrict the movement of a child or the movement or normal function of a portion of his or her body.
 - (c) "Physical restraint" occurs when a manual method is used to restrict a child's freedom of movement or normal access to his or her body.
 - (d) Restraint shall not include:
 - (1) Brief touching or holding to calm, comfort, encourage, or guide a child, so long as limitation of freedom of

movement of the child does not occur.

(2) The temporary holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a child to stand, if necessary, and then walk to a safe location, so long as the child is in an upright position and moving toward a safe location.

(3) Physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, and supportive body bands, or other physical holding when necessary for routine physical examinations and tests or for orthopedic, surgical, and other similar medical treatment purposes, or when used to provide support for the achievement of functional body position or proper balance or to protect a person from falling out of bed, or to permit a child to participate in activities without the risk of physical harm.

(4) The use of seat belts, safety belts, or similar passenger restraints during the transportation of a child in a motor vehicle.

(5) The use of force by a person to defend himself or herself or a third person from what the actor reasonably believes to be the imminent use of unlawful force by a child, when the actor uses a degree of such force which he or she reasonably believes to be necessary for such purpose and the actor does not immobilize a child or restrict the freedom of movement of the torso, head, arms, or legs of any child.

V. "School" means:

(a) A school operated by a school district.

(b) A chartered public school governed by RSA 194-B.

(c) A public academy as defined in RSA 194:23, II.

(d) A nonpublic school subject to the approval authority of the state board of education under RSA 186:11, XXIX.

(e) A private or public provider of any component of a child's individualized education program under RSA 186-C.

V-a. "Seclusion" means the involuntary placement of a child alone in a place where no other person is present and from which the particular child is unable to exit, either due to physical manipulation by a person, a lock, or other mechanical device or barrier. The term shall not include the voluntary separation of a child from a stressful environment for the purpose of allowing the child to regain self-control, when such separation is to an area which a child is able to leave. Seclusion does not include circumstances in which there is no physical barrier between the child and any other person or the child is physically able to leave the place. A circumstance may be considered seclusion even if a window or other device for visual observation is present, if the other elements of this definition are satisfied.

VI. "Serious injury" means any harm to the body which requires hospitalization or results in the fracture of any bone, non-superficial lacerations, injury to any internal organ, second- or third-degree burns, or any severe, permanent, or protracted loss of or impairment to the health or function of any part of the body.

Source. 2010, 375:2. 2014, 324:1-3, eff. Sept. 30, 2014.

Section 126-U:2

126-U:2 Written Policies Required. – Each facility and school shall have a written policy and procedures for managing the behavior of children. Such policy shall describe how and under what circumstances seclusion or restraint is used and shall be provided to the parent, guardian, or legal representative of each child at such facility or school.

Source. 2010, 375:2. 2014, 324:4, eff. Sept. 30, 2014.

Section 126-U:3

126-U:3 Post Admission Planning in Facilities. –

I. As soon as possible after admission to a facility, the treatment staff of the facility, the child, and the child's parent or guardian shall develop a plan to:

(a) Identify the child's history of physical, sexual, or emotional trauma, if any.

(b) Identify effective responses to potential behavior or situations which will avoid the use of seclusion and restraint.

- (c) Identify health conditions which may make the child vulnerable to injury while at the facility.
- II. The plan described in this section is not required if the child is expected to be at the facility for fewer than 72 hours and, after conducting a reasonable inquiry, the staff of the facility is not informed of any history of the use of seclusion or restraint of the child.

Source. 2010, 375:2. 2014, 324:4, eff. Sept. 30, 2014.

Section 126-U:4

126-U:4 Prohibition of Dangerous Restraint Techniques. –

No school or facility shall use or threaten to use any of the following restraint and behavior control techniques:

I. Any physical restraint or containment technique that:

- (a) Obstructs a child's respiratory airway or impairs the child's breathing or respiratory capacity or restricts the movement required for normal breathing;
- (b) Places pressure or weight on, or causes the compression of, the chest, lungs, sternum, diaphragm, back, or abdomen of a child;
- (c) Obstructs the circulation of blood;
- (d) Involves pushing on or into the child's mouth, nose, eyes, or any part of the face or involves covering the face or body with anything, including soft objects such as pillows, blankets, or washcloths; or
- (e) Endangers a child's life or significantly exacerbates a child's medical condition.

II. The intentional infliction of pain, including the use of pain inducement to obtain compliance.

III. The intentional release of noxious, toxic, caustic, or otherwise unpleasant substances near a child for the purpose of controlling or modifying the behavior of or punishing the child.

IV. Any technique that unnecessarily subjects the child to ridicule, humiliation, or emotional trauma.

Source. 2010, 375:2, eff. Sept. 1, 2010.

Section 126-U:5

126-U:5 Limitation of the Use of Restraint to Emergencies Only. –

I. Restraint shall only be used in a school or facility to ensure the immediate physical safety of persons when there is a substantial and imminent risk of serious bodily harm to the child or others. The determination of whether the use of restraint is justified under this section may be made with consideration of all relevant circumstances, including whether continued acts of violence by a child to inflict damage to property will create a substantial risk of serious bodily harm to the child or others. Restraint shall be used only by trained personnel using extreme caution when all other interventions have failed or have been deemed inappropriate.

II. Restraint shall never be used explicitly or implicitly as punishment for the behavior of a child.

Source. 2010, 375:2. 2014, 324:5, eff. Sept. 30, 2014.

Section 126-U:5-a

126-U:5-a Limitation on the Use of Seclusion. –

I. Seclusion may not be used as a form of punishment or discipline. It may only be used when a child's behavior poses a substantial and imminent risk of physical harm to the child or to others, and may only continue until that danger has dissipated.

II. Seclusion shall only be used by trained personnel after other approaches to the control of behavior have been attempted and been unsuccessful, or are reasonably concluded to be unlikely to succeed based on the history of actual attempts to control the behavior of a particular child.

III. Seclusion shall not be used in a manner that that unnecessarily subjects the child to the risk of ridicule, humiliation, or emotional or physical harm.

Source. 2014, 324:6, eff. Sept. 30, 2014.

Section 126-U:5-b

126-U:5-b Conditions of Seclusion. –

I. When permitted by this chapter, seclusion may only be imposed in rooms which:

- (a) Are of a size which is appropriate for the chronological and developmental age, size, and behavior of the children placed in them.
- (b) Have a ceiling height that is comparable to the ceiling height of the other rooms in the building in which they are located.
- (c) Are equipped with heating, cooling, ventilation, and lighting systems that are comparable to the systems that are in use in the other rooms of the building in which they are located.
- (d) Are free of any object that poses a danger to the children being placed in the rooms.
- (e) Have doors which are either not equipped with locks, or are equipped with devices that automatically disengage the lock in case of an emergency. For the purposes of this subparagraph, an "emergency" includes, but is not limited to:
 - (1) The need to provide direct and immediate medical attention to a child;
 - (2) Fire;
 - (3) The need to remove a child to a safe location during a building lockdown; or
 - (4) Other critical situations that may require immediate removal of a child from seclusion to a safe location.
- (f) Are equipped with unbreakable observation windows or equivalent devices to allow the safe, direct, and uninterrupted observation of every part of the room.

II. Each use of seclusion shall be directly and continuously visually and auditorially monitored by a person trained in the safe use of seclusion.

Source. 2014, 324:6, eff. Sept. 30, 2014.

Section 126-U:5-c

126-U:5-c Room Confinement at the Youth Development Center. – Notwithstanding any other provision of this chapter, the youth development center may confine children in their rooms when such confinement is part of a routine practice applicable to substantial portions of the population at the center and not imposed as a consequence in response to the behavior of one or more children. Such confinement is not subject to the notice and reporting requirements of RSA 126-U:7.

Source. 2014, 324:6, eff. Sept. 30, 2014.

Section 126-U:6

126-U:6 Schools Limited to Physical Restraint. – Use of restraint in schools shall be limited to physical restraint as permitted by this chapter. Schools shall not use medication restraint and shall not use mechanical restraint except as otherwise permitted in the transportation of children pursuant to RSA 126-U:12.

Source. 2010, 375:2, eff. Sept. 1, 2010.

Section 126-U:7

126-U:7 Notice and Record-Keeping Requirements. –

I. Unless prohibited by court order, the facility or school shall, make reasonable efforts to verbally notify the child's parent or guardian and guardian ad litem whenever seclusion or restraint has been used on the child. Such notification shall be made as soon as practicable and in no event later than the time of the return of the child to the parent or guardian or the end of the business day, whichever is earlier. Notification shall be made in a manner calculated to give the parent or guardian actual notice of the incident at the earliest practicable time.

II. A facility employee or school employee who uses seclusion or restraint, or if the facility employee or school employee is unavailable, a supervisor of such employee, shall, within 5 business days after the occurrence,

submit a written notification containing the following information to the director or his or her designee:

- (a) The date, time, and duration of the use of seclusion or restraint.
- (b) A description of the actions of the child before, during, and after the occurrence.
- (c) A description of any other relevant events preceding the use of seclusion or restraint, including the justification for initiating the use of restraint.
- (d) The names of the persons involved in the occurrence.
- (e) A description of the actions of the facility or school employees involved before, during, and after the occurrence.
- (f) A description of any interventions used prior to the use of the seclusion or restraint.
- (g) A description of the seclusion or restraint used, including any hold used and the reason the hold was necessary.
- (h) A description of any injuries sustained by, and any medical care administered to, the child, employees, or others before, during, or after the use of seclusion or restraint.
- (i) A description of any property damage associated with the occurrence.
- (j) A description of actions taken to address the emotional needs of the child during and following the incident.
- (k) A description of future actions to be taken to control the child's problem behaviors.
- (l) The name and position of the employee completing the notification.
- (m) The anticipated date of the final report.

III. Unless prohibited by court order, the director or his or her designee shall, within 2 business days of receipt of the notification required in paragraph II, send or transmit by first class mail or electronic transmission to the child's parent or guardian and the guardian ad litem the information contained in the notification. Each notification prepared under this section shall be retained by the school or facility for review in accordance with rules adopted under RSA 541-A by the state board of education and the department of health and human services.

IV. Whenever a facility or school employee has intentional physical contact with a child which is in response to a child's aggression, misconduct, or disruptive behavior, a representative of the school or facility shall make reasonable efforts to promptly notify the child's parent or guardian. Such notification shall be made no later than the time of the return of the child to the parent or guardian or the end of the business day, whichever is earlier. Notification shall be made in a manner calculated to give the parent or guardian actual notice of the incident at the earliest practicable time.

V. In any case requiring notification under paragraph IV, the school or facility shall, within 5 business days of the occurrence, prepare a written description of the incident. Such description shall include at least the following information:

- (a) The date and time of the incident.
- (b) A brief description of the actions of the child before, during, and after the occurrence.
- (c) The names of the persons involved in the occurrence.
- (d) A brief description of the actions of the facility or school employees involved before, during, and after the occurrence.
- (e) A description of any injuries sustained by, and any medical care administered to, the child, employees, or others before, during, or after the incident.

VI. The notification and record-keeping requirements of paragraphs IV and V shall not apply in the following circumstances:

- (a) When a child is escorted from an area by way of holding of the hand, wrist, arm, shoulder, or back to induce the child to walk to a safe location. However, if the child is actively combative, assaultive, or self-injurious while being escorted, the requirements of paragraphs IV and V shall apply.
- (b) When actions are taken such as separating children from each other, inducing a child to stand, or otherwise physically preparing a child to be escorted.
- (c) When the contact with the child is incidental or minor, such as for the purpose of gaining a misbehaving child's attention. However, blocking of a blow, forcible release from a grasp, or other significant and intentional physical contact with a disruptive or assaultive child shall be subject to the requirements.
- (d) When an incident is subject to the requirements of paragraphs I-III.

Source. 2010, 375:2. 2014, 324:8, eff. Sept. 30, 2014.

Section 126-U:7-a

126-U:7-a Notice and Record-Keeping Requirements for Foster Family Homes. – Notwithstanding RSA 126-U:7, foster family homes, as defined in RSA 170-E:25, shall keep records and provide notice of incidents involving seclusion or restraint, according to rules adopted pursuant to RSA 541-A by the commissioner of the department of human services. The rules shall provide for timely notice to parents or guardians, which may be provided through the department. In cases involving serious injury or death to a child subject to seclusion or restraint in a foster home, the rules shall provide for timely notification to the commissioner of the department of health and human services, the attorney general, and the state's federally-designated protection and advocacy agency for individuals with disabilities.

Source. 2014, 324:7, eff. Sept. 30, 2014.

Section 126-U:8

126-U:8 Review of Restraint Records by Department of Education. –

I. The state board of education shall adopt rules, pursuant to RSA 541-A, relative to:

- (a) Periodic, regular review by the department of education of records maintained by schools relative to the use of seclusion and restraint.
- (b) A process for the department of education's receipt of complaints and its conduct of investigations of improper use of seclusion and restraint in schools. The process shall provide for:
 - (1) Investigation of complaints regarding any violation of this chapter, regardless of whether injury results.
 - (2) Investigation by persons not affiliated with the school district which is the subject of the complaint.
 - (3) Resolution of complaints and completion of investigations within 30 days, with provision for limited extensions for good cause.
 - (4) Protection of children before and after completion of the investigation.
 - (5) Appropriate remedial measures to address physical and other injuries, protect against retaliation, and reduce the incidence of violations of this chapter.

II. Beginning November 1, 2010, and each November 1 thereafter, the state board of education shall provide an annual report to the chairpersons of the education committees of the senate and house of representatives regarding the use of seclusion and restraint in schools. The annual report shall be prepared from the periodic, regular review of such records, and shall include the number and location of reported incidents and the status of any outstanding investigations.

Source. 2010, 375:2. 2014, 324:8, eff. Sept. 30, 2014.

Section 126-U:9

126-U:9 Review of Restraint Records by Department of Health and Human Services. –

I. The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541-A, relative to:

- (a) Periodic, regular review by the department of health and human services of records maintained by facilities regarding the use of seclusion and restraint.
- (b) A process for the department's receipt of complaints and its conduct of investigations of reports of improper use of seclusion and restraint in facilities, which may be through the department of health and human services, office of the ombudsman, or otherwise. The process shall provide for:
 - (1) Investigation of complaints regarding any violation of this chapter, regardless of whether injury results.
 - (2) Investigation by persons not affiliated with the facility which is the subject of the complaint.
 - (3) Resolution of complaints and completion of investigations within 30 days, with provision for limited extensions for good cause.
 - (4) Protection of children before and after completion of the investigation.
 - (5) Appropriate remedial measures to address physical and other injuries, protect against retaliation, and reduce the incidence of violations of this chapter.

II. Beginning November 1, 2010, and each November 1 thereafter, the commissioner of the department of health and human services shall provide an annual report to the committees of the house of representatives and the senate with jurisdiction over health and human services and over children and family law, regarding the use of seclusion and restraint in facilities. The annual report shall be based on the periodic, regular review of such records and shall include the number and location of reported incidents and the status of any outstanding investigations.

Source. 2010, 375:2. 2014, 324:8, eff. Sept. 30, 2014.

Section 126-U:10

126-U:10 Injury or Death During Incidents of Restraint or Seclusion. –

I. In cases involving serious injury or death to a child subject to restraint or seclusion in a facility, the facility shall, in addition to the provisions of RSA 126-U:7, notify the commissioner of the department of health and human services, the attorney general, and the state's federally-designated protection and advocacy agency for individuals with disabilities. Such notice shall include the notification required in RSA 126-U:7, II. The department of health and human services shall annually notify facilities of their responsibilities under this section and provide contact information for the persons to be notified.

II. In cases involving serious injury or death to a child subject to restraint or seclusion in a school, the school shall, in addition to the provisions of RSA 126-U:7, notify the commissioner of the department of education, the attorney general, and the state's federally-designated protection and advocacy agency for individuals with disabilities. Such notice shall include the written notification required in RSA 126-U:7, II. The department of education shall annually notify schools of their responsibilities under this section and provide contact information for the persons to be notified.

Source. 2010, 375:2. 2014, 324:8, eff. Sept. 30, 2014.

Section 126-U:11

126-U:11 Authorization and Monitoring of Extended Restraint. –

In a school or facility:

I. Restraint shall not be imposed for longer than is necessary to protect the child or others from the substantial and imminent risk of serious bodily harm.

II. Children in restraint shall be the subject of continuous direct observation by personnel trained in the safe use of restraint.

III. No period of restraint of a child may exceed 15 minutes without the approval of the director or a supervisory employee designated by the director to provide such approval.

IV. No period of restraint of a child may exceed 30 minutes unless a face-to-face assessment of the mental, emotional, and physical well-being of the child is conducted by the facility or school director or by a supervisory employee designated by the director who is trained to conduct such assessments. The assessment shall also include a determination of whether the restraint is being conducted safely and for a purpose authorized by this chapter. Such assessments shall be repeated at least every 30 minutes during the period of restraint. Each such assessment shall be documented in writing and such records shall be retained by the facility or school as part of the written notification required in RSA 126-U:7, II.

Source. 2010, 375:2, eff. Sept. 1, 2010.

Section 126-U:12

126-U:12 Restriction of the Use of Mechanical Restraint During the Transport of Children. –

I. A school or facility shall not use mechanical restraints during the transportation of children unless case-specific circumstances dictate that such methods are necessary.

II. Whenever a child is transported to a location outside a school or facility, the director shall ensure that all

reasonable and appropriate measures consistent with public safety are made to transport or escort the child in a manner which:

- (a) Prevents physical and psychological trauma;
- (b) Respects the privacy of the child; and
- (c) Represents the least restrictive means necessary for the safety of the child.

III. Whenever a child is transported using mechanical restraints, the director shall document in writing the reasons for the use of mechanical restraints. Such documentation shall be treated as a notification of restraint under RSA 126-U:7.

Source. 2010, 375:2, eff. Sept. 1, 2010.

Section 126-U:13

126-U:13 Restriction of the Use of Mechanical Restraint in Courtrooms. – At any hearing under RSA 169-B, RSA 169-C, or RSA 169-D, the judge may subject a child to mechanical restraint in the courtroom only when the judge finds the restraint to be reasonably necessary to maintain order, prevent the child's escape, or provide for the safety of the courtroom. Whenever practical, the judge shall provide the child and the child's attorney an opportunity to be heard to contest the use of mechanical restraint before the judge orders its use. If mechanical restraint is ordered, the judge shall make written findings of fact in support of the order.

Source. 2010, 375:2, eff. Sept. 1, 2010.

Section 126-U:14

126-U:14 School Review Following the Use of Restraint or Seclusion. – Upon information that restraint or seclusion has been used for the first time upon a child with a disability as defined in RSA 186-C:2, I or a child who is receiving services under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. section 701, and its implementing regulations, the school shall review the individual educational program and/or Section 504 plan and make such adjustments as are indicated to eliminate or reduce the future use of restraint or seclusion. A parent or guardian of a child with a disability may request such a review at any time following an instance of restraint or seclusion and such request shall be granted if there have been multiple instances of restraint or seclusion since the last review.

Source. 2014, 324:9, eff. Sept. 30, 2014.

TITLE XXIII

LABOR

CHAPTER 281-A

WORKERS' COMPENSATION

Section 281-A:64

281-A:64 Safety Provisions; Administrative Penalty. –

- I. Every employer shall provide employees with safe employment. Safe employment includes but is not limited to furnishing personal protective equipment, safety appliances and safeguards; ensuring that such equipment, appliances, and safeguards are used regularly; and adopting work methods and procedures which will protect the life, health, and safety of the employees. For the purposes of this section, "employer" shall include railroads, even if the employees of such railroads receive compensation for work injuries under federal law rather than RSA 281-A.
- II. All employers with 15 or more employees shall prepare, with the assistance of the commissioner, a current written safety program and file this program with the commissioner. After a written safety program has been filed, the program shall be reviewed and updated by the employer at least every 2 years. Employer programs shall, in addition to the specific rules and regulations regarding worker safety, include the process of warnings, job suspension, and job termination for violations of the safety rules and regulations set forth in the program.
- III. Every employer of 15 or more employees shall establish and administer a joint loss management committee composed of equal numbers of employer and employee representatives. Employee representatives shall be selected by the employees. If workers are represented by a union, the union shall select the employee representatives. The joint loss management committee shall meet regularly to develop and carry out workplace safety programs, alternative work programs that allow and encourage injured employees to return to work, and programs for continuing education of employers and employees on the subject of workplace safety. The committee shall perform all duties required in rules adopted pursuant to this section.
- IV. Employers subject to the requirements of paragraph III, other than employers participating in the safety incentive program under RSA 281-A:64-a, shall be placed on a list for early and periodic workplace inspections by the department's safety inspectors in accordance with rules adopted by the commissioner. Such employers shall comply with the directives of the department resulting from such inspections.
- V. Notwithstanding paragraphs III and IV, an employer of 15 or more employees may satisfy the requirements of those paragraphs if such employer implements an equivalent loss management and safety program approved by the commissioner.
- VI. The commissioner, in conjunction with the National Council of Compensation Insurance (NCCI), shall develop a list of the best and worst performers based on the experience modification factors promulgated by NCCI. The list shall include the top 10 lowest experience modification employers. The commissioner shall publicly recognize these low experience modification employers by presenting them with an award at the department's annual workers' compensation conference. The list of the top 10 highest and lowest experience modification employers shall be provided to the advisory council. The department shall review any specific claim against any employer listed in the top 10 highest experience modification list in conjunction with the safety program on file with the commissioner.
- VII. In order to assist self-insurers in developing experience modification factors, self-insurers may submit the appropriate statistical information to the National Council of Compensation Insurance for calculating experience modifications.
- VIII. The commissioner may assess an administrative penalty of up to \$250 a day on any employer not in compliance with the written safety program required under paragraph II of this section, the joint loss management committee required under paragraph III of this section, or the directives of the department under paragraph IV of this section. Each violation shall be subject to a separate administrative penalty. All penalties collected under this paragraph shall be deposited in the department of labor restricted fund established in RSA

273:1-b.

IX. [Repealed.]

Source. 1990, 254:36. 1994, 3:19. 1997, 343:9, 10, eff. Jan. 1, 1998. 2010, 134:1, eff. July 14, 2010. 2012, 144:1, 2, 4, I, eff. Jan. 1, 2013. 2019, 134:20, eff. June 25, 2019.

TITLE XXIII LABOR

CHAPTER 281-A WORKERS' COMPENSATION

Section 281-A:53

281-A:53 Responsibility of Employer to Provide Vital Information. –

I. Every employer or self-insurer shall record in sufficient detail and shall report or cause to be reported to the commissioner any injury sustained by an employee in the course of employment as soon as possible, but no later than 5 days after the employer learns of the occurrence of such an injury. If an injury results in a disability extending beyond 3 days, the employer shall file with the commissioner a supplemental report giving notice of such disability as soon as possible after such waiting period, but no later than 7 days after the accidental injury. The employer shall supply a copy of either report to the nearest claims office of the employer's insurance carrier. A self-insurer need not file the supplemental report with the commissioner and may keep the insurance copy of the employer's first report as a file copy. If any employer fails without sufficient cause as determined by the commissioner to file a first report as set forth in this paragraph, the commissioner shall assess a civil penalty of up to \$2,500. If any employer fails to pay a civil penalty, the commissioner shall recover such penalty payment by a civil action in the superior court of the county of jurisdiction. Civil penalties owed under this section shall be paid to the commissioner, who shall deposit them into the department of labor restricted fund established in RSA 273:1-b.

II. Any employer who consistently fails to make available to the commissioner and to that employer's insurance carrier the information required by the carrier to make payment of disability compensation in a manner consistent with RSA 281-A:42 shall, after such employer has been given due notice of noncompliance and an opportunity to comply, be assessed by the commissioner a civil penalty of not more than \$100. If an employer fails to pay such penalty or to comply with the requirements of paragraph I, the commissioner shall recover the penalty and petition for an injunction in a civil action in the superior court of the county of jurisdiction.

III. On or after July 1, 2006, all "First Reports of Injury" shall be filed by the insurance carrier or self-insured employer electronically in a manner prescribed by the department. The commissioner may grant an insurance carrier or self-insured employer a variance if the carrier or self-insured employer documents to the satisfaction of the commissioner that compliance would cause the carrier or self-insured employer "undue hardship" which, for the purposes of this section, means significant difficulty or expense.

Source. 1988, 194:2. 1990, 254:31. 2005, 85:5, eff. June 7, 2005. 2011, 224:58, eff. July 1, 2011.

SB 141, Chapter 305, Laws of 2019
AN ACT establishing a committee to study violence in schools.

Organizational Meeting Report

TO: Members of the Committee

FROM: Tricia Melillo, *Legislative Aide*

RE: Organizational Meeting Minutes on

MEETING DATE: September 25, 2019 10:00 p.m. LOB RM 103

Members of the Commission Present: Senator Kahn, Rep. Mel Myler, Rep. David Luneau,

Members of the Committee Absent: Rep. Dan Wolf, Rep. Donald Bouchard

Summary of Meeting:

- Senator Kahn opened the meeting.
- Representative Luneau nominated Senator Kahn for Chair.
- Senator Kahn was voted in as Chair.
- Senator Kahn reviewed the duties of the committee as stated in SB 141.
- Future meeting dates were set.
- Possible stakeholders to attain data from and topics to focus on were discussed.
- Meeting adjourned

Discussion:

The Committee members discussed the best possible future meeting dates. It was determined that they would meet starting on October 8th at 10:00 and each Tuesday after, with Tuesday, October 29th used for review of final report, due on November 1st.

Senator Kahn reviewed the duties of the study committee as the bill details. He stated that it has been reported nationally there are 1.2 million incidences of violence in schools on an annual basis. He considered that maybe they should begin this study by looking at that data. They are hoping to get legislation from this study committee.

All members agreed that any legislation resulting from the committee findings can be filed in October.

Representative Luneau commented that looking at the charge of the committee there are two parts to letter A. One is violence and the other is problematic behavior

and how they both are an issue in New Hampshire schools. He does not think that the violence part is associated with the problematic behavior and that it can be read broadly.

Representative Myler stated that letter B. mentions the same thing and that it would be helpful if the Education Commission of the States or the National Commission of State Legislators could give some data information.

Senator Kahn responded that Senate Research has compiled some of that information and it has been sent to the Committee Members by Tricia.

Brian Hawkins NEA-NH commented that during the senate hearing, the Keene school district testified that there was a NH Department of Labor report done due to some of the incidences there. If that report has specific findings, it seems that it would help other schools that have the same problems. There needs to be some standardizing of what every school district in the state needs to do regarding violent incidences and maintain that for their staff. He brought copies of the report and will hand it to the committee

Dean Cascadden SAU 67 stated that his concern is for the employees and aides in the special education departments. It is not always intentional violence. Many times, they are dealing with students that are out of control and there are now rules around restraint and seclusion that have made it hard to take care of the problems. They used to be able to remove a child that was out of control and put them in a safe room. There is reporting that goes on and that helps but unless a child is threatening bodily harm, they cannot touch a student and it makes it hard to diffuse a situation.

Senator Kahn asked if the laws regarding restraint and seclusion were state or federal law.

Brian Hawkins NEA-NH answered that it is state law, RSA 126-U.

Dean Cascadden commented that no one is going to hold a child accountable when the behavior is part of their disability but the tools to manage those behaviors have been taken away.

Jerry Frew NH SAA stated that maybe some conversations about post traumatic supports and efforts to help students and teachers who have witnessed violent acts could be a part of what this committee focuses on. Figuring out what supports are available for people that are victimized by the violence and what measures people can use to help the school community would be beneficial.

Representative Myler questioned if he meant ways to help teachers deal with the violence.

Representative Luneau commented, yes, within the scope of the tools that they have available and can utilize right now.

Attorney Michelle Wangerin NH Legal Assistance stated that rather than looking at ways to include seclusion or restraints they should look at where the incidences of violence are and if there is there a trend. Discover if there are schools or districts that have more incidence of violence and what are the effective tools that the schools with less have used.

Senator Kahn asked if anyone at the meeting had a sense of the data that the state collects on violence in schools. His concern is that violence is under reported and the data we have may not be good data.

Dean Cascadden stated that the schools must file a safe school report to the local police department. At the end of the year those reports get submitted to the state. Any seclusion and restraint incidence must also be reported.

Senator Kahn wondered who at the state the reports go to and where we might get that data from.

John DeJoie Waypoint commented that school climate is a factor when looking at teachers being injured. In some ways the violence is an outcome, but we do not know what led up to it and that is a much broader issue.

Senator Kahn stated that this can become a very broad topic and stakeholders can help to narrow the topics on which future studies or legislation should be filed.

Bridey Bellemare NH Association of School Principals commented that there are some fantastic tools that schools and support staff are using. There is a misnomer that this is all from special education students, but it is not. There are regular education students that are involved in these incidents as well. She believes the focal point should be that correcting the issue needs to be a community effort with parents and stakeholders. There must be elements of everything raised here today. Schools cannot be the fix, there needs to be a cohesive unit working together, including parents.

Senator Kahn stated that he would like to speak to the police association regarding any data they may have.

Jerry Frew commented that the Resource Officers would be a good group to speak to.

Senator Kahn asked if there was a way to access the Resource Officers to get their input.

It was suggested that maybe they could be contacted through the Police Officer's Association.

Brian Hawkins stated that in a former life as a part of the State Employees Association he worked with hospitals across the state regarding incidence of violence

and getting good data was an issue. They started a system of data collection of violence in mental health institutions.

Jerry Frew commented that he would be happy to reach out to their Resource Officers to see if they can give the committee some information.

Bridey Bellemare NH Association of School Principals commented that Project Grow and South-Central Mental Health Collaborative are working on collecting mental health data and incidence of violence. She can reach out to them to see what that data looks like.

Next Meeting Date: October 8th, 10:00 a.m. in LOB 102

Report Due: November 1, 2019

SB 141, Chapter 305, Laws of 2019
AN ACT establishing a committee to study violence in schools.

Organizational Meeting Report

TO: Members of the Committee
FROM: Tricia Melillo, *Legislative Aide*
RE: Organizational Meeting Minutes on

MEETING DATE: October 8, 2019 10:30 p.m. LOB RM 102

Members of the Commission Present: Senator Kahn, Rep. Mel Myler, Rep. David Luneau, Rep. Donald Bouchard

Members of the Committee Absent: Rep. Dan Wolf

Discussion:

Sen. Kahn opened the meeting. He had the stakeholders introduce themselves. Information that is before the committee are Department of Education data regarding incidents reported by New Hampshire schools. He went over the number of incidents in each category. He asked the resource officer if she could explain some of the categories. He questioned the numbers and specifics.

Mr. Cascadden answered that the report from the DOE is from reports filed by NH Schools that are mandatory.

Representative Luneau asked if that is submitted in real time.

Mr. Cascadden responded that it was not. It is a once a year submission usually at the end of the year. The school keeps a file throughout the year. The restraint and seclusion incidents are usually related to special education students.

Sen. Kahn said that one of the concerns brought to the committee is underreporting of the incidents and he would like people testifying to comment on that subject because that would be helpful. He feels that is where the committee will focus to offer some help.

Officer Kristen Guest commented that she has five years with law enforcement. She works in the Alton School District. Her days are spent in both the middle and high schools and they have another officer part time. The role varies based on what the school needs. She is a member of the National Association of Resource Officers, is trained yearly and keeps best practice standards. She was happy to be before the committee to answer any questions they have.

Rep. Myler asked what kind of training Officer Guest went through.

Officer Guest said she has taken a 40-hour class that goes over the basics of how resource officers are to act, as well as policies and procedures. They have more courses after the basic that they offer, such as adolescent mental health and other specific categories of behavior.

Rep. Myler asked what her role is within the school.

Officer Guest responded that her role is as an educator and a resource officer. She works with the teachers but does not enforce discipline on school rules. She teaches Drug Abuse Resistance Education (DARE) in the Central School as well as other drug free programs. She works with the counselors on teaching about domestic violence, suicide prevention, and topics of that nature.

Sen. Kahn asked if she is a member of any Associations.

Officer Guest responded that she is a member of the National Association of Resource Officers.

Sen. Kahn asked if the National Association of Resource Offices is part of another group that focuses on juveniles.

Officer Guest replied that she believes it includes all officers working with youths.

Sen. Kahn asked if she has a sense of how many schools in the state have a resource officer.

Officer Guest replied that she does not know about the whole state, but she does know of some that have part-time officers in her area.

Rep. Myler asked what are the challenges Officer Guest faces.

Officer Guest responded that one of the biggest problems is younger kids that have families that struggle to raise them, whether it is due to drugs, financial hardships, or otherwise. This creates trauma for the student. Being able to provide kids what they need to deal with trauma is difficult and getting parents involved is tough. There is more that she wants to do but she is not able to.

Rep. Myler asked if one of the issues is boundaries of behavior.

Officer Guest responded that as soon as someone is in physical danger from the student she can step in, including when it comes to them self-harming.

Rep. Myler commented that there are two issues of behavior to address, dealing with peer violence on one hand and then the dealing with violence against staff. His concern is about the incident rate of student violence against staff. He asked Officer

Guest if she has noticed a rise in student-on-adult violence and has any adult sued over the issue.

Officer Guest responded that she has not seen a significant increase in either scenario. From her perspective it is handled the same as if it is any other assault. She handles it however the law allows depending on the situation.

Rep. Myler asked if the policy memorandums with the school district clearly defines the actions to be taken in certain scenarios.

Officer Guest responded in the affirmative. They include all of the actions that are included in the Safe School Zone Act and the responses of either herself or the teaching staff.

Rep. Luneau asked if the report that the Committee was looking at included restraints by the resource officer.

Officer Guest responded that it did not.

Rep. Luneau asked if the Safe School Zone statute excludes certain things that are not considered restraints. For example, a fight is not included in the reporting because that is not considered restraining someone. He asked if the reports included if a teacher intervenes in a fight.

Officer Guest responded that she did not know. A fight does constitute an exclusion from the restraint law. She also did not know if principles excluded those types of incidents in their reporting.

Sen. Kahn asked how long she has been a resource officer.

Officer Guest responded that she has been for 3 years.

Sen. Kahn asked if she is the only resource officer in the Alton School District.

Officer Guest responded that there is one more part-time resource officer now but during her first two years she was the only resource officer.

Sen. Kahn asked what the reason was for hiring a part-time resource officer.

Officer Guest responded that when she was out at training it left the schools unstaffed and vulnerable.

Rep. Myler asked about the differences when she would intervene as compared to when school staff intervene, as it relates to restraint.

Officer Guest responded that she will only restrain a student if they are putting someone else or themselves in danger. She does not remember ever using restraints. The teachers are good at deescalating the situation before restraints are needed.

Sen. Kahn commented that goal here is to make sure the Committee has some sense of what school violence is and, if there is, follow up action to help. He asked if she has any thoughts on a definition of school violence or what the problem of school violence is.

Officer Guest responded that her biggest issue is that schools are being portrayed as violent places when they are not. Putting an officer in a school does not make kids scared. She is able to help in more ways than just when she is having to restrain a student or stop violence. Kids at the school trust her. The violence is stemming from trauma outside of school, which they then bring to school and do not know how to handle it. More resources in mental health training is working. It is not schools that are making kids violent – it is outside events. The more support a school can provide to students and parents the better off they will be.

Rep. Myler said that it sounds like most of her time is spent dealing with referring kids and parents to resources that can help with outside issues.

Officer Guest responded that her role is more of an informal counselor than a police officer.

Sen. Kahn asked about her interactions with parents.

Officer Guest responded that she interacts with parents all the time, discussing safety concerns, mental health issues, kids acting differently, and more. She is the link between the school and the community. Her goal is to help understand the student. Parents speak to her about home issues and problems. Having that angle with parents helps the school understand the issues at school.

Sen. Kahn asked if her access to family information through a secure police record gives her an advantage to being able to understand a student and their situation, which is something that the Superintendent and staff do not have access to.

Officer Guest responded yes and that is a big benefit.

Rep. Bouchard asked how much of her time is put aside on programs for conflict resolutions with students.

Officer Guest responded that it is tough to say exactly because she talks to students all day long when they approach her with a problem, and she does resolve conflicts regularly.

Sen. Kahn asked if restorative justice is practiced.

Officer Guest responded that a delinquency petition is for a student offense that if an adult committed it would be considered a crime. If a student vandalizes a McDonalds, you have to try restorative justice and diversion for non-violent first-time offenders before any other court hearings or sentences. She can use discretion

with assault but if the parents are unwilling to agree to delinquency petition it goes to court.

Rep. Luneau asked if RSA 126: U and ED 510 are the rules they follow.

Mr. Cascadden responded that it is key when they put in a resource officer that they are able to communicate with school personnel. Community policing is a big part of that. For example, a teacher may, for example, radio in "Room 103 needs support" which means a student is having an issue. Usually the Principle will come to help and try to resolve by crisis prevention tactics, such as de-escalation, trying to calm the kids down. Some schools have a room designated to calm down kids. Dis-regulation is when kids cannot regulate their behavior. That is considered 1st level. 2nd level is taking the child out of the classroom. A person can try to move the student out but if they resist the teacher or staff must stop. Then they will move all the other kids out of the class and call the resource officer or another who can restrain the child if de-escalation has not worked. By law they can only block the child if the child is hitting staff. If staff thinks the child is going to cause serious bodily damage, that is the only time they can restrain a child. This happens when a school has the resources to hire help but if the school does not the teacher and aides are left alone and can get hurt.

Rep. Myler asked who makes the call to remove the rest of the students.

Mr. Cascadden responded that it is usually a school administrator.

Rep. Myler asked how often have the students needed to be separated in Bow.

Mr. Cascadden responded that it does not happen often in Bow. In the last year there were probably five situations where the school had to remove the other students.

Rep. Myler asked if the students causing the issues are repeat offenders and if they are violent.

Mr. Cascadden responded that many were repeat students. Usually, those students would be tested for an emotional disability or staff would try to identify other issues that would lead the student to have trouble controlling their emotions. The goal is to try to keep students in the classroom with their peers as much as possible.

Brian Hawkins, Rachel Hawkinson, and Esther Dickinson from the National Educators Association of New Hampshire wanted to paint a picture from the standpoint of the educators and talk about potential short-term and long-term actions that the Committee could recommend.

Ms. Hawkinson said that one of the most important parts of the job is to get resources to the school employees in order to help them. The most frequent question they get is what resources are available to help ensure safety in the classroom. They

realize that there is not a uniform mechanism to collect the data. In some schools the incidents are reported to police and in others they are never reported. They were trying to research the problem to find what the problems are and where they are happening. When they drilled down to the problem of reporting, there are issues to where, when, how, and who to report to. The Department of Labor requires forms to be filed if there is an incident and some schools do not file them. In the Safe School Zone Statute 193 D, reports should be filed but there are questions on how to do that and who should do it. There are employees that are afraid or discouraged to report because it makes the school look bad and it is forever on the record. Schools are a safe place, and often the safest for students. There is an aspect to working in a school that can be dangerous. The employees are there because they love the students, but the violence takes its toll.

Mr. Hawkins recounted stories that **Ms. Hawkinson** gave at the hearing on violent incidents against teachers and handed out examples,

Ms. Hawkinson said that they hear about eye gouging, broken bones, strangling, and more. Some teachers are told by their supervisors that this is just the nature of the job and that is what they signed up for. It is discouraging that the supervisor believes this.

Rep. Myler said that it is not normal, and no employee should feel unsafe at work. He asked if these incidents happen as often as has been said, have any employee sued.

Ms. Hawkinson responded that no lawsuits have been filed to her knowledge because it is a workplace incident and covered by workers compensation.

Rep. Myler stated he believes there should be a way to restrain the student when there is dangerous behavior and remove them instead of the rest of the class.

Ms. Esther Dickinson responded, that is where this Committee should possibly go. Teachers want to see students succeed and not arrested or taken away. Maybe there is a need to address the issues with resources for the students to help them succeed. The question remains of how to balance keeping people safe and keeping students in the classroom as much as possible. They are having issues identifying the problem and having people believe there is a problem. They see school employees being punished for talking about safety issues. This is a work place problem. It is a broken system and this Committee maybe can work towards solving it.

Sen. Kahn asked what the reporting process is and if there is a physical assault, does it lead to a report in the school.

Ms. Hawkinson responded that it depends on what school the incident occurs at. Some do not file reports at all. There should be a first report of injury to the workers comp insurance. The Department of Labor has access to that data. It is supposed to be available to the Joint Loss management committee. The form indicated in 193: D is supposed to be filed for record keeping purposes, not for police action. It is

different than if one filed a police report for being assaulted on the street. The teachers want to be able to teach without being hurt. If those records are not being kept then the people do not know where to go when an incident occurs.

Rep. Bouchard asked if they are saying that some of the schools are not following the law.

Ms. Dickinson responded in the affirmative.

Rep. Bouchard said that maybe that is where to start. There is aide to schools who follow the law and those that do not should be identified.

Ms. Dickinson responded in the affirmative. There has not been any consequence for not following the law. There is not a complaint procedure in 193: D if someone is not following the law. They asked the Department of Education and they were not sure either. Maybe that statute needs an update on how to remedy violence in the workplace.

Ms. Hawkinson said that workers comp does not compensate an employee unless they are out for a certain number of days. If they are gone just one day for medical treatment, then there is a financial loss. There is a high rate of turnover in schools with a high rate of violence. It is not appropriate to get hurt on a regular basis and many are not willing to work under those conditions. The Department of Labor identifies that as an issue. If the workplace is unsafe and understaffed then there will not be enough trained to help, and it gets less and less safe.

Ms. Dickinson said that the report has come out about schools that have violent incidences and the response from the school district was that they are no different than other schools and nothing gets corrected.

Rep. Myler said that his sense is that the issue is not specific to a particular region. Some schools handle it well and others don't. In those districts that are violent, they have not gone through any of the training for a positive environment that the other schools have. They are not safe if they have not gone through that training. He asked if they would concur that there are safe schools and there are unsafe schools and that the principals and superintendents are key to creating a positive school culture.

Ms. Hawkinson said that she thinks it is lack of training and lack of adequate staff. The schools that deal well with it have enough people with enough training to assist when a student becomes violent. In the situations she knows of it would have helped to have trained people. When one calls for help and no one is trained to intervene, it often leads to an injury. The employees are limited in how they can respond because of the restraint law. They can only block the students. If one student is trying to break out a window and the teacher stands in between, then the student punches the teacher. Some classes are evacuated on a daily basis. She is not advocating changes in the restraint law, specifically, but there has to be a better solution. Part of the process should be instilling confidence in employees that they

can report the issues and they will not be punished or have repercussions for it. They need to be able to speak honestly.

Ms. Dickinson said that they hear about it in every region and that the current interpretation of the restraint law is the prevailing interpretation. If a student starts resisting, you have to back off and you can only block as they hit you. What they have to figure out is training on the laws and reporting. Some districts have a great process while others none. What is frustrating is that NEA-NH members want more training, but they do not get it.

Ms. Hawkinson said that among the support staff she sees the lack of training. Part of that is that training is only offered once a year. Within the past twelve months they have had a 50% turnover, so a lot of employees miss it. There is a cost to it. It is useful and employees want it, but they cannot get it on their own.

Rep. Myler asked about special education dealing with special education students and their behavior. He wants to know with these incidents that have been discussed, if it is a special education student and there is an individualized education plan (IEP) with these issues are on it, how does that relate to a student who is just violent? How does one distinguish between a special education student who is acting out and a student who is just violent?

Officer Guest responded that when there is a report to a resource officer, they need to look at an IEP and see if that behavior is part of the IEP before they can take a student to court. In one incident, the student tore a rotator cuff and they had followed all the laws for the student. The goal in court was figuring out how to change the behavior. She agrees with the people from NEA-NH. There may be a need to change and to be proactive. Every safe school zone report goes directly to the resource officer in order for them to address the behavior with the parents and students. If they have a student kicking and scratching, they need to find a way to change the behavior. The laws are not helping.

Rep. Myler said that the issue is when people are hurt and bare the fiscal brunt of it, there is nothing that protects them.

Ms. Hawkinson said that workers comp is the only resource. There is no private way for them to be compensated and workers comp can only help if they are out for a certain number of days.

Sen. Kahn asked if civil court was an option.

Ms. Hawkinson responded that it was not because there of the available workers comp.

Sen. Kahn asked if they have asked Primex about the statistics.

Ms. Dickinson said no because it is workplace and an educational institution there are privacy laws.

Sen. Kahn asked them if they would take a look at mental health legislation and advise the Committee if there is anything they can do as a result with 193: D.

Rep. Luneau referenced that the data from the Department of Education does not specify first-degree assaults and what those would be.

Ms. Hawkinson responded that all of those should be reported but they are not.

Rep. Luneau said that if they are reported they are comingled, so it does not help.

Ms. Hawkinson commented that there used to be a report required by employers to file those incidents to the Department of Labor. At least the employer would have to say how many injuries and what type of injuries, what the common causes were, and such statistics. Maybe bringing that back would be a useful.

Mr. Hawkins commented that in his opinion the Committee should address some of the reporting issues.

Ms. Hawkinson said that it is exhausting for teachers that have to fill out a form every time they get hit. The law states it is the employer who is responsible, but it falls on the teachers.

Rep. Luneau commented that there was some discussion about training staff, and he was wondering if the NEA-NH ever produce training materials for its members or teachers.

Ms. Dickinson said they have always provided training. The problem came when it was realized that the unions are not the ones who should be doing it. It should be coming from the school districts and they should be held accountable.

Rep. Luneau said that he understands and that sometimes he feels like they could do 180 days of training because there is so much in the work that teachers do. He is just wondering if the NEA-NH can work with the school association in creating training that would mitigate the potential for harm.

Ms. Hawkinson said that CPI training is a certification that has to be renewed and that is available. Safety care is another type of training that only certain trainers can provide.

Ms. Dickinson said that most members are stating they are not comfortable with the school protocol and processes.

Ms. Hawkinson said that there are certain jobs that can help with training if a district is wealthy enough to hire them. The ratio in some schools is one counselor to 350 students.

Sen. Kahn commented that the statute states a written report is required within 48 hours in RSA 193: D and then it goes on to explain that is unless it is a simple assault. He asked if that is hindering the reporting.

Officer Guest said that that was not the case in her experience. They will still report it in order to explain what occurred and why the case is closed.

Mr. Cascadden said that there is simple assault every day in the lunchroom. There are cases of underreporting when you are in a violent district; the simple assault is not going to be reported. The administration needs to make a decision if it is a simple assault.

Ms. Hawkinson said that if it is student-against-student violence and parents are notified then it does not need to be reported.

Mr. Cascadden said anytime they get a court action the first thing they are told to do is to get a special education evaluation done. There has not been a single case that has gone to court that has not involved special education. The key is giving the supports needed for the students.

Ms. Hawkinson said that they hear all the time that teachers have ideas on what would help students regulate their behavior, but they are hampered in their ability to make those referrals by the districts due to financial constraints. Resources are a key to this problem

Sen. Kahn said that each school needs to have a policy on safe school zones and there needs to be training. They need to switch to a proactive environment as resources are available. There should be a requirement for a Joint Loss Committee representative in each school. A Multi-Tiered System of Supports for Education has made its way into legislation. There are two versions in Senate and House committees on MTSS and discipline and the need for adequate personal to carry it out. He asked if MTSS includes conflict or CPI training that would be more accessible and what is the level of state intrusion that can help make a safe workplace.

Mr. Hawkins said that the Legislature making a statement about employees being able to report these incidents would be very helpful, as was backed up by the Keene report. So far that has been discouraged. Protective language around employees reporting to the district and the Department of Labor or the Department of Education is needed. Part of the issue is making sure that teachers are able to document the specific nature and ensure that the data is coming forward.

Sen. Kahn commented that reports to the Department of Labor should be reported. He asked where the failure is occurring.

Ms. Hawkinson said that when the employer does not fill out the report to Department of Labor, the staff do have the right to have the Department of Labor come visit their workplace and evaluate. They are afraid the administration will

retaliate. There should be language that says they should not be retaliated against. There was a violent incident that took place at the beginning of the school year where employees were afraid to go back, and the principal told them to go back without a plan for safety in place. They were afraid to call the Department of Labor.

Rep. Myler said that should be part of the protocol.

Jerry Frew commented that the Commission on Mental Health and Student Behavioral Wellness is also meeting and if this committee and that commission could get together and share information it would be helpful.

One of the Professionals present commented that children by nature are not violent. Family units are not receiving services and trauma is being confused with violence. It is not the school's job to fix kids; it is their job to support them. There is only so much a school can do if the family unit does not get involved. There is still a stigma with mental health and families do not disclose issues

Mr. Cascadden commented that once the Columbine Massacre happened Joint Loss Committees became Safety Committees. None of his Joint Loss Committee members have looked at the violence against teachers. He asked if it would be appropriate to say that schools have to have a plan for violence against teachers. If those committees do not know that that is part of their purview right now it could be helpful to add it.

Sen. Kahn said that they can pursue that with the Department of Labor and Primex.

Rep. Doherty stated he will be at the next on work session on HB 677. He will try to get Primex, the Department of Labor and the Department of Education have someone explain the numbers.

Next Meeting Date: October 15th, 10:00 a.m. in LOB 103

Report Due: November 1, 2019

SB 141, Chapter 305, Laws of 2019
AN ACT establishing a committee to study violence in schools.

Organizational Meeting Report

TO: Members of the Committee
FROM: Tricia Melillo, *Legislative Aide*
RE: Organizational Meeting Minutes on

MEETING DATE: October 15, 2019 10:00 p.m. LOB RM 103

Members of the Commission Present: Senator Kahn, Rep. Mel Myler, Rep. David Luneau, Rep. Donald Bouchard, Rep. Dan Wolf

Members of the Committee Absent:

Discussion:

Sen. Kahn opened the meeting. He explained that the committee report is due November 1st and they would like to submit some recommendations for potential legislation. In last week's testimony it was identified that some acts of school violence get reported and some do not. He stated that there is an increase in violence and perhaps the statutes do not recognize that employees face these violent interactions as well as students but without protections in the statute. At the last meeting, they got closer to potential areas of legislative improvement in two areas. One is the safe school zone statute and how that chapter of statutes might be augmented to give greater recognition to student on staff assaults. Two, the Department of Labor statues as they relate to having a safety committee to receive complaints or occurrences of violence and injury and then investigate to see how the workplace is helping to minimize them. Those will be the focus of the next meetings.

Rep. Myler commented that this past weekend he spoke with a kindergarten teacher who has 18 kids in her classroom and four of those kids have autism. Two of them are Michael and Matthew and they act out by hitting and throwing things. Daily she has to shut down the class room because of their behavior. Last Friday, Michael pinned the teacher against the wall, hit and pinched her which left bruises. She does not have the administrative support she needs due to finances. There are five different kindergarten classes in the school, but the administration has not split these two children up. Michael will hit kids if he does not like them and Matthew throws things. The aide takes the other kids out when these incidents happen, and she has a walkie talkie to call for help. He was stunned at the violence this teacher has to experience. She cannot teach. She gets in at 6:30 a.m. and gets home at 7:00 p.m. to stay organized and Matthew comes in and throws her books all over. His concern is that if this can happen with small children what can happen with older kids in the high schools. This teacher has met with the parents and there is no support from them and no place for the kids to go to get the proper support and help.

Sen Kahn stated that he wants to thank Beth Sargent for having the resource officer at the last meeting. Hearing how she is able to assist was helpful. As she pointed out the officers are usually at the high school level, but many assaults are taking place at the elementary level and going unchecked. They found the data from the DOE was not consistent with what

was actually happening in schools. He is concerned about the reporting. Representative Doherty has worked on HB 677 that has to do with suspensions and expulsions in schools and he will speak to that.

Rep. Doherty stated that the House Education Committee has worked on this bill for a long time. He chaired a subcommittee on the bill to try and come to a conclusion on what should be in the final version. This legislation came about due to the perception that discipline in schools has not been fair or equal and it needed to be improved upon. The final version that the sub-committee has voted unanimously to forward on has had input from many stakeholders, some who are here today. It strives to develop a program in all schools to have students treated equally in regard to suspension and expulsion. In section 10, it calls on school boards to enact policies on school districts that they have to have a system that outlines certain actions and the consequences of those actions to make sure both students and parents are aware of the policies before the school year starts. This is to make sure everyone is on the same page and that it is standard across the state. The bill covers any suspensions and expulsions. There is some flexibility built in for the administration, but it will help establish certain policies that are appropriate for each school district. It covers serious actions not minor infractions of school rules. This bill also sets up a series of actions that need to be done, by the school, once the student is suspended such as counseling and providing materials so they can progress normally with their education. These actions will help the student get back to school and stay up to date not just cut them off from the school causing them to be so far behind. There is a support system that is recommended for the schools to follow and there is some financial means given so that students can get involved. This system is the Multi-Tier System of Supports for behavioral health and wellness. The idea is to get this in all schools, so personnel have a system to work with to provide the support the bill is calling for. The amount is 5 million for the next biennium to fund the programs. The bill has gone through many versions and many have been involved and all agree that this is a good final product. The broad outline will enable schools to look at what they are doing and start treating students fairly because every student should be looked at as an individual taking into account any disabilities or social issues.

Sen. Kahn asked if there is a provision for parental engagement.

Rep. Doherty replied that yes there is. One of the provisions to get parents involved is getting the information to them at the beginning of school. Next is that as soon as there is an incident parents are notified, and they will be involved in every step as it goes through the process.

Sen. Kahn stated that one of the things they noticed in 193: D is that in the school policy on acts of violence, the incident report will go to the police unless the parents are notified.

Rep. Doherty commented that he believes that is covered in the policy for schools to follow. Once the action takes place everyone involved will be notified, even the police if they need to be involved, if it is an egregious event the police will be notified.

Rep. Myler commented that on page 3 at the top the bill mentions violence against adults but back on page 2 right in the center, it talks about bullying and only mentions students against students. He asked why does this part not mention school personnel as well.

Mr. Cascadden answered stating that it is because the bullying statute on record currently only applies to students not adults and the reference in the bill is the bullying statute.

Rep. Luneau commented that, that section refers to extended suspension, but the initial suspension does include violence against adults.

Rep. Wolf questioned regarding Rep. Myler's story, with HB 677, would those students likely be suspended if there was funding for the educating of them outside of school.

Rep. Doherty replied that if schools have an adequate amount of training and have a policy to educate, this will perhaps encourage them to build funding to cover those situations.

Michelle Wangerin - NHLA commented that the issue is dealt with through the disability laws and any attempt at discipline for those students would involve that. Under the bill as written one of the expectations is that the local school boards will develop a parent engagement piece in their policy. On page 5 line 19, it mentions a parent conference. Representative Doherty stated that law enforcement is in the bill, it is not but it is already in statute. When referring any student to law enforcement parents must be involved and both of those components are in there

Rep. Wolf asked if the funding in this bill is for training and if there is no funding for a student that is out of school on suspension to have continued education.

Rep. Doherty replied yes that is his understanding. He stated that his interpretation is that the funding is for training of school personnel and training in the MTSSB program.

Rep. Wolf commented that when it comes to suspension or expulsion, the schools will be not funded for the extra programs they have to implement for the student.

Michael Skibbie - Disability Rights Center came to explain the restraint statute. He stated that the Disability Rights Center has been involved with this subject for many years and they do investigations on restraint complaints. The statute 126: U, was adopted in 2010 and then revised in 2014. He would like to discuss four points that have been brought up during testimony. Moving a child from one place to another is allowed and is not considered restraint. On page two of the statute is the definition of restraint and it does not include moving a child from one place to another. The general rule, if you are going to restrain a student, is that you have to meet a high threshold. When just moving a child, you do not have to meet that threshold. School staff do not need to empty a classroom, they can remove the disruptive child. There was some mention by a witness that you can only escort a student out if a child does not resist, that is not part of the law. The confusion may be on page 6, where it states that if you have intentional contact because of behavior you have to let parents know. School representatives, in 2014, objected to this notice requirement because of how often this may happen. Due to that, there is an exception on page 7 that states notice requirement is not applied if you are moving the child from one room to another. The only exception to the restraint law is the notification to parents, not that the teacher cannot escort them out of the classroom. Nowhere in the law is a limitation on escorting a child out of a classroom. The idea that this law is making classrooms have to empty is not a correct interpretation of the law. The second thing he would like to clear up is that the right to self defense is preserved in this statute on page 2. So long as you are not restraining, holding a student down, you can protect yourself.

Rep. Myler commented that there was a question about blocking the student from hitting them and that was the only thing a teacher could do. He asked if Mr. Skibbie is saying they can do more than just block.

Michael Skibbie replied that the staff/teacher can do three things. One, is defend themselves. Number two, they can restrain a child. Third, they can remove the child from the classroom. The idea that you cannot defend yourself or others is not in the law. The right to use force is on page 11. A teacher can use force against a minor when it is necessary to maintain discipline in school and it is in defense of themselves or another student. Regarding property damage, the idea that you have to stand by as a student throws things into a window is not in this law. Violence by a child to property can in some circumstances require the use of restraint or removal from the classroom.

Sen Kahn commented that the law is confusing because on page 2, line 5, while it gives the person the opportunity to defend themselves, it goes on to give strict guidelines for how they can defend themselves. Maybe that is that where people are getting the idea that they cannot.

Mike Skibbie replied that what it says is you can defend yourself so long as it does not mean restraining the student. You can punch someone in defense but if you are holding them down you need to meet the threshold for restraint in the law.

Sen Kahn commented that people have been saying to us is that there is confusion and they do not know how to apply the law.

Mike Skibbie stated that yes, it is clear that it is confusing. It says you can defend yourself so long as you are not restraining a child because many children have been harmed with restraint.

Rep. Luneau added that some of the exceptions are confusing. There are places in this law where the exception has exceptions to the exception. He stated that maybe this committee could look at 126: U and make some changes to make it clearer.

Mike Skibbie stated that in his view it is clear that there is just one exception.

Sen. Kahn reiterated that then there is an exception to the exception.

Mike Skibbie stated that he believes there is a role for the Department of Education to explain the law to schools and it is not being fulfilled. If you look at page 7 and onto page 8 what the legislature said is that the DOE should be looking at the records when restraint is being used and then give a report. If that was happening they would be able to recognize where the confusion is and train the schools on the correct way to apply the law. He continued that currently the DOE does not review restraint records and provide a report, they only do a survey to get the data. The Department needs to look and see what they can do to provide guidance to teachers and help them understand that they can defend themselves.

Rep. Myler commented that as we look at this law there is a lot of logic in it, but the confusion comes when the altercation takes place. The reality is how the staff member is going to react in the situation. He asked if as Mr. Skibbie looks at these rules are there some generalizations he can make.

Mike Skibbie replied that the good news is that there are not many injuries to children from restraint any longer. Their past experience when investigating the injuries, was that people were trying to do the right thing, but injuries resulted due to the lack of training on how to handle the student.

Sen. Kahn asked if they have attempted to get any reports like the ones he just mentioned from the DOE.

Mike Skibbie replied they have not because the reports have not been compiled the way the statute requires.

Mr. Cascadden commented that the best way the educator can stop a student from throwing or hitting would be to restrain the arms of the child. Page two of the rules prevents them from doing that. On page 4 when restraint can be used, the rules require there to be the threat of serious bodily harm. He asked them to look up serious bodily harm, the teacher is not being maimed so they do not have a right to hold the child's arms. The throwing of books is not going to create serious bodily harm.

Mike Skibbie commented that serious bodily harm is not defined in this statute. Throwing a book meets the standard in the rules and you can always move them out of the classroom so long as you observe them for safety.

Mr. Cascadden stated that he would disagree that the law allows him to restrain a student if they are resisting. The staff person would not be covered by the law in that case.

Mike Skibbie replied that they are covered as long as they notify the parents of the incident. That is the exception.

Mr. Cascadden stated if he picks up the child he is restraining them.

Mike Skibbie responded that is not restraining according to this law.

Mr. Cascadden stated they cannot grab the student.

Mike Skibbie answered yes they can as long as they are moving the child and do not prevent the child from moving.

Rep. Myler commented that this exchange is valuable because it provides the reality of the encounter and what you can do. The staff need to know what is restraint in the moment you cannot run to the law to figure out what to do. His concern is that how the teacher deals with the situation is going to be subject to interpretation. How one person handles it may be different than how others would handle it.

Rep. Luneau commented that maybe they could provide better clarity to faculty and staff so they know they can defend themselves. The superintendent is taking a responsible look at what is legal so as not to put the school in jeopardy.

Sen. Kahn stated that there could be a good debate about whether we solve this through legislation or pass the question on for interpretation to the legal system. Once we get answers point out the findings for clarity.

Mr. Cascadden stated that he would send in particular questions to see if different actions constitute restraint according to the statute.

Rep. Wolf commented that there seems to be a lack of solid reporting on this issue and asked if there is a way of knowing how many cases of restraints or cases of staff unwilling to restrain there have been in the state.

Kelly Untiet - DOE stated that she will answer any questions that she can noting that she works in a different department.

Sen. Kahn stated that they have taken a look at the data from the DOE and asked if she has reviewed the reports and could she give the committee some sense if every school district has submitted their incidents.

Kelly Untiet replied that there is a data collection team and she can check with them, but she can say that to her knowledge there is no one analyzing the data that does come in.

Sen. Kahn asked if when they see a school with zeros in every category does it mean they did not submit their data.

Kelly Untiet replied that it could mean that, or it could mean that they did not have any instances of violence.

Rep. Luneau commented that they probably did not submit because there are not many numbers in the report.

Rep. Myler stated that the DOE probably has a hard time getting data from the schools.

Kelly Untiet agreed and stated that there are three categories of schools. Those that are happy to report, schools that are confused about what to report and those that are afraid of having the stigma of being a violent school.

Rep. Myler commented that the law talks about filing written notification following an incident. He questioned why these are not being filed if it says in the law that there is supposed to be a report.

Sen. Kahn stated that it is something for us to try and understand. Especially if acts of assault whether to students or staff in schools is increasing. He asked Kelly if she has seen any evidence of an increase.

Kelly Untiet replied that from her perspective the behavior of students is reaching a level that school districts are desperate to know how to respond to. She does not have data on what the specific behaviors are, but she can look into that.

Sen. Kahn asked if she could she also check if the school districts have a policy for school safety which is required by law. He stated that they need some interpretations of the data.

Rep. Myler commented that no one wants to report that they have a violent school so how do you ensure that the survey is reflecting accurately or even if the schools are returning them. According to the DOE they cannot give a report of what is happening in the schools.

Mr. Cascadden stated that he disagrees. All schools have to file the IBA at the end of the year which is to report all the restraints and seclusions. He questioned which report the DOE used for the data that the committee has.

Sen. Kahn commented that the report they have from the department has all the restraint and seclusion data.

Rep. Myler commented that the reports that they have are incomplete, so data is not coming in from somewhere.

Rep. Luneau asked, just for clarity, if the data collection part is the IBAS and the data report they have is from the IBAS.

Kelly Untiet replied that she is uncertain if there is another data collection report.

Rep. Luneau commented that the data that is being collected does not indicate whether it is student on student or student on staff.

Sen. Kahn stated that the biggest issue is that you have a handful of schools that have said they have had 1st degree assaults and others that are reported to have none.

Rep. Wolf commented that there is also the problem of each school's interpretation of 1st degree assault.

Mr. Cascadden commented that a good source of data is the Youth Risk Behavior Survey. It could give them an idea of how often certain behaviors happen. The CRDC is another one. Schools spend a lot of time in the spring filling those out.

Sen. Kahn commented that the Bow and Dunbarten School District has been represented at every hearing and file all the correct reports. He suggested that the DOE could compare their reports to what is in the data and test if the information is being passed the way it should be.

Brian Hawkins – NEA NH supplied a hand out of legislative recommendations. He stated that they went back and contemplated the last meetings issues to determine how they might be addressed. The legislature should acknowledge in the law that school employees should be encouraged to report incidents and that there needs to be more accurate reporting from the schools. It should be a student and staff approach to keep everyone safe. Point number one of the handout addresses proactive safety plans and the thought is that there is already a collaborative committee so let's build on that. He stated that through rules they should require a student violence incident response and training has to be a part of how this is to be carried out. Injuries have to be reported, building upon the 1st report injury that is already in place.

Esther Dickinson commented that the conversation had here about the restraint law shows that interpretation is important to the practice of handling students in the moment of action to keep the student and teacher safe. It also showed that their needs to be a dialogue about reporting and the problem will become clearer as well as the process to address it. She continued that it is a good idea to build on what is already in law and not create something new. On point number one, 193: D was written in response to the school shooting epidemic and does not cover student staff violence incidences and that needs to be added. The NEA is looking at two statutory changes, training for a safe workplace and 193: D needs to be made useful to employees so that they know how to address violence. The legislature could direct the DOE to create rules.

Sen. Kahn asked if there are two paths for reporting, one to the parents and one to the police.

Esther Dickinson – NEA NH stated that the parental report also needs to have a report to the police.

Rachel Hawkinson commented that the report to parents only is assaults involving pupils and not staff.

Mr. Cascadden commented that any assault for involving an adult is an ED 17 report.

Sen. Kahn asked Mr. Cascadden where are all the places he reports assaults on an adult.

Mr. Cascadden replied on the ED 17 and the IBAS.

Brian Hawkins continued that point number four on the handout deals with what is the tool that the DOE can use when the district does not report.

Mr. Cascadden stated that he will look into what the requirements for the IBAS are.

Brian Hawkins commented, referring to the Keene school report that was given out at the first meeting, that the school district was discouraging teachers from reporting. There needs to be language in legislation protecting staff when they report an incident or injury. Adding that will say to the employees that the legislature wants them to report and it would be a valuable part of knowing where the problems are.

Rep. Myler asked if the feedback they are getting from members is that there is a hesitancy to report because of negative school repercussions.

Esther Dickinson answered that yes they are either too busy or they are unwilling to report that they are injured because they have had supervisors say they cannot report. They would like the statute to say that they can report without retaliation.

Rep. Myler commented that there are laws on the books that say child abuse has to be reported and asked if she is talking about something like that.

Esther Dickinson stated that no it does not need to be a mandate just language that encourages them to report without fear of retaliation.

Rep. Wolf asked if there was a public whistleblower statute.

Brian Hawkins replied that he is not sure that would cover the school employees.

Esther Dickinson replied that she would have to look at it and see if there is a gap in that law. She added that this new language would encourage the employee ahead of time that a report of injury has to be filed no matter what kind.

Rep. Luneau commented that there is mandatory reporting.

Esther Dickinson replied that a complaint that you were retaliated against would be reported to the Department of Labor, but some think it is different because it is a school.

Brian Hawkins commented that point number four relates back to what happens when reports under the Safe School Zone law are not happening. By asking the rule process to contemplate this, it will allow stakeholders to come up with a process. In Keene the staff member contacted the DOE, and they were helpful, but there was not a next step that anyone could take after that.

Rachel Hawkinson stated that there is a penalty in the law, but it is not clear who enforces the penalty or what it is.

Brian Hawkins stated that they think the committee should contemplate an extension of itself to deal with bigger picture issues and conversations that are still needed.

Sen. Kahn clarified that 193: D is sufficient, but they would like the reporting process expanded on.

Esther Dickinson replied that yes it has to be.

Sen. Kahn questioned if the retaliatory language is needed.

Esther Dickinson commented that it is there as a reference so staff will know that they are protected.

Sen. Kahn asked if that was the only statutory change?

Brian Hawkins replied that letters A, B, and C would require rule guidance, the last part on safe schools and number three.

Rudy Augdin - Deputy Commissioner Department of Labor commented concerning the Whistle Blower statute 275: E2. In sections A, B, and C there are protections and they would cover school staff. In terms of making clearer 281: A 53, maybe a statement needs to be added that employers should not discourage reporting. He does believe whistleblower protections would cover any retaliations.

Sen. Kahn questioned that the statute does not mention safety concerns.

Rudy Augdin replied that in paragraph B it could be made clearer that the employer not wanting the report is protected. If an employee came to them it would be covered. They receive injury reports from schools or should be getting reports of all injuries. The DOL could give information on injuries reported and what was the genesis behind the injury.

Rep. Wolf stated that his concern is that the DOL may not be getting the reports because to get workers comp you have to be out at least 3 days.

Rudy Augdin replied that they are supposed to be receiving the report whether or not workers comp is involved. They are also concerned they are not getting the reports. A lot of the protocol they have, has been focused on wires hanging in the workplace and things of that nature. Talking about these injuries is somewhat new and a lot can be done to work with these folks to inform them about required safe workplaces. He stated that it is difficult to go into schools and see what has been done in terms of training. In terms of data analysis, HB 406 passed last year and that dealt with injury reporting. The Department of Labor has hired someone to better analyze the data so they can do a better job with inspections and potential solutions.

Sen. Kahn questioned if an employer has 15 or more employees they need to have an active Joint Loss Committee.

Rudy Augdin replied yes and a safety plan.

Sen. Kahn commented that in school districts where there are many schools, it has been suggested that they focus all of their training and time on active shooters instead of following up on day to day injuries. He asked if Rudy had any guidance on what to do about that.

Rudy Augdin replied that they have seen two issues regarding Joint Loss Committees. In order to keep the committee manageable, you have to lose some voices. Best practice would be to have them located at each school and have every stakeholder at the table to hear all the voices. The other big issue is employers should be looking at incident reporting according to the law. Some are not because of HIPAA privacy laws. A suggestion is to de-identify the information and use it to see where the problems are and create a plan to improve.

Mr. Cascadden commented that traditionally those committees were looking at lights, etc. Adding looking at injury reports as a component of the Joint Committee is a good idea. In his district they have one in each building and they focus mostly on school safety and not injuries.

Sen. Kahn asked Rudy if there is any value for him to look at the DOL data and find any granularity.

Rudy Augdin replied that yes they can look at it but there are questions as to how the data comes in. He will look at what they have and try to drill down.

Sen. Kahn commented that knowing what data the DOL has access to would be good to give recognition to in the committee's final report.

Sen. Kahn asked the committee members if there were specific items that they would like to look at for the next meeting.

Rep. Luneau asked if a matrix could be put together of the discussed changes to statute to clarify what is needed.

Sen. Kahn commented that would be helpful to summarize the rule and wording changes that are needed.

(Tricia will put together a summary of discussed changes)

Rep. Luneau asked if having a Joint Loss Committee is in rule making or statute.

Rudy Augdin replied that it is in the 600 rules, but it is also in statute.

Rep. Luneau asked if they are looking at a change in statute for the Department of Labor.

Rudy Augdin commented that they could try and change statute in regard to school violence which would help in the rulemaking process. If you look at the rules now there are a lot of known things that have to do with work safety. Specificity regarding school violence would help them make the rules needed.

Next Meeting Date: October 22th, 10:00 a.m. in LOB 103

Report Due: November 1, 2019

SB 141, Chapter 305, Laws of 2019
AN ACT establishing a committee to study violence in schools.

Organizational Meeting Report

TO: Members of the Committee
FROM: Tricia Melillo, *Legislative Aide*
RE: Organizational Meeting Minutes on

MEETING DATE: October 22, 2019 10:00 p.m. LOB RM 103

Members of the Commission Present: Senator Kahn, Rep. Mel Myler, Rep. David Luneau, Rep. Donald Bouchard

Members of the Committee Absent: Rep. Dan Wolf

Discussion:

Sen. Kahn opened the meeting. The members reviewed the notes from last meeting.

Rep. Myler wanted to make a note that his teacher friend that he spoke of at the last meeting, teaches in Massachusetts and not New Hampshire.

Sen. Kahn encouraged the members to get any changes to the minutes to Tricia for the Final Report. He commented that the communications between the stakeholders at the meetings have been very helpful. He suggested they begin by going over the chart of issues and proposals that have been brought up in the meetings over the past month. He wants to try and discuss the four issues, incident reporting, the use of data and looking into a standardized reporting that they can suggest. Number two, the Department of Labor and having safety committees in schools and concerns about disincentives of reporting. Number three, School Safety Zones laws and the school policies that are supposed to be in place and number four, the use of restraints. Specifically, school policy vs state statute and the confusion over addressing violence in the classroom. He sees the primary issue as the data being reported but not being entered into the DOE database.

Rep. Luneau stated it was not clear if the reported data was student on student incidents or student on staff incidents. Also, violence against staff may be reported to the Department of Labor but violence on students is reported through the Department of Education. He is wondering if they could have a central place for both so it could be looked at and analyzed.

Rep. Myler commented that even if the reporting is more comprehensive, there is no one in the DOE to look at the data and provide support to the school districts that have problems.

Rep Bouchard commented that he looked at his school districts and spoke to an assistant superintendent and there is no one that analyzes the incidents, so they do not report.

Rep. Luneau commented that some districts give a lot more data than others do because there is no standard.

Rep. Myler stated that it is difficult for the DOE to collect data. They send out a request for information and schools do not see the importance of sending what the DOE needs. He added that the other thing is how can we create a safe culture in schools. That is where the MTSSB comes in. It has changed school culture where it has been implemented. It provides a more supportive atmosphere. Getting schools to report the information is not going to provide the safe environment that the MTSSB has proven to.

Rep. Luneau commented that his school district has implemented some supports by hiring social work staff, but he does not have data from that.

Rep. Myler asked if it was the Bureau of Student Wellness that keeps records of schools that have implemented MTSSB and their progress.

Diana Fenton - DOE confirmed that is correct.

Sen. Kahn asked her if the Department of Student Wellness has adopted it as a system for schools.

Diana Fenton stated that they make it available to schools but do not endorse any specific program.

Sen. Kahn stated that they will take a look at MTSSB because there is a growing mental health problem and school days can be increased with a system of supports.

Rep. Luneau asked what is the status of the grow grants.

Bridey Bellemare stated she believes the grants end at the end of this year.

Rep. Luneau questioned whether there will be a report on how the programs implemented with the grants are doing and what the outcomes seen in school districts are so other school districts can benefit from the information.

Bridey Bellemare replied that she does not know if there will be another round of grants yet or if the program has ended. Each school district has presented at the local level and have presented a data tracking management program for suicide and restraint in the south-central region. Nothing is formalized statewide, but people are certainly working towards programs to address the whole child. Cassie Yackley- NH partners in Education will be presenting on this topic on Nov 1st and Bridey will be happy to send the information forward. She is working with Antioch college with the project grow data.

Sen. Kahn stated that the report they have on MTSSB has data from Antioch college and this would be a systematic way of addressing school culture. Mr. Cascadden's concerns have also been noted by the committee.

Mr. Cascadden commented that he had a brief conversation with Caitlyn Davis from the DOE, and she said she can get them the information on which zeros are truly no incidents and which ones are schools that just did not report.

Sen. Kahn confirmed that there is no reliable data.

Brian Hawkins - NH NEA commented that at the last meeting they covered four areas of potential changes to legislation and he has submitted today a handout with specific legislative changes to RSA 281-A:64 which will make clear that employers have to provide a

safe work environment and trainings according to the Department of Labor statutes. He has had a conversation with the DOL and believes they are okay with the changes. The next potential change is on 281 A:53, it involves language around making sure employees are not discouraged in reporting. There are protections included in the whistleblower law, but this would make clear prior to any retaliatory act that the legislature does not want school leaders retaliating against staff regarding reporting of incidents.

Danielle Albert – Legal Counsel, Department of Labor stated that they have gone over section A:53 and agree to adding this language. The protections that are covered do lie in the whistle blower statute but to add it into the workers compensation statute will make it clear that employees should file injury reports. The second part they are also able to implement if that is the direction that this committee goes. The DOL has some technical comments on the first section. They recommend taking out the student on student violence and injury because the workers compensation statute is to help employees. Student on student injuries are outside the purview of that statute. In the next section they suggest the language say, “in addition to the foregoing, address protocols for employees to follow in relation to workplace violence, inclusive of training, so all staff are aware of the protocols”. The NEA is okay with both changes.

Esther Dickinson stated that, the issue they have is that most conversations they have regarding violence has been about school shootings and Joint Loss Management teams have not dealt with the new kind of student on teacher violence before.

Danielle Albert stated that there is not a definition of violence in statute and so the solutions could be broad. She mentioned adding that definition in rules.

Rep. Luneau asked if that will help to address clarity in the labor standard of what violence in this statute means.

Danielle Albert replied that it would.

Esther Dickinson commented that 126U they are not asking for 126-U to be changed and would not want to hold up these protections to have that conversation. Instruction for staff and programs can be talked about with Joint Loss Management. The NEA would like to concentrate on the problems they can solve practically.

Rep. Luneau asked if having the definition of violence in labor rules would give the NEA a good start in doing that.

Esther Dickinson replied yes. This is a new workplace safety issue that has not been looked at yet so if it was in rules it would give them clarity and guidance when counseling their members.

Sen. Kahn stated that he would like to pursue adding the definition of violence in workplace rules and asked if the DOL has one.

Danielle Albert responded that they do not.

Sen. Kahn clarified that they would be adding into the legislation pursuant to 541-A the definition of violence.

Rep. Luneau asked Mr. Cascadden if this approach will help clarify 126-U for him.

Mr. Cascadden stated that he does not think that the changes should be done in Department of Labor workplace rules. With those rules, if staff does not follow them he has to implement discipline on the staff member because it is safety protocol. He asked that the committee keep that in mind.

Esther Dickinson commented that part of the point is that in school districts where this is not followed, staff is getting discipline for things they do not know about. By having this conversation and implementing a clear safety plan everyone will know from the beginning what can and can't be done regarding school violence. The NEA would suggest leaving it up to the Joint Loss Management Committee to decide which training they would like to give to staff.

Danielle Albert commented that the JLM committee can give opinions about which training program to use but it is not their responsibility to implement it.

Rep. Myler stated that one of the things they want to provide is a consistent training program that is standard in all schools. There are questions to be answered regarding what is the expectation, how does it get implemented, and how do staff and management learn to understand it. He asked if the Department of Labor would provide that.

Danielle Albert replied that they provide training to employers on how to get what they need for safety, but it is really up to the employer to decide how they want to provide it. She added if they want a standard they could charge the JLMC to come up with something.

Rep. Myler affirmed that the training is important, so that all schools in NH are doing the same thing. They need to be trained in a practical way about what happens in the classroom when a child's behavior turns violent. The community needs to be trained.

Brian Hawkins stated that a lot of the provisions in the JLMC plans are physical safety components and not this new type of safety from violent incidents with students. The consistency is what the legislature can provide with clarity of actions that need to take place across the board with all schools in the state. He thinks this will incentivize schools to develop plans that fit with their specific needs.

Sen. Kahn stated that he thinks that it is good to begin with the development of a policy and Representative Myler believes that standard training should be part of that policy. He added that they could suggest that in the legislation.

Rep. Myler commented that his concern is how the policy is going to be implemented. There are teachers that have no idea of what they can and cannot do with a student in these situations. Consistency is in the eye of the beholder and if they had some sense of what can and can't happen it would be an improvement. Currently teachers are wondering how much abuse they have to take before they can physically do something with a violent student.

Esther Dickinson stated that when they talk to members it is understood that the successful schools have training, a system, a policy and have open conversations regarding these issues. Step one is to get all the schools that are not even having those conversations to begin having them and to develop a plan. That is when the agencies can give referrals for training and encouragement.

Rep. Myler wanted her to confirm that there are some best practices out there and Esther replied that there were. He stated that he is assuming that public charter schools will fall under this legislative proposal.

Sen. Kahn replied that he thinks they can just have it say all public schools and eliminate the word district. He asked if the issue of a penalty for non-reporting is covered.

Danielle Albert replied that it is. Further down on the NEA handout there is a penalty for employers who file a report late or does not file. The department can issue sanctions and the employee can seek justice as well.

Esther Dickinson stated that there is a culture of not reporting these incidents. Because they are not student on student, employers are telling the teachers not to report. With this they can alert the DOL, so they can investigate and take action, or they can go to superior court and file a whistle blower complaint

Rep. Myler asked Ms. Albert if the department has a standard of what kind of violence should be reported. One employee might think an injury is nothing, but another employee might regard it as a big deal.

Danielle Albert replied that there is not a gradient of injury in the department. There is some ownness on the employee to report to the employer the injury and then the responsibility is on the employer to report. All injuries, even a paper cut, are supposed to be reported to the DOL if the employee has let the employer know about it.

Rep. Myler asked if threats from a student are to be reported.

Danielle Albert replied that unless a threat translates into a mental health injury on a staff member, it does not need to be reported. This is because it does not fall under the injury category.

Sen. Kahn questioned if on page two where it talks about the responsibility of the employer in bold, is it better to state it as a negative or change it to a positive for the employee.

Danielle Albert replied that it could be changed to state "no employer shall discourage..." She added that the department ran a search of every 1st report of injury received from an employer or the workers compensation insurance for the year October 2018 through September 2019. It searched any report that was suggestive of violence and for a range of injuries from being kicked to being stabbed. The total number was 1447.

Esther Dickinson stated that there is an ownness on the employer and employee to describe the injury and sometimes it does not contain that it was a student on staff injury.

Sen. Kahn asked if they ran the report using a word search.

Danielle Albert explained that she had the IT department run it and she does not know what they used to search.

Sen. Kahn stated that it would be good to know with some more specificity to how they come up with the number and what were the key words.

Danielle Albert responded that she believes they searched by schools that reported and then looked in the fields for the data, but she will look into how it was done and get back to the committee.

Sen. Kahn asked if she would ask them if public charter schools were included in the search.

Danielle Albert replied that she will.

Sen. Kahn commented that it sounds like a believable number considering what the federal numbers are. He is curious what the numbers would have been five years ago. It would be helpful to see if the fact that mental health issues in our public schools are growing is leading to greater frequency of injuries.

Danielle Albert stated that they now have a different way to capture the injuries, but she can find out if there is anything there from five years ago.

Rep. Luneau suggested that the context of the suggested outcome should be if stressors in our society that have increased over the years have led to a greater frequency of injuries.

Sen. Kahn and **Ms. Albert** agreed.

Brian Hawkins commented that in 193-D:2 their first suggestion is a procedure for reporting acts of violence against school staff. He continued that when this law was adopted, these types of injuries were not as frequent. This will give the Department of Labor the ability to adopt rules to that end. The next section states that the assaults need to be reported to the Department of Education as well. This will give the DOE a tool so that if 193-D is being violated, such as when an employee calls to report, there will be a procedure to follow after such violations. It will also provide the DOE with some oversight to see where the problems are so that support can be given.

Esther Dickinson commented that this part is more about the assaults as they are happening, and it is under the purview of the DOE to handle the assault data. Assault is defined in the statute on the second page and the safe school zone law has an exemption for notifying the police but this states that they still need to report to the DOE so we can have good data.

Rep. Myler asked what happens after the DOE gets the report.

Esther Dickinson replied that the problem is there are obligations under the law that the districts are supposed to do, and they are not. Currently nothing can be done by the department so this will allow them to create a process.

Rep. Luneau commented that then the DOE would have data to examine to see what the trends are if certain programs are working or not. He would like to hear from the DOE about the changes.

Diana Fenton stated that she has not had a chance to work on the language. She does not think that assaults should be reported to the DOE. Assault should be reported to the police; an assault is a crime and the DOE does not investigate crime. In 193-D does not give the sanctions to be given by the department. They have very limited authority to impose penalties and she does not know what that would look like. The underlying problem is what the department is supposed to do with the data. The legislature would need to advise them on what to do with it.

Sen. Kahn replied that the data is used for public reporting out. They have already given mandates to schools to provide training in suicide prevention and mental health issues. He asked **Ms. Fenton** if a school fails to do comply with these mandates what is the DOE authority reserved to administer.

Diana Fenton responded that she is not sure if there is any mandate or authority to administer anything only to report out.

Jerry Frew commented that what they find happening is the so what theme. There is nothing that compels the department to look at the data and do anything with it. It is a matter of lack of resources and personnel. He added that no one looks at the data when it comes in so there is no one that can identify if there is a school that may be in trouble. This means that there is no support provided for the school to recover. The legislature requires all the training but no one to identify the problems. That is what makes it difficult to get all the right policies and procedures in place. If they are going down this path they have to look at analyzing the reports and providing the resources to help.

Mr. Cascadden stated that this statute is about discipline. They have been talking about injuries against teachers and that may never result in discipline to the student. Reporting to the DOE should not be in this statute because assaults need to be reported to the police. In practice at his school they have this discussion every day. For example, two kids are in gym class one day and one kid gets a bloody nose from the other kid punching him. They have to investigate to see if the incident rises to bullying or assault that needs to be reported to the police. If a student causes an injury to an adult violence against an adult, are we, as administration, going to report that to police which will affect the student's future. They may need to have a conversation. There are a lot of simple assault going on in schools.

Brian Hawkins stressed that in order to look at what the possible solutions are to these issues you need the data.

Esther Dickinson commented that this is in an effort to not make an entirely new process. The safe school zone law already talks about safety and reporting, it is just not happening. Schools interpret this law differently and whether or not it is reported to police is not the NEA's concern, they are not looking for punishment. Employees can use the data to know if there is a problem in the school or if there is an epidemic and if there is no data it is just anecdotal, and you cannot solve the problem.

Mr. Skibbie commented that simple assault is defined in statute as un-privileged physical contact. If it is against a teacher or a student you need to think hard about reporting to the police because it can affect the student's future.

Rep. Bouchard stated he is having a hard time because if the data is not there they cannot decide what needs to be done.

Brian Hawkins stated that is why the NEA is bringing these issues about reporting to the legislature. It is to decide what can be done to begin looking at the problem.

Rep. Luneau commented that maybe the solution is that whatever data the DOE collects they need to evaluate and submit a report to the legislature by a certain date each year.

Sen. Kahn stated he would like any suggestions from the DOE and would like to discuss the possible changes to the restraint statute 126-U.

Mr. Cascadden stated that he talked to some other superintendents and his Special Education Director and he is more comfortable with the restraint law. The changes that have been made to restraint laws are good and he does not want to change them. Two things that will help them is knowing what is allowed when moving a student or stopping a student

from being unsafe and what defensive actions can staff use. They need to know what is reasonable and some clarification around those two issues would help a lot. The last thing they want to do is restrain the student and if necessary only when it involves another person that may be hurt. People are just not sure what they can do.

Mr. Skibbie agrees there needs to be more education and clarification on the restraint law. He thinks that there is no limitation on what you can do to escort the child so long as you are moving the child. Basically, it is a carve out to what a restraint is. On page two of the handout he gave them at the last meeting, it states restraint shall not include moving a student towards a safe location. It does not say, so long as the child is not resisting or anything like that. If you need to take a larger child and move them with a couple of large grown men that is allowed. The threshold of restraint does not apply here because it is not a restraint, the child is being moved. The confusion comes when the law talks about letting parents know when a child is restrained, secluded or has been physically moved. Schools complained that they cannot write a report or give notification every time a staff member walks a child out of a classroom. So, they made the rule that only if the child is combative do the parents need to be notified. That is the only thing that is triggered when a child is combative or resists when he/she is being moved. He added that every instance cannot be listed out in the statute, they need to have abstract concepts and agreed that schools need scenario-based training to take those concepts into practical action.

Sen. Kahn stated that on page six it also makes reference to parent notification.

Mr. Skibbie replied that there is an exception for notification of an escort that is not combative.

Rep. Myler questioned if he takes a student to the office by the hand and they resist a little no notice is necessary, but if the child resists by sitting and he has to lift them up, he would have to notify a parent.

Mr. Skibbie replied no, the statute states you can cause the child to move without notification.

Rep. Myler asked if the student strikes him and he has to stop them then we have to let the parents know.

Mr. Skibbie answered, yes, in any physical combative situation. He added that it is not restraint to move a child that is resisting.

Sen. Kahn stated that on page six it states that if there is physical incident you will report to the parent.

Mr. Skibbie replied that 2/3rds of restraints are those on students with disabilities. In one instance that he knows of the parent did not know there was a physical incident because the student was nonverbal. Parents have a right to know when combative or disruptive incidents happen with their child. The law does not require a school to clear a classroom nor does it allow destruction, it allows schools to remove the student.

Sen. Kahn asked what the reason for the 2014 update to the restraint law was.

Mr. Skibbie answered that it was in order to include seclusion guidelines. In 2010 when limits were put on restraints there became more instances of seclusion, so the legislature addressed it in 2014. There were also some language tune ups.

Mr. Cascadden commented that on page two, number two, when it talks about a temporary hold on the hand, the schools are interpreting this as much less than what is allowed in the law per Mr. Skibbie.

Mr. Skibbie passed out a report from the U. S. Dept of Education. He stated that on page two he highlighted the sentence about physical restraint or seclusion and that it is the same standard in NH. This standard or close to it also appears in our law in regulation, 305.02 and 305.04, that deals with psychiatric facilities. If you defend yourself you are not breaking the restraint law. The federal law recognizes that. He stated he is unaware of a lawsuit or discipline of a teacher that was defending themselves against a student that was attacking them.

Bridey Bellemare stated that sometimes a CBA will council educators and it may not align with the law. How staff respond to incidents often depends on the way IEP's are being written. They need clarity in what the law allows. There has been a shift since the law was revised. She questioned if the term escort and transport mean the same thing and stated that escort seems softer than transport.

Mr. Skibbie passed out a report from the Carsey Institute. He stated that what schools do matters in terms of school climate. The teachers need to understand what they can and cannot do. This Carsey report shows that a majority of schools never use restraint and seclusion. This is very strong evidence that what schools do with climate, such as implement a MTSSB program, matters as it increases the time for instruction and lessens the time dealing with behavior.

Rep. Myler asked if there is any training happening in NH schools right now.

Mr. Cascadden stated that they use de-escalation training. They tell the teacher to back off if a student is getting aggravated so that the situation can be diffused calmly. A staff member cannot put their hands on a student unless they have had the CPI training.

Rep. Myler asked Mr. Frew if CPI is being used all over the state for training in schools.

Jerry Frew replied that it depends on resources whether or not a school can implement it. CPI training is 40 hours and some schools do not have the resources to train everyone. In some schools a few staff get trained and are used to respond to incidents.

Sen. Kahn commented that if this report was being shared with the school districts and part of the policy was that incidents need to be reported to the school board there would be some self-regulation.

Mr. Cascadden stated that is how they report bullying incidents. They go to the school board.

Jerry Frew stated that you have to be careful with special needs children. If they are reported to the board it could mean a lot of unintended consequences for the student and the parents.

Mr. Cascadden commented that if they could get the clarification of those two items it would be really helpful.

Rep. Luneau asked what a CBA was.

Bridey Bellemare replied that it is a clinical and behavioral analyst who develop plans for a child with special needs and is part of creating a child's IEP.

Rep. Luneau asked if **Mr. Frew** knows if there are any education paths within the University System that include CPL training as part of a degree or certificate program.

Jerry Frew stated that he is not sure of any right now.

Mr. Cascadden stated that it is a badge certification.

Rep. Myler asked if it was the kind of certificate that you could have a couple of people trained and then they can train others.

Mr. Cascadden replied yes, that is how his district does it.

Mr. Skibbie commented that the law does not require any certain type of training just that school employees are trained.

Meeting Adjourned

Next Meeting Date: Tuesday, October 29th at 10:00 a.m. in LOB 103

Report Due: November 1, 2019

SB 141, Chapter 305, Laws of 2019
AN ACT establishing a committee to study violence in schools.

Organizational Meeting Report

TO: Members of the Committee
FROM: Tricia Melillo, *Legislative Aide*
RE: Organizational Meeting Minutes on

MEETING DATE: October 29, 2019 10:00 p.m. LOB RM 103

Members of the Commission Present: Senator Kahn, Rep. Mel Myler, Rep. David Luneau, Rep. Donald Bouchard

Members of the Committee Absent:

Discussion:

Sen. Kahn opened the meeting. The members reviewed the notes from last meeting. The minutes were accepted as written.

All committee members reviewed the draft of the final report to make any changes needed.

Rep Luneau commented that on page 3 of NEA NH's proposed language, teachers, staff, and administration are all considered employees and that word should be used instead of staff.

Brian Hawkins agreed that it makes sense to be all inclusive.

A discussion was had by all members of the committee regarding including visitors and volunteers as well. The language should encompass anyone who may be assaulted at the school. It was observed that any assault in the school, no matter who it involves, can affect the overall environment. It was agreed that the reporting data should include all violent injuries of student against employee, volunteers or visitors. This data should be separate from the student against student incidents of violence.

Rep. Wolf asked, of the 1400 injury reports from the DOL, how many were acts of violence.

The members agreed that they understood it to be all of the injuries were from acts of violence.

Brian Hawkins cautioned that number may be not accurate.

Rep. Myler stated that he still thinks it is interesting that the labor department can get the data when the Department of Education cannot. He is concerned about the consistency of the data.

Rep. Wolf commented that he is concerned about the same thing.

It was discussed that the Department of Labor receives more consistent reporting due to the workers compensation injury reports that must be done. Schools do not have any incentive to report to the Department of Education.

Rep. Luneau was concerned about stating that some employees were being discouraged in reporting injury if there was no evidence of that.

Brian Hawkins stated that the NEA members report this is happening all over the state and the Department of Labor Keene report has confirmed that discouragement of reporting is happening.

Rep. Luneau and Sen. Kahn stated that they would like to note in the findings that having a resource officer in the elementary schools has had a positive impact on the environment and deescalating violence. Also, that they act as counselors and play a broader role than just enforcement of the law.

Sen. Kahn stated that their needs to be legislation recommendations regarding the lack of consistency around the restraint law, 126-U.

Rep. Luneau commented that the Department of Labor could implement rulemaking regarding restraint and turn that into practical training among school boards, teachers etc. He added that if every school has to develop their own it is going to be one more thing that they have to have training days for.

Sen. Kahn commented that maybe it would be possible for DOL and DOE to work together to come up with training. **Rep. Luneau** commented also the professional associations.

Rep. Myler asked those professionals in the room if they could provide any help to the schools for consistent training.

Carl Ladd from the School Administrators Association stated that he would need consistent definitions for 126-U. In itself it is ambiguous and is the problem. Every lawyer has a different interpretation and therefore so do the schools.

Barrett Christina cautioned the committee on suggesting another training for schools. Currently they are spending a lot of money on training that has nothing to do with educating children.

Rep. Wolf suggested that in the recommendation they ask the DOL if they can work on the definitions of 126-U because it has become a labor issue.

Sen. Kahn stated that there needs to be a discussion of what best practices are regarding 126-U. The DOE, DOL and school associations should work together and then bring it out in a train the trainer approach. Which may be the school administrators as they are the ones responsible for reporting.

Barrett Christina gave an example of a child who was immobile and non-verbal, needed to be changed. In the process of changing the child they fidgeted, and the teachers had to hold the child. They were concerned that was restraint. The school was advised to be told them to tell the parents – if you did that every time you put your hands on a child they would spend time doing nothing else

Sen. Kahn stated that in addition to reporting the restraint to the parent, it also needs to be reported to the DOE.

Rep. Wolf commented that it is hard to define common sense. He believes you have to have some flexibility in the statute. He added that maybe the DOL can come up with something, but it will be hard for them.

Sen. Kahn asked that the DOL and DOE recommend a consistent definition and application.

Rep. Myler stated that if they can get some consistency in reporting of the data, they may be able to see the trends that need to be focused on to expose the areas that need work. He added that analysis needs to be done. The DOE does not have the personnel to do it but the DOL seems to have some interest and personnel.

Rep. Bouchard stated that with his training in science he has a hard time without the correct data coming to a conclusion. The biggest problem he sees right now is the lack of reporting.

Sen. Kahn stated he thinks that is why we need the focus of our recommendations to be on reporting.

Rep. Bouchard made a motion to accept the report with the edits discussed and Rep. Myler seconded. All members voted in favor.

Rep. Wolf believes that we need a recommendation and definition of reporting and data consistently.

Sen. Kahn stated that they should include in the report the recommendation that the school boards should get a report from the administration on incidents of violence, both student to student and student to employee, visitors and volunteers.

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