



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

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MEMORANDUM

DATE: June 20, 2016

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Daniese McMullin-Powell, Chairperson
DMP/pj
State Council for Persons with Disabilities

RE: S.B. 239 (School Discipline)

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. No. 239 which would limit use of out-of-school suspension to 3 circumstances: 1) willfully causing or attempting to cause bodily injury; 2) threatening serious bodily injury or death to another person, except in self-defense; and 3) bringing a weapon or controlled substance onto school grounds. The legislation encourages use of interventions other than out-of-school suspension for disruptive behavior. Statistics would be compiled and published which would result in remedial activities for "outlier" schools.

Background is provided in the attached May 7, 2016 News Journal article. The article notes that Delaware public schools suspended 18,053 students (13.7%) of the overall student population in the 2012-13 school year. Students with disabilities comprise 13% of the overall student population but accounted for 24% of out-of-school suspensions. African-American students comprise 32% of the overall student population but accounted for 62% of out-of-school suspensions. Only 2% of the suspensions were for serious offenses.

SCPD believes the legislation has obvious merit given the statistics regarding students with disabilities and other minorities, especially considering that only 2% of out-of-school suspensions were for serious offenses. However, Council has the following observations and recommendations.

First, while the bill is ostensibly intended to cover both districts and charter schools (lines 79 and 89), only districts are expected to publish standards informing parents of the circumstances justifying the removal of students from school settings (line 25). The sponsors may wish to consider an amendment to clarify that this section also applies to charter schools.

Second, the norm in public schools is that administrators (e.g. principal; assistant principal) authorize suspensions, not teachers. See, e.g., attached excerpts from Christina School District and Indian River School District codes of conduct published at <http://www.christinak12.org/studentmanual/2015-2016/Sections/P32-Disciplinary-Processes-Procedures.pdf> and <http://www.irsd.net/common/pages/DisplayFile.aspx?itemId=8174819>. Teachers, bus drivers, and other staff generally make referrals for discipline to administrators. In contrast, S.B. 239 literally authorizes teachers to impose out-of-school suspensions as a matter of State law. See, e.g. lines 45-46: “A teacher ...may address a student’s disruptive behavior by suspending the student...” By statutorily expanding the scope of school personnel authorized to impose out-of-school suspension, the bill could inadvertently increase the number of out-of-school suspensions. Since public school policies may vary somewhat in defining who is authorized to impose an out-of-school suspension, as well as other discipline, it would be prudent to consider the following amendment, i.e., substitute “school” for “teacher or administrator” in lines 45, 33, and 34. The effect would be the same but public schools would not be forced to change their codes of conduct to invariably permit teachers to impose suspensions (lines 41-43 and 45-46) and other discipline.

Third, the legislation defines “disruptive behavior” at lines 6-8. Schools are then invited to adopt a broader definition (“further define”) of “disruptive behavior”. This is dysfunctional. It makes little sense to adopt a statutory definition and then invite schools to adopt a hodgepodge of non-conforming, amplifying definitions. It is also inconsistent with the public policy embedded in the attached legislation (H.B. 42) adopted in 2011 which instructed the Department of Education to adopt “uniform definitions for student conduct” related to student discipline. Consider the following alternate remedial amendments to lines 30-31:

(2) ~~Further define and/or~~ Provide interpretive guidance or examples of ‘disruptive behavior’ set forth in subsection (a) of this section.

OR

(2) ~~Further define and/or~~ Provide an explanation or examples of ‘disruptive behavior’ set forth in subsection (a) of this section.

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations on the proposed legislation.

cc: Mr. Brian Hartman, Esq.
ACLU
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

SB 239 School Discipline 6-6-16



KATE GRANT/STAFF PHOTOGRAPHER
New legislation in the Delaware General Assembly would reexamine out-of-school suspensions for minor infractions.

Bill's goal: Keep kids in school

JESSICA MASULLI REYES AND MATTHEW ALBRIGHT
THE NEWS JOURNAL

A bill introduced this week aims to keep Delaware students in the classroom by reducing out-of-school suspensions for minor infractions, such as being late to class, disrespecting a teacher or dress code violations.

The legislation, introduced by Sen. Margaret Rose Henry, D-Wilmington East, would require schools to use shorter in-school suspensions, counseling, parent-teacher conferences, tutoring and other restorative justice practices as the default for handling behavioral problems.

School

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Sen. Margaret Rose Henry, D-Wilmington East

for the most serious offenses, such as those involving violence, weapons or drugs.

Henry said the model of simply punishing students who act out doesn't fix anything. The legislation would push schools to use non-punitive practices intended to help students understand the harm of their behavior, learn empathy and problem solving, and build relationships and responsibility.

"You need to ask 'why are they causing a disruption?' Henry said. 'Are they doing it because they didn't have breakfast? Is there a problem in the home? We need to talk about what it is that is causing the behavior and address that.'

The bill has the backing of the American Civil Liberties Union of Delaware, which argues that too many Delaware students are being excluded from the educational environment when they receive suspensions for minor infractions.

Delaware schools suspended or expelled 18,053 students — or 13.7 percent of the overall student population — during the 2012-2013 school year, the ACLU said.

Only 2 percent of out-of-school suspensions were for serious offenses, the organization said.

"The research shows us that the more a student is out of school, the more

likely they are to drop out," said ACLU Community Organizer Shannon Griffin. "There are better ways to deal with students when you have discipline issues, and pushing a student out of school repeatedly is not the answer."

The legislation comes as the state still is reeling from the deadly attack of 16-year-old Amy Inita Joyner-Francis in the bathroom at Howard High School of Technology in Wilmington.

State prosecutors are reviewing evidence submitted by the Wilmington Police Department to decide what charges can be lodged against three girls, who have been removed from school since the attack.

The Howard High incident did not prompt the legislation this week. Instead the legislation was part of a larger review of the state's suspension data and ongoing efforts to address zero-tolerance policies, Griffin and ACLU Executive Director Kathleen MacRae said.

"We cannot suspend or expel or arrest our way out of this problem," MacRae said. "Students need tools and teachers need tools to help students learn. This is a restorative justice approach to discipline, and it's very timely."

Reid Millius, a parent from Newark, agreed. "Every situation is

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SHANNON GRIFFIN
ACLU COMMUNITY ORGANIZER

unique and with the Howard girl, it's tragic, but it's something we need to learn from," she said. "A lot of the restorative practices and push for legislation is about prevention. If we are strong in prevention, hopefully we never get to the point where we have students facing charges like what we have right now."

Shenika Sample of Millsboro has seen the effect of school suspensions first hand.

One of her three children was recently given two days of in-school suspension for making noises in the hallway during testing. She said that, while her child must take responsibility for actions, the punishment seemed harsh.

She believes a better approach is to try to address the root cause of the problem and, when necessary, restrict the student's privileges, such as recess time or attendance at games or school dances, rather than removing the child from classroom learning time.

Griffin said the legislation also seeks to address troubling disparities regarding race, disabilities and gender.

African-American students made up 32 percent



Kathleen MacRae

vote on the bill, but says he wants to make sure it doesn't go too far. The bill, which has received support from a long-list of sponsors in the House and Senate, is currently pending before the Senate Education Committee. A vote is not yet scheduled.

"The number one complaint I hear from teachers is disruptive students," Bonini said. "I think the default needs to be safety. If there is a kid who is dangerous, there shouldn't be any hesitation about removing him."

Bonini, who is running for governor, said the state should look at developing a better alternative school system where disruptive kids wouldn't be warehoused but would also not interrupt learning for other kids.

He and several other Republicans have criticized other efforts in the General Assembly to rein in tough criminal justice policies like the three-strikes laws.

Jennifer Thomas of Smyrna hopes the legislation will pass. She is a mother of five children and a youth service specialist at an alternative school. "I think in all these issues, our focus needs to be on the victims and not the perpetrators," Bonini said.

She became interested in legislation after her daughter was asked to leave school because of a

nose piercing. Thomas pointed out to the school that it was part of the family's culture, and the school eventually agreed to let her daughter keep it.

Thomas worries that minor offenses like that too frequently lead to out-of-school suspensions without any oversight of how the student is spending their time at home. She said there needs to be more follow up to determine if the student completed his or her work at home or how they spent their day.

"There is no follow up," she said. "They lose time on education, and that is why we are so low in reading and math scores."

Millius said children often act out because of other things going on in life.

"If you can take that as a cue about what is frustrating them ... you can identify what the issue is," she said. "That creates a more equitable system for disciplining children."

Thomas hopes the legislation will come with extra funding or grants for teachers to be able to implement restorative justice approaches.

"Delaware is too small, and our children are going through too much right now" to not pass the legislation, Thomas said.

Contact Jessica Masulli Reyes at (302) 324-2777, jmareyes@delawareonline.com or Twitter @JessicaMasulli. Contact Matthew Albright at malbright@delawareonline.com, (302) 324-2428 or on Twitter @TNJ_malbright.

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SB

DISCIPLINARY PROCESSES & PROCEDURES

REFERRALS

Some behaviors student's exhibit can over time disrupt the instructional environment of the school or classroom. Many of these behaviors can be managed within the classroom by using strategies developed to re-direct and re-engage students in the process of learning. Classroom strategies are often enough to provide redirection for the bulk of disruptive behaviors seen in schools. But there are times when student behavior violates the behavioral expectations outlined in the Christina School District Student Manual in a way that requires sanctions or additional support for the student. Strategies and/or interventions may be appropriate for some behaviors but once appropriate levels of classroom/school strategies/interventions have been implemented without success OR the behavior rises above a level where strategies/interventions are not appropriate, the classroom teacher must "refer" the student to an appropriate building administrator for consideration for administrative disciplinary action.

The District utilizes an electronic "referral" system which tracks referral data at many levels allowing for monitoring and analysis of disciplinary actions. The Process for Referrals is as follows:

1. Classroom Teacher or other staff member determines that based on the student behavior, classroom strategies are not appropriate or have not been successful.
2. Teacher submits an electronic referral for the student describing the behavior to the building administrator.
3. The administrator reviews the behavior and if deemed appropriate assigns the appropriate "action" and/or appropriate disciplinary sanction.

Individuals Investigating allegations of behavioral violations as outlined in the Student Manual shall not require a student to provide a statement if the student refuses.

SUSPENSION FROM SCHOOL

Suspension is the temporary removal of a pupil from the regular school program. For purposes of clarification, students assigned administratively

to an alternative placement and students returning from expulsion shall not be considered "suspended" such as to trigger due process rights. Prior to a suspension from school the student shall:

1. Be given oral or written notice of the charges and be told on what evidence the decision may be made;
2. Be given the opportunity to present the student's side of the story; and
3. Have had prior opportunity to know that the alleged actions were in violation of established rules and regulations.

When a student is suspended, written notification of the suspension shall be sent to the parent. The notification shall state the cause and duration of the suspension. For each out-of-school suspension up to three (3) days, the principal/designee is required to hold and in-person or phone conference. If the suspension is for three (3) or more days, the principal/designee is required to hold a conference, to include the parent and child, prior to the readmission of the student. A definite time and date for a conference shall be scheduled at a place designated by the school administrator. Students have the right to submit a statement in writing concerning any incident requiring discipline action, but are not required to do so. The parent will be advised that the suspension may be appealed to the next administrative level.

Generally the notice and conference should precede the student's removal from school. However, if this is not feasible or if the immediate removal of the student from school is necessary to protect the safety of individuals, property, and/or the educational process, the necessary notice and conference, if requested, will follow as soon as practical.

In all cases of suspension an attempt shall be made to notify the parents/ guardians by telephone to request that the student be picked up from school. Students whose parents/guardians cannot be reached by telephone will be retained at school until the end of the school day. In certain emergency situations, and upon proper approval of notification, an administrator or designee may take the student to his/her home.

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JG
(also JFCH, JFCI,
JFI, JGA, JGD, JGE)

- (7) Any student who is found consuming beyond the prescribed or recommended dosage, or is found to be under the influence of, selling, or distributing any substance which alters or is intended to alter performance such as steroids, stimulants, amphetamines, diuretics, and related compounds, any of which are found on the NCAA list of banned drugs may be suspended from school and subject to disciplinary action up to and including expulsion as provided for in this drug and alcohol/palcohol abuse by students policy.

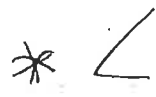
Each principal will be responsible for conducting an assembly each year, on or before September 15th, during which time students are given information about this section and consequences of its violation.

The Superintendent shall be responsible for developing regulations governing the approval procedure for alcohol/palcohol/drug abuse treatment programs, the monitoring of student participation in those programs and other procedures necessary to carry out this section of the policy.

SCHOOL BUS DISCIPLINE

Recognizing that pupil safety and welfare on school buses depend, to some degree on the conduct of pupils themselves, and that misbehavior which distracts a school bus driver is a serious hazard to the safety of all passengers, the Indian River School Board, herewith established the following as a means of uniformly dealing with school bus discipline problems:

“School bus transportation is a privilege extended to all pupils who qualify for same under state law. This privilege may be suspended temporarily or for the remainder of the year for violations of ‘School Bus Safety Regulations.’ The ‘Student Code of Conduct’ of the Indian River School District shall be in effect on every school bus transporting Indian River School District students or at any designated Indian River School District school bus stop.



Violations of the ‘Bus Safety Regulations’ are to be submitted by the bus driver on a discipline report form to the appropriate principal or assistant principal as soon as practical. Administrators alone have authority to invoke school bus suspensions. When suspensions from school bus transportation are invoked, parents or guardians will be responsible for providing transportation to and from school.”

EXTRA-CURRICULAR ACTIVITES

A student must be in school one half day of the extra-curricular event, or the last day preceding the event if the activity occurs on a non-school day, to be eligible to participate in any extra-curricular activity after regular school hours unless authorized by the principal. One half day is defined as three (3) hours for students who will be participating in any extra-curricular event. Any student representing the school or attending any extra-curricular activities is subject to the jurisdiction of the school during all aspects of participation. Normal disciplinary measures will

Students who are uncomfortable for any reason with discussing the matter with the individual designated to receive the report, or who are not satisfied after bringing the matter to the attention of the designated individuals, shall report the matter promptly to the Superintendent or designee.

The district will investigate all allegations of sexual harassment or misconduct in as prompt and confidential manner as possible and will take appropriate corrective action when warranted. Students who are found, as a result of such investigation, to have engaged in sexual harassment or misconduct in violation of this policy will be subject to appropriate disciplinary action, up to and including expulsion from the school district. Furthermore, retaliation in any form against students who exercise their right to make a complaint under this policy is strictly prohibited, and will itself be cause for appropriate disciplinary action.

The Sexual Misconduct portion of the policy shall be printed in any student handbook distributed to or made available to students and employees within the district.

SUSPENSION

* / Suspensions are authorized by the building principal or assistant principal for a period of time ranging from one day to ten school days. After having a conference with the student, the Superintendent or designee may suspend the student additional days when the administrative recommendation is to expel the student, or if unusual circumstances warrant such action.

The parent(s) or legal guardian(s) shall be notified by mail of any suspension imposed upon a student. The letter will include the reason for suspension, the day and time when the suspension begins, and the day and time when the suspension ends.

When a student is suspended, he or she may not return to regular attendance until a conference is held between parent/legal guardian and the building principal or assistant principal. When a student is suspended, he/she must be given a written note saying exactly what time the suspension begins and ends.

Suspension Programs

The Board of Education of the Indian River School District will conduct two (2) suspension programs and school administration may use either of these depending upon the severity and/or number of previous disciplinary offenses of a student.

In-school Suspension

The Board of Education of the Indian River School District will conduct in-school suspensions under the supervision of a staff member designated by an administrator to ensure that school assignments are done under the supervision of a staff member designated by an administrator and students are in school for the entire day.

In-school Suspension Guidelines:

- Absolutely no talking, except to the teacher, will be tolerated.

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CHAPTER 189

FORMERLY

HOUSE BILL NO. 42

AS AMENDED BY

HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO THE POWERS AND DUTIES OF THE DEPARTMENT OF EDUCATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 14, Chapter 1, §122(b) by adding a new subsection to read as follows:

"(24) Establishing, for purposes of student discipline, uniform definitions for student conduct which may result in alternative placement or expulsion, uniform due process procedures for alternative placement meetings and expulsion hearings, and uniform procedures for processing Attorney General's reports. Such regulations shall apply to all districts and charter schools. This subsection shall not be interpreted to restrict the ability of district and charter schools to determine which student conduct shall result in expulsion or an alternative placement."

Approved August 22, 2011