



STATE OF DELAWARE  
**STATE COUNCIL FOR PERSONS WITH DISABILITIES**  
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**MEMORANDUM**

DATE: April 25, 2011

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

FROM: Ms. Daniese McMullin-Powell, <sup>Dmp/KIT</sup> Chairperson  
State Council for Persons with Disabilities

RE: H.B. 42 [DOE Uniform School Discipline Regulations]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 42 which would require the Department of Education (DOE) to promulgate uniform regulations related to school discipline with the intent to provide consistency across all districts and charter schools. As background, the DOE published a Standardized School Code of Conduct Policies Report in May, 2010. The bill implements recommendations contained in that report. In a nutshell, the DOE would be authorized to issue regulations applicable to public schools to establish uniformity in definitions of conduct which may result in alternate placements or expulsion, uniformity in due process procedures, and uniformity in processing Attorney General reports.

In general, the original bill would facilitate accurate aggregation and analysis of data based on uniform definitions and standards. It may also facilitate publication of informative handbooks and brochures for students, parents, and public school personnel since a single publication could cover standards for all public schools. Finally, it may result in fewer appeals to the DOE/SBE based on procedural violations at the district/charter school level since uniform standards will be better understood and conform to DOE regulations.

Based on amendment(s) considered on April 7, the following language would be added at line 5:

This subsection shall not be interpreted to restrict the ability of district or charter schools to determine which student conduct shall result in expulsion or an alternate placement, provided that alternative placement, rather than expulsion, must be pursued unless the child poses an actual threat to others.

SCPD has two (2) concerns with the above amendment.

First, it creates some “tension” within the Delaware Code. Title 14 Del.C. §§1604 and 1604(8) contemplate the DOE issuing regulations covering eligibility for alternate programs. The Department has implemented this authorization by adopting specific regulations identifying conduct which bars admission to an alternate program. See 14 DE Admin Code Part 611. This approach is superior to adopting a less precise and subjective “child poses an actual threat to others” statutory bar to admission.

Second, the amendment undercuts the advantages of establishing uniform regulations. Literally, it would authorize an expulsion based on undefined conduct or conduct which does not conform to a uniform DOE standard. For example, if the DOE adopted a definition of “offensive touching” with certain elements, a school could simply ignore the definition and expel for anything it subjectively viewed as offensive touching. If public schools expel based on non-uniform standards, the State cannot compile accurate statistics since each district/charter school expels based on different standards. Nor could the State DOE publish model information pamphlets/handbooks for parents since every district/charter school could expel for conduct unrelated or inconsistent with uniform DOE standards.

For the above reasons, SCPD endorses the original bill without amendment.

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

cc: The Honorable Jack A. Markell  
Mr. Brian Hartman, Esq.  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

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