



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
Margaret M. O'Neill Bldg., Suite 1, Room 311
410 Federal Street
Dover, Delaware 19901
302-739-3621

The Honorable John Carney
Governor

John McNeal
SCPD Director

MEMORANDUM

DATE: June 21, 2017

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

FROM: Ms. Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

RE: S.B. 85 (Student Discipline)

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. No. 85. This legislation was introduced on May 17, 2017. As of May 30, it awaited action by the Senate Education Committee. It borrows some provisions from legislation (S.B. No. 239) which was introduced near the end of the 2015-16 legislative session.

The bill is designed to encourage public schools to reduce disproportionate discipline of certain subpopulations and to compile and publish discipline data. The preamble touts the benefits of non-punitive disciplinary responses consistent with restorative justice practices (lines 1-9). The Department of Education (DOE) would publish a report based on data from three consecutive school years covering various forms of discipline imposed on students by individual schools (lines 40-46). Schools whose data exceeds certain thresholds would develop and implement a remedial plan (lines 47-61). Based on a DOE annual data report, public schools whose data on suspensions exceed certain thresholds would be required to take certain remedial action (lines 79-90).

SCPD has the following observations

First, there is a typographical error on line 34. It should include a strike-out of "activity; and". Compare prior S.B. No. 239 at line 29.

Second, the legislation defines “disruptive behavior” at lines 17-19. 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. No. 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 35-36:

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

OR

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

Third, unless repeal of current §702 is intended, the sponsors may wish to include a provision which explicitly recites that current §702 is redesignated as §703. The reference to §703 in line 29 suggests that redesignation is desired.

Fourth, although the legislation is ostensibly intended to collect data based on “the subgroups of students categorized as those with disabilities” [lines 23-24 and synopsis (Par. “(2)”], these subgroups are omitted from those subject to disaggregated data collection (lines 44-46). This is a major oversight. The term “disability classification” could be inserted in lines 45-46.

Fifth, the synopsis recites that schools are expected to “first collect and publicly report disaggregated student discipline data, and solicit feedback from students, staff, families, and community representatives.” In contrast, the bill omits the concept of soliciting input from students, staff, and community representatives (lines 47-56 and 79-90). Plans and strategies are ostensibly developed exclusively by public school personnel. The following amendments could be considered:

A. Amend line 49 as follows: “...submit a plan, developed with input from student, parent, and community stakeholders, identifying the strategies...”

B. Amend line 83 as follows: “(2) After soliciting input from student, parent, and community stakeholders, incorporate strategies to promote greater fairness and equity in discipline.”

OR

Amend line 83 as follows: “(2) After consultation with student, parent, and community stakeholders, incorporate strategies to promote greater fairness and equity in discipline.”

Sixth, since certain disability classifications (e.g. emotional disability; traumatic brain injury; other health impairment) are correlated with significantly higher suspension rates, using global data for all students with disabilities (lines 74-75) will likely “mask” disproportionate suspension. Using a global benchmark is equivalent to “lumping” all racial minorities into one group rather than breaking out data on subgroups with historically disproportionate suspension rates (e.g. Black; Hispanic). The bill could be improved by the following amendment to line 75: “...without disabilities, or the suspension gap between any subgroup of students with disabilities by classification and students without disabilities, exceeds any of the following:”

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

cc: The Honorable Matthew Denn, Attorney General
Ms. Kathleen MacRae, ACLU
Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

SB 85 student discipline 6-21-17

[Previous Page](#)

[Next Page](#)

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