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DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 85

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO THE LAWFUL AUTHORITY OF
TEACHERS OVER PUPILS.

WHEREAS, restorative justice practices are non-punitive disciplinary responses that focus on repairing harm done to relationships and people; developing solutions by engaging all persons affected by a harm; and encouraging accountability; and

WHEREAS, restorative justice practices include a variety of interventions, such as brief on-the-spot responses to student behavior in the classroom; and

WHEREAS, restorative justice practices also include community conferencing which involves multiple parties, such as students, parents, and teachers, and is intended to address the harm committed by a student's disruptive behavior; enhance responsibility and accountability; build relationships and community; and teach students empathy and problem solving skills that can help prevent the occurrence of inappropriate behavior in the future.

NOW, THEREFORE:

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

Section 1. Amend § 701, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 701. Authority of teachers and administrators to control the disruptive behavior of students.

(a) As used in this chapter:

(1) "Department" means the Department of Education.

(2) "Disruptive behavior" includes means conduct that is so unruly, ~~disruptive~~ disruptive, or abusive that it seriously interferes with a school teacher's or school administrator's ability to communicate with the students in a classroom, with a student's ability to learn, or with the operation of a school or a school-sponsored activity.

(3) "School" means a traditional public school, vocational technical school, or charter school.

(4) "Racial subgroup" means the racial subcategories of students as described in § 103-2.10(4), Title 14 of the Delaware Administrative Code [CDR 14-100-103-2.10(4)].

(5) "Subgroup" means the subgroups of students categorized as those with disabilities as described in § 103-2.10(1), Title 14 of the Delaware Administrative Code [CDR 14-100-103-2.10(1)] and by race and ethnicity as described in § 103-2.10(4), Title 14 of the Delaware Administrative Code [CDR 14-100-103-2.10(4)].

(b) While a student is entrusted in their care or supervision, public school teachers and administrators have the same authority to control the behavior of the student and to discipline or punish the student as a parent, custodian, ~~guardian~~ guardian, or other person similarly responsible for the care and supervision of the student except as provided in §§ ~~702~~ §§ 703 and 4112F of this title. The authority includes removing a student from a classroom or school-sponsored activity.

(g) Each local board of education shall establish, adopt, ~~publish~~ publish, and distribute to students in the district and their parents or guardians policy or standards ~~that~~ that include all of the following:

(1) Specify the general circumstances under which a student may be removed from a classroom or school-sponsored activity, consistent with a teacher's ultimate authority to determine disruptive behavior and to remove a student from a classroom or school-sponsored activity; and activity.

(2) Further define ~~and/or~~ or provide examples of "disruptive behavior" set forth in paragraph (a)(2) of this section.

Section 2. Amend Chapter 7, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

702. Student discipline report; school discipline improvement plan.

(a) The Department shall issue annually and make public a report on student discipline in all schools as follows:

(1) The analysis must be based on data collected over 3 consecutive school years, beginning with the 2013-2014 school year.

(2) The report must be posted on the Department's Internet website.

(3) The report shall include data on issuance of out-of-school suspensions, expulsions, alternative school assignments, and in-school suspensions, disaggregated by race, ethnicity, gender, grade level, limited English proficiency, incident type, and discipline duration.

(4) Beginning with the 2017-2018 school year, the Department shall require each of the school that are identified in the top 20% of any of the metrics described in subsection (b) of this section for 3 consecutive years to submit a plan identifying the strategies the school will implement to reduce the use of exclusionary disciplinary practices or racial disproportionality or both, to the local school board or board of directors of a charter school for approval.

a. The plan must be approved at either a public local school board meeting or a charter school's public board of directors meeting and must be posted on the school's Internet website.

b. Within 1 year after being identified, the school shall submit the plan to the Department and post on the school's Internet website a progress report describing the implementation of the plan and the results achieved.

c. A school that has already implemented restorative justice practices must expand its existing program if it has an out-of-school suspension rate that exceeds the standards specified in paragraph (4) of this section

d. After a school does not meet the criteria in paragraph (4) of this section for 3 consecutive years, the school is not required to submit an updated plan.

(b) The Department shall issue annually and make public a list of schools that meet the following criteria:

(1) A school with an out-of-school suspension rate for all students or any 1 subgroup that exceeds any of the following:

a. A rate of 20 suspensions per 100 students for the 2016-2017 school year.

b. A rate of 15 suspensions per 100 students for the 2017-2018 school year and each school year thereafter.

(2) A school with an out-of-school suspension rate for all students or any 1 subgroup that exceeds any of the following:

a. A rate of 20 suspensions per 100 students for the 2016-2017 school year.

b. A rate of 15 suspensions per 100 students for the 2018-2019 school year and each school year thereafter.

(3) A school for which the out-of-school suspension gap between the lowest-suspended racial subgroup and the highest suspended racial subgroup, or the suspension gap between students with disabilities and students without disabilities, exceeds any of the following:

a. 20% for the 2016-2017 school year.

b. 15% for the 2017-2018 school year.

c. 10% for the 2018-2019 school year and each school year thereafter.

(c) Each local school board and board of directors of a charter school shall require the administrator of each school, within its control, that has an out-of-school suspension rate exceeding the standards specified in subsection (b) of this section to do all of the following:

- 82 (1) Review the school’s discipline policies and data.
- 83 (2) Incorporate strategies to promote greater fairness and equity in discipline.
- 84 (3) Increase professional development opportunities for teachers, administrators, and staff. Components
- 85 of such professional development may include all of the following:
- 86 a. Restorative practices.
- 87 b. Trauma informed care.
- 88 c. Implicit bias awareness.
- 89 d. Cultural competency.
- 90 e. Classroom management.

SYNOPSIS

According to data provided by the Delaware Department of Education (“DOE”), thousands of Delaware students receive out-of-school suspensions each year for minor infractions, such as being unprepared or late for class, dress code violations, and disrespectful behavior. In 2013, only 2% of out-of-school suspensions were for serious offenses such as weapons, drugs, or serious violence. Out-of-school suspensions do not address the root causes for the misbehavior, and only serve to put the students further behind in class. Furthermore, DOE data shows that, in 2013, African-American students made up only 32% of the student body, but accounted for 62% of out-of-school suspension, and students with disabilities made up 13% of the student body, but accounted for 24% of out-of-school suspensions.

New federal discipline guidance, developed jointly by the U.S. Departments of Education and Justice, instructs schools to commit to regular evaluation of school discipline policies and practices, and monitor progress toward the schools’ climate and discipline goals. This process requires schools to first collect and publicly report disaggregated student discipline data, and solicit feedback from students, staff, families, and community representatives.

This Act furthers those goals by requiring schools that suspend at a high rate or that show significant suspension disparities to take meaningful corrective action by implementing plans to reduce these numbers and by replacing out-of-school suspensions with more effective and restorative discipline interventions. The schools in need of intervention are defined schools with high rates of suspension in the following categories:

- (1) All students.
- (2) Students belonging to 1 or more subgroups, such as students of specified racial subgroups or with disabilities.
- (3) Schools with a significant disparity in suspension rates between racial subgroups or between students with disabilities and students without disabilities.

This Act also makes technical corrections to conform existing law to the guidelines of the Delaware Legislative Drafting Manual.

Author: Senator Henry