



SPONSOR: Rep. Dorsey Walker & Sen. Pinkney
Reps. Baumbach, Chukwuocha, Lambert, Morrison,
Wilson-Anton; Sen. Sokola

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 396

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO SCHOOL DISCIPLINE.

1 WHEREAS, current Delaware practice allows law enforcement to notify school districts or charter schools
2 through an Attorney General Report when a student is arrested or charged off-campus; and

3 WHEREAS, law enforcement is not required to update districts or charters on the outcome of the charges imposed
4 on a student, including whether the charges were dropped; and

5 WHEREAS, as a result of a notification, the district may choose to have the child suspended, sent to an alternative
6 disciplinary school, or expelled; and

7 WHEREAS, a student with disabilities should not be expelled for behavior relating to their disability, but may be
8 arrested off-campus as law enforcement officers do not have access to school behavioral history and planning documents;
9 and

10 WHEREAS, children should be separated from a supportive, educational environment only where absolutely
11 necessary to maintain a safe school environment.

12 NOW, THEREFORE:

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

14 Section 1. Amend Chapter 16, Title 14 of the Delaware Code by making deletions as shown by strike through and
15 insertions as shown by underline as follows:

16 CHAPTER 16. ~~Comprehensive School Discipline Improvement Program~~

17 Subchapter I. Comprehensive School Discipline Improvement Program

18 Subchapter II. Attorney General Reports

19 § 1621. Definitions.

20 As used in this subchapter:

21 (a) “Attorney General’s Report” means a notification in accordance with § 1622 of this title to a school that a
22 student has been arrested or charged with a crime or act of delinquency.

23 (b) “Case resolution” means any of the following:

(1) Charges have been dismissed, a nolle prosequi has been entered, or the charges were otherwise resolved in the student's favor.

(2) A conviction or finding of delinquency has been entered through plea or otherwise.

(3) The student has entered a diversion program.

(c) "Violent felony" means an offense listed in § 4201(c) of Title 11.

§1622. Notification to schools of arrests or charges.

(a) The attorney general or a law enforcement agency who arrests or charges a student with violations of the criminal law or an act of juvenile delinquency may not share information regarding the arrest or charges with the student's school or school personnel unless one or more of the following applies:

(1) The alleged crime took place on school property or during a school-sponsored event.

(2) The alleged victim is a student in the same school.

(3) The student is charged with a violent felony.

(b) A notification permitted under subsection (a) of this section may be accomplished electronically through an interagency agreement between the Department of Justice, the Department of Education, school districts and charter schools, law enforcement agencies, and the Delaware Justice Information System. The notification may include a copy of the complaint and warrant and affidavit of probable cause.

(c) (1) In the case of a student enrolled in a school district, the Attorney General's Report shall be sent to the superintendent or the superintendent's designee.

(2) In the case of a student enrolled in a charter school, the Attorney General's Report shall be sent to the school leader or the school leader's designee.

(d) Whenever a notification of arrest or charge permitted under subsection (a) of this section is made, the Attorney General shall provide notification to the same school or school personnel of the case resolution within 2 business days of the case resolution.

§ 1623. Confidential treatment of Attorney General Reports.

(a) All Attorney General Reports received by a school or school official under § 1622 of this title, and the information contained therein, shall be kept confidential except to the extent necessary for safety planning, service provision, or placement decisions under this subchapter.

(b) The superintendent or charter school leader may provide a copy of the Attorney General's Report to the student's principal if the superintendent or charter school leader believes that further action is necessary under this subchapter.

(c) All copies of the Attorney General's Report shall be destroyed unless the report is used in a disciplinary or manifestation hearing, in which case a copy shall be maintained as part of the record of that meeting.

§ 1624. District or charter school action in response to Attorney General's Report.

(a) No disciplinary action may be taken against a student that is the subject of an Attorney General's Report until such time as a case resolution has been reached. Disciplinary action may be taken after a case resolution is reached only where the out of school conduct is a direct threat to the health and safety of school personnel or other students.

(b) Where the alleged victim is a student at the same school, the district or charter shall take appropriate safety planning steps in consultation with the alleged victim's family.

(c) A district or charter may offer or require counseling or services for a student who is the subject of an Attorney General's Report.

(d) Where a student who is the subject of an Attorney General's Report has been identified as a student with disabilities under the Individual with Disabilities Act or under Section 504 of the Rehabilitation Act of 1973, the student may not be disciplined for out of school conduct if that conduct was related to or a manifestation of the student's disability.

Section 2. Amend § 122, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 122. Rules and regulations.

(b) The Department shall prescribe rules and regulations:

(26) 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~~; reports in accordance with Chapter 16 of this title. Such regulations shall apply to all districts and charter schools. ~~This paragraph 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;~~

Section 3. The Department of Education shall revise its regulations to accord with this Act within six months of its enactment.

Section 4. This Act takes effect on January 1, 2023.

SYNOPSIS

It has been the case for several decades that when a juvenile is arrested or charged with certain crimes, the child's school is notified with an "Attorney General's letter" regardless of whether the crime occurred on school property or had anything at all to do with school. Children can then face disciplinary consequences in school, including being placed in an alternative setting, or even expelled. Since they face consequences in the justice system, this creates the possibility of double punishment.

This Act codifies the notification process, limiting notifications to violent felonies, crimes that occur on school property or at a school event, or where the alleged victim attends the same school. It also requires that when an Attorney General's report is sent, the Attorney General must send a follow-up report within 2 business days letting the school know how the case was resolved.

Under this Act, schools may not take disciplinary action against a child while the charge is pending, and may take disciplinary action after case resolution only where it is necessary to protect the health and safety of the school community. Children who are separated from the school environment unnecessarily are likely to become more involved with the justice system. Schools may offer or require counseling or other services for students who are the subject of an Attorney General's report. When the alleged victim is at the same school, the school may take safety steps as appropriate.

The Act specifies that when a child has an IEP or 504 plan, their disability must be considered in the course of any disciplinary proceedings.

Finally, the Act requires Attorney General's reports be handled confidentially and retained past the case resolution only in specified circumstances.