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DELAWARE STATE SENATE  
149th GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1  
FOR  
SENATE BILL NO. 85

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

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

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

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

10 NOW, THEREFORE:

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

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

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

15 (a) As used in this chapter:

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

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

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

21 (4) “Racial subgroup” means the racial and ethnic subgroups of students as defined under the Elementary  
22 and Secondary Education Act of 1965, 20 U.S.C. § 6301 et seq., as amended, which includes African American or  
23 Black, American Indian or Alaska Native, Asian American, Native Hawaiian or other Pacific Islander, Hispanic or  
24 Latino, White or Caucasian, and Multi-Racial.

25 (5) “Subgroup” means as subgroup is defined under the Elementary and Secondary Education Act of  
26 1965, 20 U.S.C. § 6301 et seq., as amended, which includes racial subgroups, economically disadvantaged  
27 students, children with disabilities, and English learners.

28 (b) While a student is entrusted in their care or supervision, public school teachers educators, and administrators  
29 have the same authority to control the behavior of the student and to discipline or punish the student as a parent, custodian,  
30 ~~guardian-guardian~~, or other person similarly responsible for the care and supervision of the student except as provided in §§  
31 702 and 4112F of this title. The authority includes removing a student from a classroom or school-sponsored activity.

32 (g) Each local board of education shall establish, adopt, ~~publish~~ publish, and distribute to students in the district  
33 and their parents or guardians policy or standards ~~that:~~ that are consistent with the regulations developed under § 122(b)(26)  
34 of this title and include all of the following:

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

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

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

42 § 703. Student discipline report; school discipline improvement plan.

43 (a) The Department shall compile and release an annual report on student discipline in all schools as follows:

44 (1) The analysis must be based on data, as permitted under the Family Educational Rights and Privacy  
45 Act, 20 U.S.C. § 1232g, collected over the 3 most recent consecutive school years.

46 (2) The report must be posted on the Department’s website no later than October 30.

47 (3) The report shall include both statewide totals and individual school data on the issuance of out-of-  
48 school suspensions, expulsions, alternative school assignments, and in-school suspensions, disaggregated by race,  
49 ethnicity, gender, grade level, limited English proficiency, incident type, discipline duration, and if the student is  
50 identified as having a disability.

51 (4) The report shall include a list of schools that meet the following criteria:

52 a. Calculations under this subsection should exclude subgroups that contain fewer than 15 students.

53                    b. A school with an out-of-school suspension rate for all students or any 1 subgroup that exceeds any  
54 of the following:

55                    1. A rate of 20 suspensions per 100 students for the 2018 through 2019 school year.

56                    2. A rate of 15 suspensions per 100 students for the 2019 through 2020 school year and each  
57 school year thereafter.

58                    c. A school for which the out-of-school suspension gap between the lowest-suspended racial  
59 subgroup and the highest suspended racial subgroup, or the suspension gap between students with  
60 disabilities and students without disabilities, exceeds any of the following:

61                    1. 20% for the 2018 through 2019 school year.

62                    2. 15% for the 2019 through 2020 school year.

63                    3. 10% for the 2020 through 2021 school year and each school year thereafter.

64                    (b) Each local school board and board of directors of a charter school shall require the administrator of each school  
65 included on the list under paragraph (a)(4) of this section to do all of the following:

66                    (1) Review the school's discipline policies and data.

67                    (2) After soliciting input from students, parents, educators, administrators, and community stakeholders,  
68 incorporate strategies to promote greater fairness and equity in discipline.

69                    (3) Increase professional development opportunities for educators, administrators, and staff. Components  
70 of such professional development may include 1 or more of the following:

71                    a. Restorative practices.

72                    b. Trauma informed care.

73                    c. Implicit bias awareness.

74                    d. Cultural competency.

75                    e. Classroom management.

76                    f. Other appropriate programming.

77                    (c) If a school is included on the list under paragraph (a)(4) of this section for 3 consecutive years, the Department  
78 shall notify the school of this status by December 1 and the school must submit a plan as follows:

79                    (1) The plan must identify the strategies the school will implement beginning in the following school year  
80 to reduce the use of exclusionary disciplinary practices or racial disproportionality, or both.

81                    (2) The plan may be part of their school improvement plan.

82                    (3) The plan must be developed with input from students, parents, educators, administrators, and  
83 community stakeholders.

84                    (4) A school that has already implemented restorative justice practices must expand its existing program.

85                   (5) The plan must be approved at either a public local school board meeting or a charter school’s public  
86                   board of directors meeting.

87                   (6) No later than the beginning of the following school year, the school must submit the plan to the  
88                   Department and post the plan on the school's Internet website.

89                   (7) No later than October 30, the school shall submit to the Department an annual progress report  
90                   describing the implementation of the plan and post the progress report on the school's website. The school may  
91                   cease submitting a progress report when the school is not included on the list under paragraph (a)(4) of this section  
92                   for 3 consecutive years.

93                   Section 3. Section § 703(c) of Title 14 takes effect on December 1, 2019.

### SYNOPSIS

This Act draws attention to the types of discipline used in schools by capturing data about out-of-school suspensions and publishing that data, in an effort to help schools identify areas where the data regarding out-of-school suspensions indicates there is room to reduce such suspensions. This Act is meant to increase transparency, improve overall school climate, resulting in improved student outcomes.

The collection and publication of this data will also help the Department of Education and community partners identify opportunities to provide greater supports to schools, students, and their families.

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.

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. The federal process requires schools to collect and publicly report disaggregated student discipline data and solicit feedback from students, staff, families, and community representatives.

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

This Substitute Bill makes the following changes to Senate Bill No. 85:

1. References the existing definition of "disruptive behavior" in Title 14.
2. Includes "disability" as a category for data collection.
3. Extends by 1 year the years stated in the requirements to retain the same time frames. This is necessary because this Act will be enacted in 2018, not 2017 when it was drafted.
4. Clarifies what information is required for reports and provides deadlines for the required plans and reports.
5. Clarifies that schools must develop plans and strategies with stakeholder input.
6. Clarifies content for professional development.

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