



Governor's Advisory Council for Exceptional Citizens (GACEC)
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MEMORANDUM

DATE: June 8, 2016

TO: The Honorable Members of the Delaware General Assembly

FROM: Robert D. Overmiller, Chairperson
GACEC

RE: Senate Bill No. 239 (School Discipline)

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed Senate Bill No. 239 which would limit the use of out-of-school suspension to three circumstances (lines 45-49): 1) willfully causing or attempting to cause bodily injury; 2) threatening serious bodily injury or death to another person, except in self-defense; and 3) bringing a weapon or controlled substance onto school grounds. This legislation also encourages the use of alternative interventions for disruptive behavior (lines 32-44) besides out-of-school suspension. Schools would be required to compile and publish statistics which could be used to identify schools in need of intervention due to high rates of suspensions. A May 7, 2016 News Journal article notes that Delaware public schools suspended 18,053 students (13.7%) of the overall student population in the 2012-13 school year. Students with disabilities comprise 13% of the overall student population but accounted for 24% of out-of-school suspensions. African-American students comprise 32% of the overall student population but accounted for 62% of out-of-school suspensions. Only 2% of the suspensions were for serious offenses. Council feels that this legislation has merit considering these statistics; however, we would like to share the following observations.

First, while the bill is apparently intended to cover both districts and charter schools (lines 79 and 89), only districts are expected to publish standards informing parents of the circumstances justifying the removal of students from school settings (line 25). The sponsors may wish to consider an amendment to clarify that this section also applies to charter schools.

Second, the norm in public schools is that administrators (e.g. principal; assistant principal) authorize suspensions, not teachers. See, e.g., attached excerpts from Christina School District and Indian River School District Codes of Conduct published at

<http://www.christinak12.org/studentmanual/2015-2016/Sections/PG32-Disciplinary-Processes-Procedures.pdf> and <http://www.irsd.net/common/pages/DisplayFile.aspx?itemId=8174819> .

Teachers, bus drivers and other staff generally make referrals for discipline to administrators. In contrast, Senate Bill No. 239 literally authorizes teachers to impose out-of-school suspensions as a matter of State law. See, e.g. lines 45-46: “A teacher ...may address a student’s disruptive behavior by suspending the student...” By statutorily expanding the scope of school personnel authorized to impose out-of-school suspension, the bill could inadvertently increase the number of out-of-school suspensions. Since public school policies may vary somewhat in defining who is authorized to impose an out-of-school suspension, as well as other discipline, it would be prudent to consider the following amendment, i.e., substitute “school” for “teacher or administrator” in lines 45, 33, and 34. The effect would be the same but public schools would not be forced to change their codes of conduct to invariably permit teachers to impose suspensions (lines 41-43 and 45-46) and other discipline.

Third, the legislation defines “disruptive behavior” at lines 6-8. Schools are then invited to adopt a broader definition (“further define”) of “disruptive behavior”. It seems unusual to adopt a statutory definition and then invite schools to adopt an assortment of non-conforming, amplifying definitions. It is also inconsistent with the public policy embedded in the attached legislation (House Bill 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 30-31:

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

OR

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

Thank you for your time and consideration of our comments. Please feel free to contact me or Wendy Strauss at the GACEC office if you have any questions.

CC: Kathleen MacRae, ACLU of Delaware

Attachments