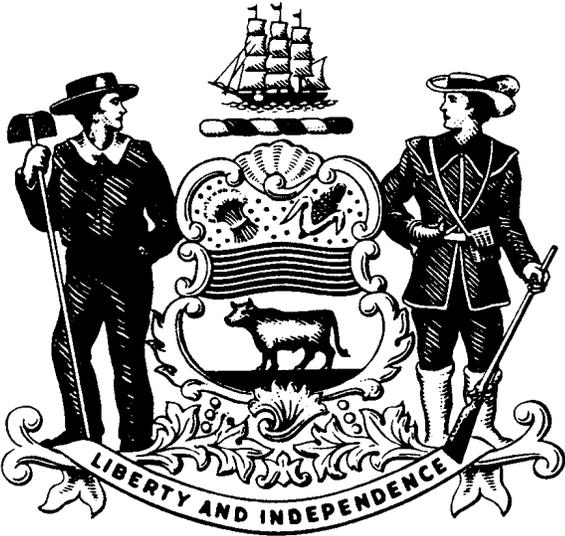


# School Discipline Task Force Final Report



January 2010

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**Special thanks to the Delaware Center for Justice for staffing  
the School Discipline Task Force.**

## **Members**

**Representative Michael A. Barbieri, Chair**

**Representative Darryl Scott, Co-Chair**

**Kevin Bordley, Delaware State Police – Troop 2**

**Robin Case, Education Associate – Department of Education**

**Brian Conlin, Delaware State Police – Troop 4**

**Dan Cruce, Deputy Secretary – Department of Education**

**Joseph Dobrowalski, Dean of Students – Polytech High School**

**Patty Daily Lewis, Office of the Attorney General**

**Merv Daugherty, Superintendent – Red Clay School District**

**Mary Jo Faust, Delaware State Education Association**

**Drew Fennell, Executive Director – ACLU Delaware**

**Martha Gregor, Department of Children, Youth, and their Families**

**Chandlee Johnson Kuhn, Chief Judge of the Family Court**

**Janet Laban, Executive Director – Delaware Center for Justice**

**Allison McGonigle, Department of Children, Youth, & their Families**

**Mary Elizabeth Mical, Delaware Center for Justice**

**Lisa Minutola, Office of the Public Defender**

**David Sechler, Caesar Rodney Board of Education**

**Henry Smith, Deputy Secretary – Department of Health & Social Services**

**George Stone, Superintendent – Cape Henlopen School District**

**Mike Thomas, Superintendent – Capital School District**

**David Weaver, Delaware State Police – Troop 3**

## Executive Summary

The School Discipline Task Force, created by House Concurrent Resolution No. 22, was formed to examine how House Bill 85, passed in 1993, and other legislative initiatives have affected the school learning climate, education of students, school codes of conduct and disciplinary procedures. The objective of the General Assembly and the school administrators was to create a safe and positive school environment through House Bill 85, which mandated reporting of all in-school incidents and set uniform punishments for infractions.

Although the intent was laudable, the legislation established a one-size-fits-all disciplinary system that allowed little to no discretion for school officials and the justice system. After years of putting the legislation into practice, the negative impacts on the educational system became apparent. Students have been expelled from school and criminally charged for infractions that upon closer review did not merit such punishments. However, the law provided no ability for administrators or justice officials to address these situations on an individual basis. These unforeseen consequences took a toll on the school environment, education of the youth and the demand placed on the juvenile justice system.

Earlier this session, the House of Representatives convened a task force to explore existing policies and procedures and to identify alternative intervention strategies. The task force consisted of a cross section of individuals who are directly or indirectly affected by the discipline practices of our schools. The task force was charged with reviewing the existing legislation and resulting codes of conduct and identifying ways to create a disciplinary system that fairly dispenses justice without negatively impacting the school environment. The subcommittees established worked to identify areas in the law that needed to be revised and recommended procedures and practices that may need to be adjusted to give more discretion to the local school districts. A one-size-fits-all policy does not adequately account for the different circumstances and potential impact that decisions have on a child. There have been many children whose academic careers have been derailed by the enforcement of the policies and procedures associated with the iterations of House Bill 85.

The task force met four times to review existing laws, evaluate the impact the resulting school discipline policies had on the individuals and the schools and identify alternatives. There were three subcommittees formed: one to look at procedures, one to address legal issues and one to look at alternatives. The bulk of the work was done in the subcommittees. At each task force meeting, the subcommittees reported their findings to the full body. The discussion that ensued allowed for various perspectives to be presented and an opportunity to identify the impact moderate adjustments would have on various components of a system. It was clear from the discussion of the participants that all were aware that each time the school takes a disciplinary action on a child it has an impact on the child, the family, the school environment, the juvenile justice system and the community.

The major questions asked were:

Does a uniform intervention create the outcomes desired or does it act to create a series of unintended consequences?

Do the laws and resulting regulations impede the districts' ability to manage effectively?

Does greater discretion place the schools and the administrators at risk?

Do the laws and resulting regulations take away the responsibility and accountability from the superintendents, administrators and teachers?

The existing school discipline system presents a multifaceted problem that impacts not only the superintendents but also the child, family, principals, teachers, parent associations, board and courts. In order to address these problems, the task force included a diverse group of members from all components of the school discipline system. The task force had constant, open dialogue among its members so that diverse opinions could be examined and potential problems could be identified. An adjustment in one area could seriously affect the operations of many others, which is clearly seen in the negative outcomes associated with the implementation of House Bill 85. The desire of the task force was not only to identify the flaws in the existing structure but also to posit viable alternatives.

The task force had superintendents, teachers, parent association members, principals, a deputy attorney general, Student Resource Officers, the Chief Judge of Family Court, the Director of the Delaware ACLU, the Director of the Delaware Center for Justice, representatives from the Division of Children Youth and their Families, academics and service providers. This diverse group allowed the task force to look at the issues from a legal, educational, clinical, social and familial point of view. The task force determined that the current approaches do not help the school, the family or the community. The current system creates a greater burden and cost to the system, clearly an unintended consequence. The talents and skills of our teachers, administrators, student resource officers and juvenile court workers are not being used effectively because they do not have the discretion to use those professional skills in addressing disciplinary issues. The task force believes that placing the trust back into these officials' hands would better facilitate a more positive and productive school environment.

## **Recommendations to the General Assembly:**

### **Subcommittee for School Climate and Student Codes of Conduct, Policy and Procedure offers the following final recommendations:**

1. Any legislation resulting from the School Discipline Task Force should call for the Department of Education, in consultation with appropriate stakeholders, to promulgate Department of Education regulations outlining the following requirements:
  - a. Common legal definitions of student offenses that lead to alternative placement or expulsion consequences in every LEA Student Code of Conduct
  - b. Common due process procedures for alternative placement meetings and expulsion hearings in every LEA Student Code of Conduct
  - c. Common procedure for handling of Attorney General reports in every LEA Student Code of Conduct

The Department of Education shall work with Department of Safety and Homeland Security and appropriate stakeholders to:

- Draft common Memorandum of Understanding detailing minimum responsibility requirements of School Resource Officers for all LEAs

Having legislation call for the promulgation of these specific items will allow for ample/proper opportunity for additional input from a broader set of stakeholders. We felt our subcommittee's expertise, while diverse, was not expansive enough to finalize what the actual definitions, procedures, etc. should look like.

### **Subcommittee for Alternatives offers the following final recommendations:**

1. School districts and schools should:
  - a. Develop a discipline plan for reducing discipline referrals and suspensions, as well as defining intermediate interventions for students.
  - b. Implement professional development training for teachers and school staff concerning best practices in classroom management and instructional practices.
  - c. Review alternative placement and in-school suspension programs to provide student awareness and assistance with identified problems and behavior issues.

- d. Define Student Resource Officer (SRO) responsibilities and develop guidelines in their assigned schools.

**Subcommittee for Legislative Initiatives offers the following final recommendations:**

1. Age of alleged offender for mandatory report
  - a. Definitions limiting age of student victims to age 18 in 14 *Del. C.* §4112(b)(3): We believe that to protect the needs of students with disabilities, language limiting this section of the code to students under 18 should be amended. There are many students over 18, and they should enjoy the same protections as students over 18. We need to explore the reasons for the “age 18” limitations.
  - b. 14 *Del. C.* §4112(b)(2) and (b)(4): The recommendation is to change the age from “*offenders under the age of 9*” to “*offenders under the age of 12.*”
  - c. **Anywhere there is minimum of age of 9, we believe that age should be moved to 12.**
2. Mandatory reporting when victim is school employee: 14 *Del. C.* §4112 (b)(4). We believe the sections need to be re-worked to address compliance with 504 plans. The issues regarding the determination to file charges and the use of citizen warrants need to be addressed.
3. 14 *Del. C.* §4112(d)(1)b: Re-write the references to suspensions based on probable cause findings to include – among other things – that the school must find that the safety of the students, faculty and staff are impaired by having the offender present in the school. There should be specific plans submitted to meet the needs of the child in case of suspension.
4. Create a new section of the Delaware Code to deal with implementing a three-step process prior to invoking criminal violation reporting except for sex crimes and weapons offenses. The three steps would be: **a *written warning, school mediation,*** and finally, ***arrest.*** This process would replace immediate arrest for misdemeanors, except any sex crime or weapons offenses.

**The full School Discipline Task Force offers the following final recommendation:**

Ask the governor to instruct the Departments of Education and Children, Youth and Their Families to work together in implementing the changes proposed in this report. Also ask Family Court to work collaboratively with the departments in one concentrated effort.

## **Minutes**

**July 29, 2009**

**Minutes: 1st Meeting of School Discipline Task force**

Task force Leader: Rep. Mike Barbieri

**Members of Task Force Present:**

Darren Guido, Mary Jo Faust, Robin Case, Alison McGonigal, David Sechler, David Weaver, Janet Leban, Mary Elizabeth Mical, Mervin Daugherty, Patricia Daley Lewis, Joseph Dobrowalski, Kerrin Wolf, Shaivani Howard, the Honorable Chandlee Kuhn, Kathryn Lunger, Henry Smith III, Jea Street, Drew Fennell, Dan Cruce, Rep. Mike Barbieri, Darryl Scott.

The first task force meeting on school discipline was convened and was led by Rep. Mike Barbieri: 07/29/09 in Dover:

**Introduction:**

Rep. Barbieri asked group to identify issues that they have experienced in the courts and schools before and after arrest of students under the rubric of H.B.85. All taskforce participants had concerns, experiences and information about the enactment of H.B.85 and what has happened as a result of it, and what they would like to see happen going forward, along with suggestions of possible alternatives to amend/modify or replace H.B.85.

**Major issues raised by the task force:**

- High arrest rates in Delaware schools relative to zero tolerance and law as it currently is written.
- (H.B.85) students incur an arrest record as a result of H.B.85: arrest records limit students' future: entering National Service, University admission, job training programs, jobs, etc.
- Many students arrested under H.B. 85 are first and only time offenders who are non-violent and unlikely to recidivate.
- H.B. 85 not applied uniformly throughout schools/districts/counties. There should be uniformity in administration of the law.
- School discipline and arrests are handled as the same thing: every student who acts out should be sanctioned by school policies regarding discipline and appropriate, respectful behavior. Bad behavior should not necessarily be criminalized. Work is needed on clarification between discipline for students who use bad/childish behavior and students who commit crimes in school or on school property.
- Many voiced the need for changing school culture regarding arrests for childish behavior, minor non-violent infractions.
- H.B. 85 arrests are using legal and court time/money/resources that could be better used for more serious crimes: these arrests negatively impact the working capacity of the Attorney Generals Office and the Family Court.

- Group posed question of whether or not mandatory reporting equated with mandatory arrests; are we criminalizing immature/inappropriate behavior by giving students arrest records?
- Unanimous agreement on actions to be taken for lethal weapons, verses more innocuous objects identified as weapons (plastic knife, box cutter, etc.) brought to school by non offending students; however, all present agreed that in making changes in zero tolerance, student accountability and school safety are of primary importance.
- What are the actual issues that are actionable? And what is the relationship between expulsion and criminal charges; does one necessitate the other?
- Why can't principals make decision about what is actionable?
- Should the task force work to modify or repeal H.B.85?
- Look for viable alternatives to impact/change negative student behavior before arrest takes place.
- What happens to the student who is suspended or expelled from school/or out of school for prolonged period of time. Is that student ever encouraged to rejoin educational process, or has student been identified as drain on school resources; discouraged from returning to school and trying again. What is our obligation to ensure that all students receive an education?
- What is the fiscal burden imposed by H.B.85 in relationship to its effectiveness?
- Many mentioned the lack of consistent application of codes of conduct; what would be the impact on codes of conduct if the law changes?
- Decision about arrest is necessarily relegated to SRO. Is this the best course of action or should other mechanisms/strategies be put in place to make decision about school arrests?
- How do we as a task force "get on the same page" about setting new ground rules, making modification and changing the law relative to zero tolerance in Delaware public schools, and what do we want the baseline policy to be? What is the training that will be needed to make this shift in school culture?
- What about school-based sanctions versus arrests? How can we advocate for positive behavior change, keep students and teachers safe while lowering arrest rates?
- What have other states done to help students with positive behavior support/ or use other strategies to address inappropriate student behavior? What is available in Delaware currently in terms of alternatives?
- How do we bring about a "larger ecology" and work to bring various/multiple state systems and agents together to make necessary changes that better support keeping students in school? How do we apply equitable and consistent measures relative to school arrests and create diversion and pre-arrest measures/programs/initiatives to lower arrest rates, while at the same time keeping school safe for students and facility?

**Statement of Purpose and Goals with which task force is tasked:**

Rep. Barbieri identified 6 areas of possible improvement and change:

1. Put new legislation or amended legislation on legislative agenda by January 2010.

2. Identify and develop diversion/pre-arrest programs to "catch" students in advance of arrest. Such programs might better address some student needs and behaviors and negate the need for expulsion, suspension, or arrest.
3. Identify alternative placements for acting-out students: (a) help schools develop resources to improve student behavior and (b) strengthen teachers' capacity to manage classroom behaviors/acting out/disruption.
4. Students can't function without families and support systems: this is NOT JUST a school problem, it is a community problem. Create a more holistic approach to student behavior and school discipline within the school and within the community.
5. Reduce school expulsions, suspensions and arrests.
6. Strengthen and enhance safety in school for students, faculty, workers, SRO's, etc.: define the role of the SRO in school culture.

**Set dates and format:**

Work groups will meet between August and September and determine recommendations for Task force. Work group leaders will contact members to schedule meetings and will assign a recorder to make reports back to entire Task force and Rep. Barbieri. October meeting will be scheduled by Rep. Barbieri to bring back together the entire Task force to recruit, develop and work on finalizing new strategies and next steps toward goals. Final Task force meeting to be held in December/ early January in Dover to approve, recommend and work toward final workgroup products.

**Discussion of Key Ideas:**

Task force work groups will focus on three distinct areas:

1. Legislation: looking at developing new legislation or making amendments to current law on zero tolerance in Delaware schools in 2010. (Patricia Dailey Lewis)
2. Comprehensive perspective on codes of conduct, conduct policies and legal interventions, etc., currently in place in Delaware schools. (Dan Cruce)
3. Pre-arrest alternatives, diversions and programs that might better address students' needs and function to keep students in the school community. (Merv Daugherty)

**Designate Assignments: Task force Work Groups:**

Legislative Workgroup: Patricia Dailey Lewis (DOJ) Chairperson, members are: Kit Lunger (PD), Leann Summa and Ellie Tores (Family Court), Alison McGonigal/MaryKate McLaughlin (DSCYF), Jea Street (Hilltop Lutheran Center), Drew Fennell (ACLU), Robin Case (DOE), David Weaver (DSP), Mary Jo Faust (DSEA)

Conduct and Policy Workgroup: Dan Cruce ((DOE) Chairperson, members are: Darren Guido (Capital), Henry Smith (DHSS), Martha Gregor (DSCYF), Mary Jo Faust (DSEA), Jea Street (Hilltop Lutheran Center), Robin Case (DOE), Joseph Dobrowalski (PolyTech), David Weaver (DSP)

Alternative Workgroup: Merv Daugherty (Red Clay) Chairperson, members are:

Chief Judge Chandlee Kuhn (Family Court), Alison McGonigal (DSCYF), Lisa Minutola (PD), Robin Case (DOE), Darryl Scott (Legislature), David Sechler (DE School Boards Assn.), Patricia Dailey Lewis (AG), Janet Leban and Mary Elizabeth Mical (DE Center for Justice)

**Next Steps:**

Task force workgroup leaders are asked to set and convene workgroup meetings during August/September; group leader will appoint a note taker/recorder who will record key points of workgroup and report back key recommendations to Rep. Barbieri/full task force. Rep. Barbieri will schedule and reconvene entire task force in October, 2009 in Dover.

**October 26, 2009**

**Minutes: 2<sup>nd</sup> Meeting of School Discipline Task Force**

Task force Leader: Rep. Mike Barbieri

**Members of Task Force Present:**

Darryl Scott, State Representative

George Stone, Superintendent of Cape Henlopen School District

Robin Case, Department of Education

Kevin Bordley, Delaware State Police

Patricia Dailey Lewis, Department of Justice

Alison McGonigal, Department of Youth, Children, and their Families

Joseph Dobrowalski, Principle of Polytech High School

Martha Gregor, Department of Health and Human Services

Lisa Minutola, Public Defenders Office

David Weaver, Delaware State Police, Troop 3

**Meeting Attendants:**

Terry Schooley, State Representative

Jea P. Street, County Councilman, 10<sup>th</sup> District

Dariel Janerette, PhD Student, University of Delaware

Kim Pepper, Department of Youth, Children, and their Families

Aaron Kupchik, Professor, University of Delaware

Leslie Newman, Children and Families First

Dawn Williams, Public Defenders Office

Lenn Beck, Prison Advocate

Debbie Christie, Parent

Lee Irving, Parent

Mary Elizabeth Mical, Delaware Center for Justice

**Introduction:**

Representative Barbieri convened the meeting, thanked everyone for coming, and informed the task force that they would be hearing presentations from the subcommittee chairs.

**Major Issues Raised in Task Force Subcommittee Reports:**

Patty Dailey Lewis, Legal Subcommittee Chair:

- Inherent problems with arresting 8-10 year-olds for misdemeanors.
- Idea: Create pre-arrest diversion program because of the large number of children being arrested.
- Develop a three-step process, maybe by using master's students as counselors.
- Need people on site dealing with these incidents in a different fashion than we currently have. Possibly, support could come from Child Mental Health. This could save money in long term

Dan Cruce, Legislative Subcommittee Chair:

- More common definitions for most serious charges, expellable offenses. Common definitions should be legal definitions.
- Common set of consequences for serious offenses.
- Common due process. Parents need to have input. This doesn't occur right now in all districts.
- Selection and contracting of expulsion hearing officers.
- Common standards for AGs report.

Dawn Williams, Delaware State Police (filling in for Merv Daugherty, Alternatives Subcommittee Chair):

- Introduce pilot program

**Next Steps:**

Mike Barbieri: Alright, well we have had a very good discussion. The next step is for each subcommittee to revise their presentations into a written form. The written reports from the three subcommittees will be combined to form a legislative agenda.

**December 2, 2009**

**Minutes: 3<sup>rd</sup> Meeting of School Discipline Task Force**

Task force Leader: Rep. Mike Barbieri

**Members of Task Force Present:**

Dawn Williams, Kevin Bordley, Joseph Flinn, Patricia Dailey Lewis, Theresa Sedivec, Len Beck, David Sechler, Janet Leban, Joseph Dobrowalski, Margaret Reyes, Merv Daugherty, Aaron Kupchick, Martha Gregor, Jamie-Leigh Bissett, Paul Son, Mary Elizabeth Mical, Mike Barbieri, Drew Fennel, Eli Turkel, Darryl Scott, Dan Cruce, Robin Case

The third task force meeting on school discipline was convened and was led by Rep. Mike Barbieri who stated that the driving principal of this task force is “to keep more kids in school, and we will begin to do that starting in January, 2010.” He spoke of his plan to receive final reports from all parties involved and begin to draft new legislation.

The Alternatives subgroup represented by Merv Daugherty indicated that they had met and discussed:

- Insights into reduction of referrals and suspensions and the programs and strategies in place to address suspensions. (Merv gave committee a copy of Red Clay code of conduct as example)
- Merv posits making a review of all state school districts reports on suspensions and expulsions to begin to determine how to continue to reduce the number.
- Take an in-depth look at how off-task classroom behavior is treated by teachers and principals, and districts, and develop statewide plan to evaluate such data (that points toward causes of suspensions and expulsions; this also opens up the question of the impact of poor classroom management as a contributing cause for expulsions/suspensions.)

It was the consensus of the alternatives subcommittee that there must be an additional “something” ...in place in Delaware schools that functions as a definitive barrier to having students arrested, suspended or expelled for low level bad behaviors. Although the committee did not come up with a specific plan or path on how to achieve this objective, other than the rules and codes of conduct of individual schools and districts already in place, the committee remains focused on the above issues. Further discussion within the full task force made general suggestions such as:

- More teacher training on class management
- Look at best nationwide practices
- Behavioral supports for identified students/classes
- Use restorative practices such as peer mediation programs and family group conferencing as a strategy to intervene in the escalation of cases to criminal charges

- Adapt strategies that support a school, district, and statewide culture in which criminalization of bad behavior is decreased and addressed within the school community
- Increase positive behavioral supports for students and teachers
- Increase initiatives for classroom teachers to use preventative and strategic tactics that lead to better outcomes for students/teachers/principals/districts viz student arrests in school.

It was the consensus of the full task force assembled at this meeting that actions/interventions/initiatives should start as early as possible in students' careers; if focused efforts start in middle school, change can be realized in the behavior of students in Jr. High and High School.

Legislative Sub-Committee represented by Patricia Dailey Lewis handed out an issues list that stated:

- Need to explore the reasons for the "age 18" limitation: Protection of the needs of students with disabilities under 18 should be amended to include students over 18; disabled students over 18 should enjoy the same protections as students under 18.
- Committee recommended change of language to exclude "offenders under the age of 9" be changed to "... under the age of 12"
- Mandatory reporting when victim is school employee: committee recommends that this stipulation be re-worked to address compliance with 504 plans.
- School must find that safety of students, faculty and staff are impaired by having offender present in school
- Specific plans submitted to meet the needs of the child in cases of suspension
- Implementation of a 3 step process prior to invoking criminal violation reporting section except for sex crimes and weapons offenses: 3 steps would be a written warning, school mediation and as last effort, an arrest. This process would replace immediate arrest for misdemeanors (except for above mentioned exceptions.)

Policy and Procedure Sub-Committee whose spokesperson is Dan Cruce recommended:

- Common legal definitions of student offenses that lead to alternative placement or expulsion; common due process procedures for alternative placements and expulsion hearings; and common procedures for handling of Attorney General reports in every LEA Student Code of Conduct and
- The Department of Education should work with the Department of Safety and Homeland Security and (any other) appropriate stakeholders to draft a Memorandum of Understanding detailing minimum responsibility requirements of School Resource Officers (SRO's) for all LEA Student Codes of Conduct.
- Define whether a student is expelled or is withdrawn

- Consistency in conclusion of students' reprimanded status, i.e., accepted consequences move with student from district to district, school to school

The sub-committee recommended that the inclusion of a broader set of stakeholders (beyond the sub-committee) will allow for a more inclusive and comprehensive understanding of the definitions, procedures and proposed changes to legislation impacting school discipline.

**Next Steps:**

Representative Barbieri concluded the meeting stating that it is important for us to clarify and streamline legislation regarding student accountability and make necessary changes that allow for less restrictive consequences than a criminal record for low level student offenses. He proposed that principals be protected in exercising creativity, insight and restraint in solving discipline problems within their own school community. He promised to send the task force members a preliminary report that that will proximate the changes he proposes to the Speaker of the House and full legislature. He encouraged all present to remain active and committed to the goal of changing/creating school discipline legislation that is appropriate, fair and just for our students and for the school community.

## HOUSE OF REPRESENTATIVES

## 145th GENERAL ASSEMBLY

## HOUSE RESOLUTION NO. 22

CREATING A TASK FORCE TO STUDY AND MAKE RECOMMENDATIONS FOR IMPROVING DELAWARE'S LAWS, REGULATIONS AND SCHOOL DISTRICT POLICIES RELATING TO SCHOOL DISCIPLINE AND VIOLATIONS OF SCHOOL CODES OF CONDUCT.

WHEREAS, it the intent of the House of Representatives that all Delaware school children have the opportunity to learn in a safe school environment, free of crime and violence; and

WHEREAS, it also the intent of the General Assembly that all school children facing suspension or expulsion as a result of an arrest or violation of a school code of conduct be treated fairly and equitably with appropriate consideration being given to their age and development; and

WHEREAS, although Federal and State laws and regulations mandate suspension or expulsion in certain very serious instances, in most school discipline proceedings the local school board has a substantial degree of discretion; and

WHEREAS, the House of Representatives believes that "zero tolerance" policies, which require suspension or expulsion of a student regardless of their age or the circumstances of their violation, should be reserved only for the most serious violations of a school's code of conduct; and

WHEREAS, in order to make sanctions imposed in school discipline proceedings more uniform and consistent, the House of Representatives believes it is appropriate to create a Task Force to study Delaware laws, regulations and school district policies relating to school discipline and violations of school codes of conduct.

NOW THEREFORE:

BE IT RESOLVED by the House of Representatives of the 145th General Assembly of the State of Delaware that a Task Force be created for the purpose of studying and making recommendations for improving Delaware's laws, regulations and school district policies relating to school discipline and violations of school codes of conduct.

BE IT FURTHER RESOLVED that the Task Force shall be comprised of the following members:

1. Two members of the House of Representatives, to be appointed by the Speaker of the House;
2. The Attorney General or of the Attorney General's designee;
3. The Public Defender or the Public Defender's designee;
4. The Chief Judge of the Delaware Family Court or the Chief Judge's designee;
5. Two representative(s) from the Department of Education, one of whom shall have experience in school climate and discipline and one of whom shall have experience in services for children with disabilities, to be designated by the Secretary of Education;
6. The Secretary of Department of Health and Social Services or the Secretary's designee;
7. The Secretary of the Department of Services for Children, Youth and their Families, or the Secretary's designee;
8. One School District Superintendent, or their designee, from each County, to be appointed by the Speaker of the House;
9. One member of the Delaware School Boards Association;
10. One member of Delaware State Education Association;
11. One member of the Delaware Association of School Administrators;
12. One school resource officer from each county, to be designated by the Superintendent of the Delaware State Police; and.
13. One member of the Delaware Center for Justice, to be designated by the Executive Director.

BE IT FURTHER RESOLVED that the Speaker shall designate one of the House members to serve as Chairperson of the Task Force;

BE IT FURTHER RESOLVED that the Chairperson of the Task Force shall be responsible for guiding the administration of the Task Force by, at a minimum:

1. setting a date, time and place for the initial organizational meeting;
2. supervising the preparation and distribution of meeting notices, agendas, minutes, correspondence, and reports of the Task Force; and

3. ensuring that the final report of the Task Force is submitted to the Speaker of the House of Representatives, the Director of the Division of Research of Legislative Council and the Delaware Public Archives.

BE IT FURTHER RESOLVED that the Task Force shall submit a report of its findings and recommendations on or before January 15, 2010.

#### SYNOPSIS

This House Resolution creates a Task Force to study Delaware's laws, and regulations and school district policies relating to school discipline and violations of school codes of conduct. The Task Force shall prepare a report of its findings and recommendations by January 15, 2010.

## HOUSE OF REPRESENTATIVES

## 145th GENERAL ASSEMBLY

## HOUSE BILL NO. 120

## AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO CERTAIN OFFENSES

WHEREAS, Delaware was one of many states to adopt statewide “Zero Tolerance” policies for its public schools, which are policies that mandate predetermined consequences for specific offenses; and

WHEREAS, many states and local school districts have since reformed or abandoned these policies in response to studies showing that Zero Tolerance policies have resulted in arbitrary and unfair expulsions of students; and

WHEREAS, the Delaware Code currently requires a local school board or charter school to expel, for a period of not less than 180 days, any elementary or secondary school student who possesses a firearm or other deadly weapon in a Safe School and Recreation Zone; and

WHEREAS, school boards and administrators currently have no discretion to modify the terms of a mandatory expulsion once a student is found to be in possession of a “deadly weapon,” which is broadly defined in the Delaware Code; and

WHEREAS, the American Psychological Association recently reported that zero tolerance policies do not effectively improve school safety.

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

SECTION 1. Amend § 1457(j)(4), Title 11 of the Delaware Code by inserting a second sentence as follows: “The local School board or charter school board of directors may, on a case by case basis, modify the terms of the expulsion or determine that expulsion is not appropriate.”.

SYNOPSIS

This bill amends the “zero tolerance” provision in the Delaware Code to give discretion to school boards to modify the terms of expulsions when a school board determines that it is appropriate to do so.

AMEND House Bill No. 120 by striking the words “or determine that expulsion is not appropriate” from the first sentence of Section 1 at line 16.

FURTHER AMEND House Bill No. 120 by adding new Sections 2 and 3 to read as follows:

“SECTION 2. Amend § 1457(i), Title 11 of the Delaware Code by striking the number ‘11’ where it appears therein and substituting in lieu thereof the number ‘12’.

SECTION 3. Amend § 222(5), Title 11 of the Delaware Code by striking the number ‘11’ where it appears therein and substituting in lieu thereof the number ‘12’.”.

#### SYNOPSIS

This Amendment clarifies that House Bill No. 120 is intended to provide school boards with the discretion to modify the terms of an expulsion and removes from the bill the ambiguous “appropriate to do so” language. This Amendment also makes technical corrections to two definitional cross-referencing errors in existing provisions of Title 11 of the Delaware Code.

## HOUSE BILL NO. 85

## CHAPTER 120

AS AMENDED BY HOUSE AMENDMENT NO. 1,

HOUSE AMENDMENT NO. 2 AS AMENDED BY HOUSE AMENDMENT NO. 1

TO HOUSE AMENDMENT NO. 2 AND HOUSE AMENDMENT NO. 3

AN ACT TO AMEND CHAPTER 41, TITLE 14 OF THE DELAWARE CODE  
RELATING TO GENERAL

REGULATORY PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE (Two-thirds of all members elected to each House thereof concurring  
therein):

Section 1. Amend Title 14, Chapter 41, §4112 by striking the headnote as it currently appears and substitute in lieu thereof a new headnote to read as follows: "Discipline Powers, Reporting Requirements and Responsibilities of Superintendents, Principals and Teachers."

Section 2. Amend Title 14, Chapter 41, §4112 of the Delaware Code by striking the existing subsections (b) and (c) in their entirety and substituting in lieu thereof the following new subsections (b) and (c) to read as follows:

"(b) Student Criminal Violations; Mandatory Complaints.

In any instance where a pupil or parent or guardian of any pupil is found to have committed an assault or an extortion against a pupil or found to have committed an assault, offensive touching, terroristic threatening or an extortion against a school employee as prohibited by Title 11 on school property, after verifying the identity of the pupil or parent or guardian involved and that probable cause exists to believe a criminal charge is appropriate, the principal shall immediately report such incident to the appropriate local police agency and to the superintendent. Thereafter, the superintendent shall immediately file a written report of such incident with the State Department of Public Instruction and the Youth Division of the Delaware State Police. In any instance where a pupil, parent or guardian is found to have committed an assault, offensive touching, terroristic threatening or an extortion under this subsection against a school employee, the superintendent or his designee shall, without unreasonable delay, file the appropriate charge against the pupil, parent or guardian. The obligations of the superintendent and principal, as set forth in this subsection, are mandatory and are not discretionary. However, the reporting requirements set forth in this section shall not

apply to offenses committed between students enrolled in grades kindergarten through third grade.

(c) Student possession of weapons and unlawful drugs; mandatory complaints.

In any instance where a pupil is found to have on his person, or concealed among his possessions, or placed elsewhere on the school premises, any controlled substance (as prohibited by Title 16), or any dangerous instrument or deadly weapon (as prohibited by Title 11), after verifying the identity of the pupil involved and that probable cause exists to believe a criminal charge is appropriate, the principal shall immediately report such incident to the appropriate local police agency and to the superintendent. Thereafter, the superintendent shall immediately file a written report of such incident with the State Department of Public Instruction and the Youth Division of the Delaware State Police. The obligations of the superintendent and principal, as set forth in this subsection, are mandatory and are not discretionary."

Section 3. Further amend, Title 14, Chapter 41, §4112 by redesignating the current subsection (d) as a new subsection (g) and by inserting new subsections (d), (e) and (f) to read as follows:

"(d) Teacher's Duty to Report.

In any instance where a teacher witnesses an act of violence as set forth in subsection (b) or finds a pupil in possession of a weapon or unlawful drugs as set forth in subsection (c), it shall be the duty of the teacher to immediately report such incident to the principal."

(e) Immediate Suspension.

Any pupil determined to have committed an offense under subsection (b) or (c) shall be immediately suspended by the school district until such time as a parent conference is held as provided for in subsection (a). Furthermore, any pupil determined to have committed an offense under subsection (b) or (c) shall also be referred to the school district's alternative program for counseling of an appropriate nature and duration prior to being returned to the general student body. Nothing in this section shall preclude the school district from imposing a longer suspension or expulsion where otherwise appropriate.

(f) Failure to Report a Violation.

Any superintendent, principal, or teacher who fails to report an incident as required by subsection (b), (c), or (d), shall be guilty of a violation and be fined not more than \$250.00 for a first offense and not more than \$500.00 for a subsequent offense.

However, it shall be an affirmative defense to a prosecution under this section if the superintendent, principal or teacher decided not to report an incident where, after conducting a thorough investigation, he or she makes a good-faith determination that no probable cause exists to believe a criminal charge is appropriate."

Section 4. Further amend Chapter 41, Title 14 of the Delaware Code by adding a new §4118 to read as follows:

"§4118. Metal Detectors.

The school board of each school district shall have authority to employ the use of metal detectors, or any other similar security devices, to prevent pupils from bringing dangerous instruments, deadly weapons or any other contraband into the schools. Any school board exercising its authority under this Section shall promulgate rules and regulations governing the implementation and use of such security devices."

Section 5. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

Approved July 9, 1993.

SPONSOR: Rep. Spence

HOUSE OF REPRESENTATIVES  
137TH GENERAL ASSEMBLY

HOUSE AMENDMENT NO.  
TO  
HOUSE BILL NO. 85

AMEND House Bill No. 85, page 3, line 3 by adding a new sentence to read as follows:

"However, it shall be an affirmative defense to a prosecution under this section if the superintendent, principal or teacher decided not to report an incident where, after conducting a thorough investigation, he or she makes a good-faith determination that no probable cause exists to believe a criminal charge is appropriate."

SYNOPSIS

This Amendment creates a good-faith defense to a prosecution for failing to report.

SPONSOR: Rep. Wagner;  
Rep. Brady

137TH GENERAL ASSEMBLY  
HOUSE AMENDMENT NO.  
TO  
HOUSE BILL NO. 85

AMEND House Bill No. 85, page 1, by deleting lines 9 through 23 and substituting in lieu thereof the following:

"(b) Student Criminal Violations; Mandatory Complaints.

In any instance where a pupil or parent or guardian of any pupil is found to have committed an assault or an extortion against a pupil or found to have committed an assault, offensive touching, terroristic threatening or an extortion against a school employee as prohibited by Title II on school property, after verifying the identity of the pupil or parent or guardian involved and that probable cause exists to believe a criminal charge is appropriate, the principal shall immediately report such incident to the appropriate local police agency and to the superintendent. Thereafter, the superintendent shall immediately file a written report of such incident with the State Department of Public Instruction and the Youth Division of the Delaware State Police. In any instance where a pupil, parent or guardian is found to have committed an assault, offensive touching, terroristic threatening or an extortion under this subsection against a school employee, the superintendent or his designee shall, without unreasonable delay, file the appropriate charge against the pupil, parent or guardian. The obligations of the superintendent and principal, as set forth in this"

SYNOPSIS

This Amendment adds the crimes of offensive touching and terroristic threatening by a student or parent or guardian against a school employee that must be reported as per the procedures outlined in the Act and for which the local superintendent must file appropriate charges.

HOUSE OF REPRESENTATIVES  
137TH GENERAL ASSEMBLY

HOUSE AMENDMENT NO.

TO

HOUSE AMENDMENT NO. 2

TO

**HOUSE BILL NO. 85**

AMEND House Amendment No. 2 to House Bill No. 85 by striking the word "probably" as it appears in line 9 thereof and by substituting in lieu thereof the word "probable".

FURTHER AMEND House Amendment No. 2 to House Bill No. 85 by striking the period and end quote (".") as they appear at the end of line 19 thereof and by substituting in lieu thereof an end quote and period (".").

**SYNOPSIS**

This Amendment corrects two typographical errors in House Amendment No. 2 to House Bill No. 85.