JOINT STATE GOVERNMENT COMMISSION

General Assembly of the Commonwealth of Pennsylvania

DISCIPLINE POLICIES IN PENNSYLVANIA'S PUBLIC SCHOOLS

REPORT OF THE ADVISORY COMMITTEE ON ZERO TOLERANCE SCHOOL DISCIPLINE POLICIES

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REPORT

Discipline Policies in Pennsylvania's Public Schools

Report of the Advisory Committee on
Zero Tolerance School Discipline Policies

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The full report is available on our website, http:/jsg.legis.state.pa.us.

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The Joint State Government Commission was created in 1937 as the primary and central non-partisan, bicameral research and policy development agency for the General Assembly of Pennsylvania.[1]

A fourteen-member Executive Committee comprised of the leadership of both the House of Representatives and the Senate oversees the Commission. The seven Executive Committee members from the House of Representatives are the Speaker, the Majority and Minority Leaders, the Majority and Minority Whips, and the Majority and Minority Caucus Chairs. The seven Executive Committee members from the Senate are the President Pro Tempore, the Majority and Minority Leaders, the Majority and Minority Whips, and the Majority and Minority Caucus Chairs. By statute, the Executive Committee selects a chairman of the Commission from among the members of the General Assembly. Historically, the Executive Committee has also selected a Vice-Chair or Treasurer, or both, for the Commission.

The studies conducted by the Commission are authorized by statute or by a simple or joint resolution. In general, the Commission has the power to conduct investigations, study issues, and gather information as directed by the General Assembly. The Commission provides in-depth research on a variety of topics, crafts recommendations to improve public policy and statutory law, and works closely with legislators and their staff.

A Commission study may involve the appointment of a legislative task force, composed of a specified number of legislators from the House of Representatives or the Senate, or both, as set forth in the enabling statute or resolution. In addition to following the progress of a particular study, the principal role of a task force is to determine whether to authorize the publication of any report resulting from the study and the introduction of any proposed legislation contained in the report. However, task force authorization does not necessarily reflect endorsement of all the findings and recommendations contained in a report.

Some studies involve an appointed advisory committee of professionals or interested parties from across the Commonwealth with expertise in a particular topic; others are managed exclusively by Commission staff with the informal involvement of representatives of those entities that can provide insight and information regarding the particular topic. When a study involves an advisory committee, the Commission seeks consensus among the members.[2] Although an advisory committee member may represent a particular department, agency, association, or group, such representation does not necessarily reflect the endorsement of the department, agency, association, or group of all the findings and recommendations contained in a study report.

[1] Act of July 1, 1937 (P.L.2460, No.459); 46 P.S. §§ 65 – 69.

[2] Consensus does not necessarily reflect unanimity among the advisory committee members on each individual policy or legislative recommendation. At a minimum, it reflects the views of a substantial majority of the advisory committee, gained after lengthy review and discussion.

Over the years, nearly one thousand individuals from across the Commonwealth have served as members of the Commission's numerous advisory committees or have assisted the Commission with its studies. Members of advisory committees bring a wide range of knowledge and experience to deliberations involving a particular study. Individuals from countless backgrounds have contributed to the work of the Commission, such as attorneys, judges, professors and other educators, state and local officials, physicians and other health care professionals, business and community leaders, service providers, administrators and other professionals, law enforcement personnel, and concerned citizens. In addition, members of advisory committees donate their time to serve the public good; they are not compensated for their service as members. Consequently, the Commonwealth of Pennsylvania receives the financial benefit of such volunteerism, along with their shared expertise in developing statutory language and public policy recommendations to improve the law in Pennsylvania.

The Commission periodically reports its findings and recommendations, along with any proposed legislation, to the General Assembly. Certain studies have specific timelines for the publication of a report, as in the case of a discrete or timely topic; other studies, given their complex or considerable nature, are ongoing and involve the publication of periodic reports. Completion of a study, or a particular aspect of an ongoing study, generally results in the publication of a report setting forth background material, policy recommendations, and proposed legislation. However, the release of a report by the Commission does not necessarily reflect the endorsement by the members of the Executive Committee, or the Chair or Vice-Chair of the Commission, of all the findings, recommendations, or conclusions contained in the report. A report containing proposed legislation may also contain official comments, which may be used in determining the intent of the General Assembly.[3]

Since its inception, the Commission has published more than 350 reports on a sweeping range of topics, including administrative law and procedure; agriculture; athletics and sports; banks and banking; commerce and trade; the commercial code; crimes and offenses; decedents, estates, and fiduciaries; detectives and private police; domestic relations; education; elections; eminent domain; environmental resources; escheats; fish; forests, waters, and state parks; game; health and safety; historical sites and museums; insolvency and assignments; insurance; the judiciary and judicial procedure; labor; law and justice; the legislature; liquor; mechanics' liens; mental health; military affairs; mines and mining; municipalities; prisons and parole; procurement; state-licensed professions and occupations; public utilities; public welfare; real and personal property; state government; taxation and fiscal affairs; transportation; vehicles; and workers' compensation.

Following the completion of a report, subsequent action on the part of the Commission may be required, and, as necessary, the Commission will draft legislation and statutory amendments, update research, track legislation through the legislative process, attend hearings, and answer questions from legislators, legislative staff, interest groups, and constituents.

[3] 1 Pa.C.S. § 1939 ("The comments or report of the commission . . . which drafted a statute may be consulted in the construction or application of the original provisions of the statute if such comments or report were published or otherwise generally available prior to the consideration of the statute by the General Assembly").

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October 27, 2016

To the Members of the General Assembly of Pennsylvania:

House Resolution No. 540 of 2015 directed the Joint State Government Commission to appoint an advisory committee to assist the Commission in a comprehensive study of school discipline policies, Commonwealth laws, and regulations that address school discipline, and memoranda of understanding that exist between local law enforcement and school districts.

Further, the resolution directed that the report include alternative approaches to school discipline utilized in Pennsylvania and in other states. A particular emphasis of the report is on discipline policies' effects on students with disabilities and students under 12 years of age. The report presents a series of recommendations developed for consideration by the General Assembly.

On behalf of the Joint State Government Commission, I would like to thank the members of the Advisory Committee for their dedication to this project.

We are pleased to present the report, ***Discipline Policies in Pennsylvania's Public Schools: Report of the Advisory Committee on Zero Tolerance School Discipline Policies***.

Respectfully submitted,

Glenn J. Pasewicz
Executive Director

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INTRODUCTION

Pennsylvania's public schools' discipline policies provide its students with adequate safety, security and stability in most circumstances, but a number of flaws have been identified over time. The Commonwealth's rates of expulsion and out-of-school suspension are higher than the national average. Further, studies have shown that excessively punitive discipline for misbehavior can result in long-term consequences for the children involved, especially the youngest ones. Data reflect disparities in the experiences of racial minority students and students with special needs when compared to the general school population. Most observers agree that while school discipline policies are working most of the time, there is significant room for improvement. Policies relating to expulsion and out-of-school suspension are those in need of the most careful scrutiny.

"Zero tolerance" school discipline policies, in their purest form, do not exist in the laws of Pennsylvania. The closest the Commonwealth comes to a zero tolerance law is in its prohibition of firearms in schools, at school functions and on school conveyances. This law is based upon the federal Gun-Free Schools Act which requires expulsion for one year of any student possessing a gun at school-related activities and requires states to adopt similar laws or lose federal funding.[4] However, even this penalty is not absolute. Pennsylvania's law incorporates modifications and exceptions that are allowed by federal law.

The problems that arise with zero tolerance are largely attributable not to the language of the law, but to the application of the law from school district to school district. For example, Pennsylvania has adopted a definition of "weapon" that is broader than the federal definition and with final determination of discipline policies left to each of the 500 school districts, there are many varied definitions of weapons. Some districts have very broad definitions, and some principals and superintendents adhere more strictly than others to those definitions. Despite having the ability to make modifications, some do not. In some cases school administrators are heavily influenced by liability concerns or fear of making a mistake that leads to a tragedy. In other cases, it can be simply a matter of the individual administrator's attitude and philosophy toward school discipline. Similarly, the definition of offenses that can result in expulsion and out-of-school suspension vary widely from school district to school district and are frequently applied subjectively.

[4] 20 U.S.C. § 7961.

In exploring various aspects of school discipline in Pennsylvania, this report recognizes the importance of local control and flexibility when resolving behavioral problems. Stringent uniformity is neither desirable nor advised. However, some guidance is offered to help school administrators, students and parents avoid extreme reactions to any given situation.

Advisory Committee on Zero Tolerance School Discipline Policies

On October 26, 2015, the Pennsylvania House of Representatives adopted House Resolution No. 540, calling for the Joint State Government Commission to establish an Advisory Committee comprised of a police chief, a juvenile public defender, a district attorney, a rural school superintendent, a suburban school superintendent, an urban school superintendent, a school board member, a certified public school teacher, a parent of a student enrolled in a public school, an individual representing the interests of juveniles and of students with disabilities, a representative of the Juvenile Court Judges' Commission, a representative of the Juvenile Justice and Delinquency Prevention Committee of the Pennsylvania Commission on Crime and Delinquency, a representative of the Pennsylvania Department of Education and a representative of the Pennsylvania State Board of Education. The Advisory Committee's overall directive was to conduct a comprehensive study of school discipline policies, laws, and regulations, with particular attention paid to zero tolerance discipline and to make a report of its findings and recommendations.

The advisory committee convened five times over the course of the study. Following much lively debate and delicate consensus building, the Advisory Committee agreed to present this report containing its recommendations and observations to the General Assembly. While the Advisory Committee reached consensus on many issues, there was some disagreement on certain aspects of the recommendations. Those areas where unanimity was not achieved are noted *in situ*.

The Advisory Committee held five meetings, which included in-person meetings on April 21, and September 29, 2016, and conference calls on February 25, June 30 and August 25, 2016. Additionally, a public hearing was held in Harrisburg on July 28, 2016, where administrators, law enforcement, parents, and students were able to share their "real world" perspective on school discipline policies that have directly impacted them.

Recognition of Contributors

The following individuals testified at the Advisory Committee's hearing on July 28, 2016 and we appreciate their willingness to share their experiences with school discipline policies:

- *Ms. Jessica Barthold, Parent*
- *David E. Baugh, Ed.D., Superintendent of Schools, Centennial School District*
- *Ms. Kayla Bowyer, Amachi Pittsburgh Ambassadors Coordinator*[5]
- *Sheriff Philip Bueki, School Resource Officer, Pike County*
- *Kahlil Darden, High School Student*
- *Leon Ford, Jr., Former Student*
- *Dr. Richard L. Frerichs, School Director, Penn Manor School District*
- *Dr. Michael G. Leichliter, Superintendent of Schools, Penn Manor School District*
- *Jeffrey Litts, Esquire, School District Solicitor*
- *Ms. Tangerine McDaniel, Parent*
- *Officer Frederick Mill, School Police Chief, East Stroudsburg School District*
- *Ms. Susan Napier, Parent*
- *Yusef Shelton, Transitioning to College*

We also received input from Harold Jordan of the American Civil Liberties Union of Pennsylvania, author of *Beyond Zero Tolerance: Discipline and Policing in Pennsylvania Public Schools*[6] and the Pennsylvania State Education Association, who both offered timely research and important recommendations.

[5] Amachi Pittsburgh is a non-profit organization that works with children of incarcerated parents. Ms. Bowyer presented testimony on behalf of Iyonna Johnson and Na'taya Richardson, high school students from the Pittsburgh area who were unable to attend the hearing in person.
[6] Originally published in November 2013 and updated February 2015.

Methodology

Pennsylvania has 500 school districts, enrolling 1,739,559[7] students in 2,945[8] schools. Several of the directives of HR 540 called for a general description of various aspects of school discipline policies in the Commonwealth's public schools. The number of public schools and school districts makes a full rendering of discipline policies less than useful to the reader. Instead, a representative sample of schools that would reflect the diversity of environments in which schools operate in the Commonwealth is used. Dauphin County's 12 school districts are the primary sample in this study.[9] The county contains urban, rural, and suburban schools, schools with very large and very small Total Enrollments and varying degrees of wealth in the communities in which there are located. Additionally, the top 20 academically performing and bottom 20 academically performing public high schools in the Commonwealth were examined to determine if correlations existed with school discipline data within those classifications.[10] Statewide data was used and analyzed where available and if appropriately related to the study.

Current Pennsylvania Law Governing Student Discipline

A review of school discipline policies overall and a focus on zero tolerance in particular involves two separate but related analyses. With respect to mandatory expulsion, each school district has the authority to determine which acts of misconduct may be subject to expulsion from school, with one exception: all schools must comply with federal law, which states that possession of a weapon on school property will result in a one-year expulsion from school. Any other policy that mandates expulsion from school is left to the individual school district's discretion.

Additionally, under federal and state law, certain criminal offenses that occur on school property, at a school sponsored activity, on a conveyance such as a school bus that is providing transportation to or from a school or school sponsored activity, must be immediately reported to local law enforcement. An additional list of criminal offenses may be reported, in the discretion of the school district.

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[7] Pennsylvania Department of Education, Total Enrollment Reports and Projections, Public School Total Enrollments, 2014-2015. http://www.education.pa.gov/Data-and-Statistics/Pages/Total Enrollment%20Reports%20and%20Projections.aspx#tab-1

[8] Pennsylvania Department of Education, Educational Names and Addresses. www.edna.ed.state.pa.us.

[9] Central Dauphin, Derry Township, Halifax Area, Harrisburg City, Lower Dauphin, Middletown Area, Millersburg Area, Steelton-Highspire, Susquehanna Township, Susquenita, Upper Dauphin, and Williams Valley.

[10] Pennsylvania Department of Education, Pennsylvania School Performance Profile, 2011-2012. http://www.paschoolperformance.org/SelectCounty. Data for those individual school districts was also obtained from the U.S. Department of Education, Civil Rights Data Collection, http://ocrdata.ed.gov.

The Public School Code of 1949 authorizes suspension and expulsion as disciplinary measures.[11] The governing board of each school is authorized to establish reasonable rules and is required to adopt a code of student conduct that includes policies governing student discipline and a listing of students' rights and responsibilities. The code of conduct must be published and distributed to students and parents or guardians.[12] Copies of the code must also be available in each school library and most are posted on the school districts' websites. These codes of conduct list disciplinary infractions and potential penalties. While a principal or teacher may impose a temporary suspension, expulsion is only authorized after a hearing before the school board of directors. More specific details regarding the procedural rights of students under consideration for expulsion are included in the Department of Education (PDE) regulations.[13] Expulsions for weapons possession are governed by their own set of procedural requirements.[14]

Special rules of discipline, together with specific procedural rules, are also set forth in regulation for children with disabilities. Punishment for a manifestation of a child's disability is forbidden. For example, if a child's behavior would normally constitute grounds for suspension or expulsion, a suspension or expulsion may not be imposed if it is determined that the behavior is a manifestation of the child's disability. Also prohibited is the use of suspensions that constitute a pattern that is deemed a change in placement. A change of placement triggers the need for a review and change of the child's individualized education plan (IEP)[15], if deemed appropriate by the IEP Team. Federal regulations state that a change of placement occurs if

> (2) The child has been subjected to a series of removals that constitute a pattern—
>
> (i) Because the series of removals total more than 10 school days in a school year;
>
> (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
>
> (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

Under Pennsylvania regulations, this determination of a pattern has be modified so that if a child with disabilities is removed from the classroom for disciplinary infractions for more than 15 cumulative days in a school year, the removal will be deemed a change of placement, triggering the need to develop an IEP.[16]

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[11] Act of March 10, 1949 (P.L.30, No.14) § 1318; 24 P.S. § 13-1318. Act No. 14 is known as The Public School Code of 1949, and will be hereinafter cited as PSC.
[12] 22 Pa. Code § 12.3.
[13] 22 Pa. Code §§ 12.6 and 12.8.
[14] PSC § 1317.2; 24 P.S. § 13-1317.2.
[15] An Individual Education Plan is used to determine the supports and placement needed for a student with disabilities to receive an appropriate public education.
[16] 22 Pa. Code §§ 14.133 and 14.143(a); 34 C.F.R. 300.530-300.536.

Under Pennsylvania's Safe Schools Act, the chief school administrator of each school is required to report to the PDE on an annual basis regarding incidents occurring on school property.[17] Most of the offenses listed are crimes against the person, although there are also property crimes (like arson and burglary), drug and alcohol, and tobacco offenses. This list forms the basis of the types of activities that must be reported to law enforcement by school officials. Each school district is required to enter a memorandum of understanding (MOU) with local law enforcement that outlines which activities are subject to mandatory or discretionary reporting, as well as procedures and protocols to be followed in the event criminal activity occurs on school property. The PDE's Office for Safe Schools is required to provide a model MOU for us by the school districts. [18]

These statutes and regulations appear in Appendix A.

[17] Reportable incidents include all incidents involving acts of violence, possession of a weapon or possession, use or sale of controlled substances as defined in the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or possession, use or sale of alcohol or tobacco by any person on school property. These are in addition to the mandatory and discretionary list of potentially criminal offenses that are to be report to local law enforcement.

[18] PSC § 1303-A; 24 P.S. § 13-1303-A.

RECOMMENDATIONS

Pursuant to House Resolution No. 540, the Advisory Committee on Zero Tolerance School Discipline Policies offers the following legislative, regulatory and policy recommendations to the General Assembly to improve school discipline policies and help to develop a school environment that is more conducive to learning for all students.

Recommendation 1:

Pennsylvania's public school system should minimize the use of exclusionary discipline and law enforcement intervention to maintain discipline and order in its schools and move toward a system of evidence- or research-based alternatives. Both restorative practices and positive behavioral interventions and supports are two such alternatives that the advisory committee recommends.[19] This recommendation would add subsection (d) to PSC § 1318, *infra* p.

Recommendation 2:

Efforts should be made to substantially lower Pennsylvania's expulsion and out-of-school suspension rates, which are in the top 25% and 39% of the 50 states and the District of Columbia, respectively. Statutory guidance should be provided to clarify that expulsion and out-of-school suspension are reserved for only the most serious of offenses. The Department of Education is encouraged to share federal guidance with the school districts on what types of offenses should be considered for these levels of discipline. This recommendation would add subsection (b) to PSC § 1318, *infra*, p. 14.

Recommendation 3:

The Advisory Committee recognizes that out-of-school suspension and expulsion can have long-term, detrimental effects on younger students subject to this discipline. However, there are limited circumstances where the use of exclusionary discipline is unavoidable. Accordingly, the Advisory Committee recommends that out-of-school suspensions or expulsions of children under the age of 10 be restricted to those circumstances when the discipline is based on conduct that is of a violent or sexual nature that endangers others. Children under the age of 10 who receive such exclusionary discipline must be offered an alternative educational setting to continue his or her education during the pendency of the classroom removal, and a plan of services must be in place prior to the child's return to the regular classroom. The duration of the exclusion should be limited to minimize the time that the child is out of

[19] Significant guidance in this regard has been offered by the U.S. Department of Education on its website at http://www2.ed.gov/policy/gen/guid/school-discipline/index.html.

the regular classroom. This recommendation would add subsection (c) to PSC § 1318, *infra*, p. 14.

Recommendation 4:

The Advisory Committee wishes to stress that school districts have always had latitude in determining the necessity of expulsion for weapons violations, yet some have treated it as a "zero tolerance" mandate. Therefore, it is recommended that the Public School Code mirror the federal Gun-Free Schools Act in defining expulsion for weapons possession. School districts should be given more guidance as to what constitutes a weapons violations and not as much latitude in defining weapons. This recommendation does not mean that schools cannot impose expulsion as a discipline for possession of other types of weapons; it simply limits the automatic one-year expulsion to firearms as defined in federal law. The recommendation would amend PSC § 1317.2, *infra*, p. 11.

Recommendation 5:

Memoranda of understanding between school districts and local law enforcement regarding the mandatory and discretionary referral of students to law enforcement for various criminal offenses should adhere closely to the Office for Safe Schools' Model Memorandum of Understanding. The mandate in the Federal Gun-Free Schools Act only requires that weapons offenses be reported to local law enforcement. Pennsylvania's system of mandatory and discretionary notifications goes beyond what is required under federal law. "Discretionary notice" should be eliminated from the Public School Code of 1949 MOU provisions. Discretionary referrals to law enforcement are already within the rights and duties of school administrators. This recommendation would repeal subsection (a)(3) of PSC § 1302.1-A, *infra*, p. 23.

Recommendation 6:

Law enforcement officials working in educational settings, such as school resource officers and school police officers should receive training in de-escalation techniques, disabilities and their impact on student cognition, communication and behavior, disability rights under federal and state law, cultural competency, implicit bias, restorative practices, child development, and psychology, and other topics designed to assist officers to work effectively in schools. Training in these areas should also be available for any school employees making disciplinary decisions. This recommendation would amend subsection (d)(2)(iv) of PSC § 1302-A, *infra*, p. 20.

Recommendation 7:

The Department of Education should review and monitor statistical data collected on expulsion, out-of-school suspension, referral to alternative education for disruptive youth, and referrals to law enforcement to identify schools that are statistical outliers in the disciplinary exclusion of students. Statistics regarding racial and ethnic minorities, students with disabilities, very young children, and other vulnerable subgroups should be carefully scrutinized to identify any bias, as well as the justifications offered for discipline of these subgroups. This information should be

used by the Department to provide technical assistance to schools to take corrective action when needed. As part of its technical assistance to schools, the Department may require the school district in question to establish a Disciplinary Policy Review Committee that is comprised as follows: 50% of the membership shall be made up of parents and advocates who are representative of the population subject to disciplinary exclusions and law enforcement referrals. The Committee shall review disciplinary data and procedures and recommend changes in school policy and practice. This recommendation would add subsection (b.2) to PSC § 1302-A, *infra* p. 15.

Recommendation 8:

The Office for Safe Schools targeted grants criteria found in PSC § 1302-A should be changed to create a more equitable division of the amount grant money available for hiring and training school resource officers and the amount available to all other safe school programs, including non-exclusionary discipline programs and practices. This recommendation would amend subsection (e) of PSC §1302-A, *infra*, p. 22.

Recommendation 9:

With its complement of five employees, the Office for Safe Schools is not staffed to effectively audit or otherwise verify the appropriate use of its grants for violence prevention programs or school resource officers, or effectively monitor and review data reports governing school discipline and truancy from almost 3,000 public schools. The Office for Safe Schools is the most logical home for implementing recommendation #7, but additional staff would be needed to effectively monitor and advise outlier schools.

***Recommendation 10*:**

Like other exclusionary discipline methods, the alternative education of disruptive youth (AEDY) programs should be used sparingly and only for the most disruptive students. While several specific types of behavior are listed as justification for transfer to an AEDY program, the catch-all phrase "disruptive" leaves room for vague and subjective interpretation and should be specifically defined and limited. Specifically, language that relates to disregard for school authority, including persistent violation of school policy should be removed. Additionally, the Advisory Committee supports the efforts of PDE as it continues to expand its oversight of the AEDY programs, to ensure better compliance with the laws and regulations regarding education. This recommendation would repeal a subparagraph from PSC § 1901-C(5), *infra*, p. 26.

These recommendations represent the overall consensus of the Advisory Committee, but not unanimity. In particular, there are a few members who believe young children should never be suspended or expelled for disciplinary purposes. Additionally, a few members expressed concern that some of the recommendations too narrowly restrict school districts discretion in imposing discipline.

PROPOSED LEGISLATION

AN ACT

Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An act relating to the public school system, including certain provisions applicable as well to private and parochial schools; amending, revising, consolidating and changing the laws relating thereto," amending disciplinary methods, distribution of grants by the Office of State Schools, standards for memoranda of understanding between school districts and local law enforcement agencies, and alternative education for disruptive youth requirements.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 1317 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, is amended to read:

Section 1317.2. Possession of [Weapons] Firearms Prohibited.—

(a) Except as otherwise provided in this section, a school district or area vocational-technical school shall expel, for a period of not less than one year, any student who is determined to have brought onto or is in possession of a [weapon] firearm on any school property, any school-sponsored activity or any public conveyance providing transportation to a school or school-sponsored activity.

(b) Every school district and area vocational-technical school shall develop a written policy regarding expulsions for possession of a [weapon] firearm as required under this section. Expulsions shall [be conducted pursuant to] comply with all applicable regulations.

(c) The superintendent of a school district or an administrative director of an area vocational-technical school may recommend modifications of such expulsion requirements for a student on a case-by-case basis. Modifications shall be in writing and may include

the duration of the expulsion. The superintendent or other chief administrative officer of a school entity shall, in the case of an exceptional student, take all steps necessary to comply with the Individuals with Disabilities Education Act (Public Law 91-230, 20 U.S.C. § 1400 et seq.).

(d) The provisions of this section shall not apply to the following:

(1) a [weapon] firearm being used as part of a program approved by a school by an individual who is participating in the program; [or]

(2) a [weapon] firearm that is unloaded and is possessed by an individual while traversing school property for the purpose of obtaining access to public or private lands used for lawful hunting, if the entry on school premises is authorized by school authorities.

(e) Nothing in this section shall be construed as limiting the authority or duty of a school or area vocational-technical school to [make]:

(1) Make an alternative assignment or provide alternative educational services during the period of expulsion.

(2) Provide for other appropriate discipline for a student who is determined to have brought onto or is in possession of a weapon on any school property, any school-sponsored activity or any public conveyance providing transportation to a school or school-sponsored activity.

(e.1) A school district receiving a student who transfers from a public or private school during a period of expulsion for an act or offense involving a [weapon] firearm may assign that student to an alternative assignment or provide alternative education services, provided that the assignment may not exceed the period of expulsion.

(f) All school districts and area vocational-technical schools shall report all incidents involving possession of a [weapon] firearm prohibited by this section as follows:

(1) The school superintendent or chief administrator shall report the discovery of any [weapon] firearm prohibited by this section to local law enforcement officials.

(2) The school superintendent or chief administrator shall report to the Department of Education all incidents relating to expulsions for possession of a [weapon] firearm on school grounds, school-sponsored activities or public conveyances providing transportation to a school or school-sponsored activity. Reports shall include all information as required under section 1303-A.

(g) As used in this section, the term "firearm" shall having the meaning given at 18 United States Code § 921(a)(3), as incorporated by reference under the federal Gun Free Schools Act, 20 U.S.C. § 7961(b)(3).

["weapon" shall include, but not be limited to, any knife, cutting instrument, cutting tool, nunchaku, firearm, shotgun, rifle and any other tool, instrument or implement capable of inflicting serious bodily injury].

Section 2. Section 1318 of the act is amended to read:

Section 1318. Suspension and Expulsion of Pupils.—

(a) Every principal or teacher in charge of a public school may temporarily suspend any pupil on account of disobedience or misconduct, and any principal or teacher suspending any pupil shall promptly notify the district superintendent or secretary of the board of school directors. The board may, after a proper hearing, suspend such child for such time as it may determine, or may permanently expel him. Such hearings, suspension, or expulsion may be delegated to a duly authorized committee of the board, or to a duly

qualified hearing examiner, who need not be a member of the board, but whose adjudication must be approved by the board.

(b) Students above the age of 10 may be subject to out-of-school suspension and expulsion for only the most serious offenses and only after other behavioral supports and interventions have failed. The Department of Education shall provide technical assistance to school districts in developing student codes of conduct that reflect current federal guidance on appropriate use of out-of-school suspension and expulsion.

(c) Children 10 years of age or younger may not receive and out-of-school suspension or expulsion except in those circumstances where the discipline is based on conduct that is of a violent or sexual nature that endangers others. Children 10 years of age or younger who receive that discipline must be offered an alternative educational setting to continue the child's education during the pendency of the classroom removal. A plan of supportive services must be in place prior to the child's return to the regular classroom.

(d) School districts shall utilize evidence- or research-based behavioral supports and interventions and other appropriate remedial measures to prevent the recurrence of the behavior that led to the out-of-school suspension or expulsion. Any intervention shall be designed to assist the return of the student to a classroom setting to minimize the disruption of the student's academic instruction.

Section 3. Section 1302-A of the act is amended to read:

Section 1302-A. Office for Safe Schools.—

(a) There is hereby established in the Department of Education an Office for Safe Schools.

(b) The office shall have the power and duty to implement the following:

(1) To coordinate antiviolence efforts between school, professional, parental, governmental, law enforcement and community organizations and associations.

(2) To collect, develop and disseminate information, policies, strategies and other information to assist in the development of programs to impact school violence.

(2.1) To direct all school entities to submit annual school violence statistics and reports to the office no later than July 31 of each year.

(3) To provide direct training to school employees, parents, law enforcement officials and communities on effective measures to prevent and combat school violence.

(4) To advise school entities and nonpublic schools on the development of policies to be used regarding possession of weapons by any person, acts of violence and protocols for coordination with and reporting to law enforcement officials and the Department of Education.

(4.1) To verify the existence of corrective action plans to reduce incidents of violence as required in the No Child Left Behind Act of 2001 (Public Law 107-110, 115 Stat. 1425).

(5) To develop forms to be used by school entities and police departments for reporting incidents involving acts of violence and possession of weapons on school property. The forms shall be reviewed on a biennial basis and revised when necessary.

(6) To verify that each school entity has a biennially updated and reexecuted memorandum of understanding with local law enforcement and has filed such memorandum with the office on a biennial basis.

(7) To publish and post on the Department of Education's Internet website a School Safety Annual Report no later than November 1 of each calendar year outlining all incidents required to be reported under section 1303-A and any school district that failed to submit a report under section 1303-A.

(8) To establish criteria, in consultation with the Pennsylvania State Police, for certifying approved vendors to provide school police officers to nonpublic schools for the purposes of awarding grants under subsection (c.1)(3).

(9) To publish and post on the Department of Education's publicly accessible Internet website a listing of all approved vendors under paragraph (8).

(b.1) The office shall process and tabulate the data on an annual basis to assist school administrators and law enforcement officials in their duties under this article.

(b.2) The office shall review and monitor statistical data collected on expulsion, out-of-school suspension, referral to alternative education for disruptive youth, and referrals to law enforcement to identify schools that are statistical outliers in the use of disciplinary exclusion of student, in accordance with the following:

(1) Schools identified as statistical outliers shall be further examined by the office to determine if there are any bias issues contributing to these data.

(2) The office shall provide this information to the department to provide technical assistance where corrective action is indicated.

(3) As part of its technical assistance to schools, the department may require the school district in question to establish a Disciplinary Policy Review Committee that is comprised as follows: 50% of the membership shall be made up of parents and advocates who are representative of the population subject to disciplinary exclusions

and law enforcement referrals. The committee shall review disciplinary data and procedures and make recommendations for changes in school policy and practice.

(c) In addition to the powers and duties set forth under subsection (b), the office is authorized to make targeted grants to school entities to fund programs which address school violence, including:

(1) Conflict resolution or dispute management, including restorative justice strategies.

(1.1) School-wide positive behavior support that includes primary or universal, secondary and tertiary supports and interventions in school entities.

(1.2) School-based diversion programs.

(2) Peer helpers programs.

(3) Risk assessment, safety-related, violence prevention curricula, including, but not limited to, dating violence curricula and restorative justice strategies.

(4) Classroom management.

(5) Student codes of conduct.

(6) Training to undertake a districtwide assessment of risk factors that increase the likelihood of problem behaviors among students.

(7) Development and implementation of research-based violence prevention programs that address risk factors to reduce incidents of problem behaviors among students including, but not limited to, bullying.

(8) Comprehensive, districtwide school safety, violence prevention, emergency preparedness and all-hazards plans, including revisions or updates to such plans and

conducting emergency preparedness drills and related activities with local emergency responders.

(9) Security planning, purchase of security-related technology which may include metal detectors, protective lighting, surveillance equipment, special emergency communications equipment, electronic locksets, deadbolts and theft control devices and training in the use of security-related technology. Security planning and purchase of security-related technology shall be based on safety needs identified by the school entity's board of directors.

(10) Institution of student, staff and visitor identification systems, including criminal background check software.

(12) Provision of specialized staff and student training programs, including training for Student Assistance Program team members in elementary, middle and high schools in the referral of students at risk of violent behavior to appropriate community-based services, including mental health services.

(13) Alternative education programs provided for in Article XIX-C.

(14) Counseling services for students enrolled in alternative education programs.

(15) An Internet web-based system for the management of student discipline, including misconduct and criminal offenses.

(16) Staff training programs in the use of positive behavior supports, de-escalation techniques and appropriate responses to student behavior that may require immediate intervention.

(c.1)

(1) In addition to the powers and duties set forth under subsections (b), (b.1), (b.2) and (c), the office is authorized to make targeted grants to school entities, municipalities, local law enforcement agencies and approved vendors to fund programs which address school violence by establishing or enhancing school security, including costs associated with the training and compensation of school resource officers and school police officers. Municipalities or local law enforcement agencies that receive grants under this subsection shall, with the prior consent of the governing board of the school entity or nonpublic school, assign school resource officers to carry out their official duties on the premises of the school entity or nonpublic school.

(2) Municipalities or local law enforcement agencies may not receive grant funds under this subsection for any purpose other than for costs associated with school resource officers and are not eligible for other grants provided to school entities under this section. In assigning school resource officers pursuant to this subsection, municipalities shall take into consideration the proportion of students enrolled in each school entity or nonpublic school.

(3) Nonpublic schools are authorized to apply to the office for grant funding under paragraph (1) to be used for the costs associated with obtaining the services of a school police officer from a list of approved vendors certified by the office. Grant awards for this purpose shall be awarded and paid directly to the approved vendor with which the nonpublic school contracts for services. Nonpublic schools may not apply for grant funding under this section for any purpose other than obtaining the services of a school police officer under this paragraph.

(d) The office shall have the following duties as to targeted grants:

(1) Targeted grants shall be allocated through a competitive grant review process established by the office. School entities must satisfy the requirements of this section and section 1303-A to be eligible for grants. The application for a targeted grant shall include:

(i) the purpose for which the targeted grant shall be utilized;

(ii) information indicating need for the targeted grant, including, but not limited to, school violence statistics;

(iii) an estimated budget;

(iv) methods for measuring outcomes; and

(v) any other criteria as the office may require.

(2) The office shall:

(i) Give priority in grant funding under subsection (c) to a school entity designated as a persistently dangerous school as defined in 22 Pa. Code § 403.2 (relating to definitions).

(ii) Give priority in grant funding under subsection (c) to school entities with the greatest need to establish safety and order.

(iii) To the greatest extent possible, ensure that grant funding is geographically dispersed to school entities and municipalities throughout this Commonwealth.

(iv) For school entities, municipalities, local law enforcement agencies and nonpublic schools that apply for funding for the training and compensation of school resource officers and school police officers under subsection (c.1), give priority to school entities, municipalities, local law enforcement agencies and

nonpublic schools that utilize school resource officers or school police officers who have completed additional training recommended by the Department of Education relating to interaction with all children and adolescents within a school setting, including training in de-escalation techniques, disabilities and their impact on student cognition, communication and behavior, disability rights under federal and state law, cultural competency, implicit bias, restorative practices, child development and psychology.

(v) For school entities or nonpublic schools that apply for funding for school police officers under subsection (c.1), give priority to school entities and nonpublic schools that utilize school police officers who satisfy all of the following:

(A) Are retired Federal agents or retired State, municipal or military police officers.

(B) Are independent contractors of the school entity or nonpublic school.

(C) Are compensated on an hourly basis and receive no other compensation or fringe benefits from the school entity or nonpublic school.

(D) Have completed such annual training as shall be required by the Municipal Police Officers' Education and Training Commission pursuant to 53 Pa.C.S. Ch. 21 Subch. D (relating to municipal police education and training).

(E) Are in satisfaction of the requirements of section 111.

(F) In the case of a school entity, have been indemnified by the school entity pursuant to 42 Pa.C.S. § 8548 (relating to indemnity).

(G) Are utilized by a school entity or nonpublic school that has not employed a school police officer within the three years immediately preceding the effective date of this clause.

Nothing in this clause shall be construed to impact on grant decisions for school entities, municipalities or local law enforcement agencies that apply for funding for hiring of school resource officers pursuant to subsection (c.1).

(3) The office shall provide all targeted grant agreements to the Department of Education's comptroller for review and approval prior to awarding the grant. The school entity, municipality, local law enforcement agency or approved vendor shall provide the office with full and complete access to all records relating to the performance of the grant, and shall submit, at such time and in such form as may be prescribed, truthful and accurate information that the office may require. The office shall conduct a thorough annual evaluation of each program for which a grant under this section is made. The office shall seek repayment of funds if it determines that funds were not utilized for the original stated purpose.

(e) The sum appropriated annually to the Department of Education for the purpose of making targeted grants under this section shall be allocated as follows:

(1) [Forty] Sixty percent of the sum shall be allocated for grants under subsection (c).

(2) [Sixty] Forty percent of the sum shall be allocated for grants under subsection (c.1).

(f) As used in this section, "school entity" shall have the same meaning given to it under section 222(c).

Section 4. Section 1302.1-A of the act is amended to read:

Section 1302.1-A. Regulations.—

(a) Within one year of the effective date of this section, the State Board of Education shall promulgate final-omitted regulations pursuant to the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act," necessary to implement this article. The regulations shall include the following:

(1) A model memorandum of understanding between school entities and local police departments. The model memorandum of understanding shall be reviewed on a biennial basis and revised where necessary. The State Board of Education may revise the model memorandum of understanding by publishing a notice in the Pennsylvania Bulletin that contains the complete revised model memorandum of understanding. The revised model memorandum of understanding shall be incorporated into the Pennsylvania Code in place of the existing model memorandum of understanding.

(2) Protocol for the notification of the police department when an offense listed under section 1303-A(b)(4.1) occurs on school property, which shall include a requirement that the local police department be notified immediately when such an offense occurs.

[(3) Protocol for the notification of the police department at the discretion of the chief school administrator regarding an offense listed under section 1303-A(b)(4.2) or any other offense that occurs on school property.]

(4) Protocol for emergency and nonemergency response by the police department, which shall include a requirement that the school district shall supply the police department with a copy of the comprehensive disaster response and emergency

preparedness plan as required by 35 Pa.C.S. § 7701(g) (relating to duties concerning disaster prevention).

(5) Procedures and protocols for the response and handling of students with a disability, including procedures related to student behavior as required by 22 Pa. Code §§ 14.104 (relating to special education plans) and 14.133 (relating to positive behavior support).

(b)

(1) In promulgating the regulations required under subsection (a), the State Board of Education shall convene and consult with a Statewide advisory committee which shall include a police chief, juvenile public defender, school superintendent, school principal, district attorney, solicitor of a school district, special education supervisor, special education advocate and in-school probation officer and one designee from the Department of Education, the Pennsylvania Commission on Crime and Delinquency, the Municipal Police Officers' Education and Training Commission, the Juvenile Court Judges' Commission and the Pennsylvania State Police.

(2) Members of the committee shall be selected to be representative of the rural, suburban and urban school entities of this Commonwealth.

(3) The advisory committee shall be convened no later than sixty (60) days after the effective date of this section and shall meet regularly to fulfill the requirements of this section.

Section 5. Section 1901-C of the act is amended to read:

Section 1901-C. Definitions.--For purposes of this article, the following terms shall have the following meanings:

(1) “Alternative education program” or “program.” Any applicant's program applying for funds under this article, which program is implemented by a school district, an area vocational-technical school, a group of school districts or an intermediate unit, which removes disruptive students from regular school programs in order to provide those students with a sound educational course of study and counseling designed to modify disruptive behavior and return the students to a regular school curriculum. Notwithstanding section 1502, alternative education programs may operate outside the normal school day of the applicant district, including Saturdays. School districts and private alternative education institutions operating pursuant to the provisions of Article XIX-E shall adopt a policy for periodic review of those students placed in their respective alternative education program for disruptive students. This review shall occur, at a minimum, at the end of every semester the student is in the program or more frequently at the district's or private alternative education institution's discretion. The purpose of this review is to determine whether or not the student is ready to return to the regular school curriculum. Programs may include services for students returning from placements or who are on probation resulting from being adjudicated delinquent in a proceeding under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) or who have been judged to have committed a crime under an adult criminal proceeding.

(2) “Applicant.” A school district, a combination of school districts or a charter school that provides an alternative education program within or to a chartering school district or school districts as the central mission of its charter and that applies for funds under this article.

(3) "Community resources." Those agencies and services for children and youth provided by the juvenile court and the Department of Health and the Department of Public Welfare and other public or private institutions.

(4) "Department." The Department of Education of the Commonwealth.

(5) "Disruptive student." A student who poses a clear threat to the safety and welfare of other students or the school staff, who creates an unsafe school environment or whose behavior materially interferes with the learning of other students or disrupts the overall educational process. The disruptive student exhibits to a marked degree any or all of the following conditions:

[(i) Disregard for school authority, including persistent violation of school policy and rules.]

(ii) Display or use of controlled substances on school property or during school-affiliated activities.

(iii) Violent or threatening behavior on school property or during school-affiliated activities.

(iv) Possession of a weapon on school property, as defined under 18 Pa.C.S. § 912 (relating to possession of weapon on school property).

(v) Commission of a criminal act on school property or during school-affiliated activities.

(vi) Misconduct that would merit suspension or expulsion under school policy.

(vii) Habitual truancy.

No student who is eligible for special education services pursuant to the Individuals with Disabilities Education Act (Public Law 91-230, 20 U.S.C. § 1400 et seq.) shall be

deemed a disruptive student for the purposes of this act, except as provided for in 22 Pa. Code § 14.35 (relating to discipline).

(6) "School." Any school classified by the Department of Education as a middle school, junior high school, senior high school or area vocational-technical school.

(7) "Secretary." The Secretary of Education of the Commonwealth.

Section 6. Regulations.

Any regulation inconsistent with the act is abrogated to the extent of that inconsistency.

Section 7. Effective date.

(1) The amendments to sections 1317.2 and 1318 of the act shall take effect immediately.

(2) The remainder of this act shall take effect July 1, 2017.

WHAT IS ZERO TOLERANCE?

House Resolution No. 540 calls for "an analysis of laws and regulations related to student discipline in this Commonwealth and other states, including discussion of whether any states have in place laws or regulations addressing zero-tolerance policies."

Commonly accepted definitions of zero tolerance include:

- A policy of giving the most severe punishment possible to every person who commits a crime or breaks a rule.[20]

- Refusal to accept antisocial behavior, typically by strict and uncompromising application of the law.[21]

- A law, policy, or practice that provides for the imposition of severe penalties for a proscribed offense or behavior without making exceptions for extenuating circumstances.[22]

Concerns and anecdotal reports about the imposition of unreasonable punishments under the strictest interpretation of zero tolerance discipline policies were part of the impetus for HR 540. "No compromise, no exception" applications of rules to broadly defined offenses can result in unintended consequences that damage the educational experience of students. Additional concerns have been raised by the use of exclusionary discipline in situations where they are not mandated, and where they fall disproportionately on non-white students and students with disabilities. This despite the fact that Pennsylvania does not have a pure zero tolerance policy in its law.

Federal Gun-Free Schools Act

By statute and regulation, there is only one area of Pennsylvania school discipline law that approaches the characteristics of a zero tolerance policy. The possession of weapons on school property, at school activities or on school transportation, is dealt with in the most prescriptive section of the Commonwealth's discipline laws, which have their genesis in a federal mandate. To receive federal funds under the Gun-Free Schools Act, state law must require local educational agencies to expel students for certain firearms violations.[23]

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[20] Merriam-Webster Dictionary, http://www.merriam-webster.com/dictionary/zero%20tolerance (2016).
[21] Oxford Dictionaries
http://www.oxforddictionaries.com/us/definition/american_english/zero-tolerance (2016).
[22] American Heritage® Dictionary of the English Language,
http://www.thefreedictionary.com/zero+tolerance (2011).
[23] 20 U.S.C. § 7961.

The minimum standards are:

- One year expulsion for bringing a firearm to, or possessing at, a school or school related functions.
- Automatic referral to law enforcement of any student bringing a firearm to school.
- Chief administrator of the local educational agency may modify the expulsion on a case-by-case basis in writing.
- Educational services for the expelled student may be provided in an alternative setting
- To be construed consistent with IDEA.[24]
- Does not apply to firearms in locked vehicles on school property.
- Does not apply to authorized school activities where appropriate safeguards to protect student safety are adopted.

Under the federal law, "firearms" are defined as those weapons designed to expel a projectile, as well as the frame/receiver and muffler/silencer, which are commonly known as "guns" and destructive devices, which are in essence, incendiary devices.[25] This definition sets forth the basic minimum requirements for state compliance with the federal mandate.

Pennsylvania Definition of Weapon

In its adoption of this federal mandate, Pennsylvania provides for expulsion for "weapons," defined as including but not limited to:

> any knife, cutting instrument, cutting tool, nunchaku, firearm, shotgun, rifle and any other tool, instrument or implement capable of inflicting serious bodily injury. [26]

This definition sets the minimum definition for Pennsylvania school districts. School districts may provide more expansive definitions, and many do.

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[24] Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400-1975. Regulations found at 34 C.F.R. Part 300. 24 P.S. § 13-1317.2(g).
[25] 18 U.S.C. § 921.
[26] PSC 1317.2(g); This definition is repeated in the chapter governing the Office for Safe Schools at § 1301-A; 24 P.S. § 13-1301-A.

Consistent with the exceptions to the federal law, the school superintendent may recommend modifications to the expulsion requirements for a student on a case-by-case basis. In the case of an exceptional student, compliance with the Individuals with Disabilities Education Act[27] is required. Further, weapons are allowed on school premises when: (1) being used as part of a program approved by a school by an individual who is participating in the program; or (2) is unloaded and is possessed by an individual while traversing school property to obtain access to public or private lands used for lawful hunting, provided the entry on school premises is authorized by school authorities.[28]

School District Variations

Commission staff reviewed the codes of conduct of the 12 school districts located in Dauphin County. Four of the school districts adopted the state definition (Lower Dauphin, Middletown, Susquehanna Township, and Upper Dauphin). Six of the school districts added noxious substances such a pepper spray, mace, poison gas, or drugs (Central Dauphin, Derry Township, Millersburg Area, Steelton-Highspire, Susquenita, and Williams Valley). Additionally, replica weapons were specifically included in seven school districts, with three of those including replicas that were not necessarily operable.

Other objects included were brass knuckles, nightsticks, and ax handles. In some cases, pellet guns and BB guns were added to "firearms" and specific cutting instruments were identified. In the most expansive definitions, provisos were made that turned upon the interpretation of the potential victim or the intent of the wielder. Examples include:

> Objects and instruments or devices which a person reasonably believes to be a weapon or firearm and causes a reasonable person observing it to experience fear or physical injury (Derry Township)
>
> Not reasonably related to education (Harrisburg City)
>
> Any material or substance, animate or inanimate, which under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury . . . Other items fashioned with the intent to use, sell, harm, threaten, or harass students, staff members, parents and patrons (Millersburg Area)
>
> Objects which have the appearance or characteristics of weapons or objects which are intended and capable of producing bodily injury (Halifax Area, Steelton-Highspire, Susquenita)

A more detailed table of how weapons are defined beyond the federal and state definitions in the sample school districts is found at Appendix B.

[27] Public Law 91-230, 20 U.S.C. § 1400-1975.
[28] PSC § 1317.2(d); 24 P.S. § 13-1307.2(d).

Effectiveness and Impact of Zero Tolerance Discipline Policies

Zero tolerance policies found their genesis in drug enforcement, but by the early 1990s the philosophy had been picked up by schools reacting to incidents of school violence nationwide, in an attempt to create a safe learning environment for students. A 2008 review of zero tolerance policies by the American Psychological Association Zero Tolerance Task Force made several findings about the purported benefits of zero tolerance policies:

- *Violence in schools is out of control or increasing*. "Incidents of critical and deadly violence remain a relatively small proportion of school disruptions, and the data have consistently indicated that school violence and disruption have remained stable, or even decreased somewhat since approximately 1985."

- *Zero tolerance has increased the consistency of discipline*. "Rates of suspension and expulsion vary widely across schools and school districts, and this variation appears to be due as much to characteristics of schools and school personnel (e.g. disciplinary philosophy, quality of school governance) as to the behavior or attitudes of students."

- *Removing students who violate school rules produces a better school learning environment*. "…schools with higher rates of school suspension and expulsion appear to have *less* satisfactory ratings on school climate, to have less satisfactory school governance structures, and to spend a disproportionate amount of time on disciplinary matters. Perhaps more important, recent research indicates a negative relationship between the use of school suspension and expulsion and school-wide academic achievement, even when controlling for demographics such as socioeconomic status."

- *Zero tolerance serves as a deterrent to future episodes of misbehavior*. "Rather than reducing the likelihood of disruption, however, school suspension in general appears to predict higher future rates of misbehavior and suspension among those students who are suspended. In the long term, school suspension and expulsion are moderately associated with a higher likelihood of school dropout and failure to graduate on time."[29]

Five years later, in 2013, the American Academy of Pediatrics (AAP) similarly found that out of-school suspension and expulsion contributed to increasing involvement in the juvenile justice system, higher high school dropout rates, limited educational and employment opportunities, and a return of the child to the home "environment that may

[29] American Psychological Association Zero Tolerance Tax Force, "Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations," *American Psychologist*, Vol. 63, No. 9, 852-862, 853-854 (December 2008).

have contributed to the antisocial behaviors in the first place."[30] It recommended early intervention and identification of children at risk and the use of statewide positive behavioral intervention and support to avoid discipline issues. The AAP advised that "out-of-school suspension and expulsion are counterproductive to the intended goals, rarely if ever are necessary, and should not be considered as appropriate discipline in any but the most extreme and dangerous circumstances, as determined on an individual basis rather than as a blanket policy."[31] Other findings relating to zero tolerance include the expansion of serious punishment for relatively minor discipline matters, the growing presence of police in public schools, and the disproportionate representation of minority students and students with disabilities in the population of students subject to the most severe exclusionary discipline practices.[32]

Laws of Other States Regarding Zero Tolerance Discipline Policies

Not many states refer to the practice of "zero tolerance" by that name. Most of those that do include it statutorily indicate that expulsion is a punishment of last resort and is not to be used lightly or for relatively minor infractions. The Nevada description of simulating a weapon provides an example of situations in which children could and have been expelled for weapons infractions that, at least on the surface, appear to be an absurd interpretation of the law.[33]

Colorado

The general assembly hereby finds that except when a student's behavior would cause imminent harm to others in the school or when an incident requires automatic expulsion as defined by state law or a school's conduct and discipline code, expulsion should be the last step taken after several attempts to deal with a student who has discipline problems.

> The general assembly further finds that school districts should work with the student's parent or guardian and with state agencies and community-based nonprofit organizations to develop alternatives to help students who are at risk of expulsion before expulsion becomes a necessary step and to support students who are unable to avoid expulsion.[34]

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[30] Council on School Health, American Academy of Pediatrics, "Out-of-School Suspension and Expulsion," *Pediatrics*, 2013; 131; e1000-e1007; e1002; originally published online February 25, 2013; DOI: 10.1542/peds.2012-3932. *See also* Kang-Brown, Jacob, *et al*. "A Generation Later: What We've Learned about Zero Tolerance in Schools," Issue Brief, Vera Institute of Justice, Center on Youth Justice, December 2013, for similar findings.

[31] *Supra* note 26, *at e*.1005.

[32] Jordan, Harold, "Beyond Zero Tolerance: Discipline and Policing in Pennsylvania's Public Schools," American Civil Liberties Union of Pennsylvania, February 2015 (updated), at p. 7.

[33] "6 School Suspensions Over Obviously Fake Guns," Huffington Post, http://www.huffingtonpost.com/2013/10/21/6-school-suspensions_n_4136563.html (October 21, 2013).

[34] Colo. Rev. Stat. § 22-33-201.

Florida

It is the intent of the Legislature to promote a safe and supportive learning environment in schools, to protect students and staff from conduct that poses a serious threat to school safety, and to encourage schools to use alternatives to expulsion or referral to law enforcement agencies by addressing disruptive behavior through restitution, civil citation, teen court, neighborhood restorative justice, or similar programs. The Legislature finds that zero-tolerance policies are not intended to be rigorously applied to petty acts of misconduct and misdemeanors, including, but not limited to, minor fights or disturbances. The Legislature finds that zero-tolerance policies must apply equally to all students regardless of their economic status, race, or disability.[35]

Georgia

"It is the policy of this state that it is preferable to reassign disruptive students to alternative educational settings rather than to suspend or expel such students from school."[36]

Illinois

Among the many possible disciplinary interventions and consequences available to school officials, school exclusions, such as out-of-school suspensions and expulsions, are the most serious. School officials shall limit the number and duration of expulsions and suspensions to the greatest extent practicable, and it is recommended that they use them only for legitimate educational purposes. To ensure that students are not excluded from school unnecessarily, it is recommended that school officials consider forms of non-exclusionary discipline prior to using out-of-school suspensions or expulsions. . . .

> Unless otherwise required by federal law or this Code, school boards may not institute zero-tolerance policies by which school administrators are required to suspend or expel students for particular behaviors.[37]

Louisiana

Any city, parish, or other local public school board may adopt and implement a zero tolerance policy for fighting in the schools under its jurisdiction. Such policy may include a requirement that a student who is disciplined pursuant to the policy and such student's parent or parents shall attend a conflict resolution class or classes and may include provisions for the school board to take appropriate action, as determined by the board, against any student or parent who fails to comply with the class attendance requirement.

> Such classes may be provided by the school board or other appropriate provider as determined by the board. Any city, parish, or other local public school board may charge a fee for such attendance in an amount as may be

[35] Fla. Stat. § 1006.13(1).
[36] Ga. Code § 20-2-768(c).
[37] 105 Ill. Comp. Stat'. 5/10-22.6(b-5)(b-10).

determined by the board. However, such fee amount shall not exceed one hundred dollars.[38]

Nevada

1. Except as otherwise provided in subsection 3, a pupil enrolled in kindergarten or grades 1 to 8, inclusive, may not be disciplined, including, without limitation, pursuant to NRS 392.466, for:

(a) Simulating a firearm or dangerous weapon while playing; or

(b) Wearing clothing or accessories that depict a firearm or dangerous weapon or express an opinion regarding a constitutional right to keep and bear arms, unless it substantially disrupts the educational environment.

2. Simulating a firearm or dangerous weapon includes, without limitation:

(a) Brandishing a partially consumed pastry or other food item to simulate a firearm or dangerous weapon;

(b) Possessing a toy firearm or toy dangerous weapon that is 2 inches or less in length;

(c) Possessing a toy firearm or toy dangerous weapon made of plastic building blocks which snap together;

(d) Using a finger or hand to simulate a firearm or dangerous weapon;

(e) Drawing a picture or possessing an image of a firearm or dangerous weapon; and

(f) Using a pencil, pen or other writing or drawing implement to simulate a firearm or dangerous weapon.

3. A pupil who simulates a firearm or dangerous weapon may be disciplined when disciplinary action is consistent with a policy adopted by the board of trustees of the school district and such simulation:

(a) Substantially disrupts learning by pupils or substantially disrupts the educational environment at the school;

(b) Causes bodily harm to another person; or

(c) Places another person in reasonable fear of bodily harm.

4. Except as otherwise provided in subsection 5, a school, school district, board of trustees of a school district or other entity shall not adopt any policy, ordinance or regulation which conflicts with this section.

5. The provisions of this section shall not be construed to prohibit a school from establishing and enforcing a policy requiring pupils to wear a school uniform as authorized pursuant to NRS 386.855.

6. As used in this section:

(a) "Dangerous weapon" has the meaning ascribed to it in paragraph (b) of subsection 9 of NRS 392.466.

(b) "Firearm" has the meaning ascribed to it in paragraph (c) of subsection 9 of NRS 392.466.[39]

[38] La. Rev. Stat. § 17:416.15.
[39] Nev. Rev. Stat. § 392.4634.

North Carolina

(e) Board policies shall not impose mandatory long-term suspensions or expulsions for specific violations unless otherwise provided in State or federal law.

(f) Board policies shall minimize the use of long-term suspension and expulsion by restricting the availability of long-term suspension or expulsion to those violations deemed to be serious violations of the board's Code of Student Conduct that either threaten the safety of students, staff, or school visitors or threaten to substantially disrupt the educational environment. Examples of conduct that would not be deemed to be a serious violation include the use of inappropriate or disrespectful language, noncompliance with a staff directive, dress code violations, and minor physical altercations that do not involve weapons or injury. The principal may, however, in his or her discretion, determine that aggravating circumstances justify treating a minor violation as a serious violation.

(g) Board policies shall not prohibit the superintendent and principals from considering the student's intent, disciplinary and academic history, the potential benefits to the student of alternatives to suspension, and other mitigating or aggravating factors when deciding whether to recommend or impose long-term suspension.[40]

Rhode Island

3.28 Zero Tolerance - (as defined by state policy) the purpose is to provide a school environment that is conducive to learning. The underlying belief of this policy is that all children have the right to be educated in a safe and nurturing environment. Therefore, each school system shall adopt a policy of zero tolerance for weapons, violence and illegal drugs in schools. Any student found to be in possession of a weapon, or involved in an aggravated assault as defined herein, will immediately be suspended in accordance with applicable due process provisions. During this suspension, the school district will take the necessary steps in determining any additional action to be taken, which may include long-term suspension. Zero tolerance policies cannot supersede other Federal and State Regulations, such as the Individuals with Disabilities Act (IDEA), Section 504 of the Rehabilitation Act of 1973, and R.I. Special Education Regulations.[41]

[40] N.C. Gen. Stat. § 115C-390.2(e), (f) and (g).
[41] Rhode Island Regulations. ERLID 3826. Physical Restraint Regulations; Section 3.0. Definitions.

TRADITIONAL METHODS OF STUDENT DISCIPLINE

Among the directives found in House Resolution No. 540 is an instruction that the final report of this study include "a general description of the types of school discipline policies in place in public schools throughout this Commonwealth with specific attention to zero-tolerance policies, and analysis of the prevalence of each type of policy and its effects on students, including students with disabilities and students who are under 12 years of age." This chapter will discuss the types of school discipline policies in Pennsylvania and an analysis of the prevalence of each type. Their effect on students with disabilities and those under 12 years of age will be discussed in the following chapter.

From the earliest days of the Commonwealth, individual school districts have had the statutory authority and responsibility to maintain order and mete out discipline. Since the Victorian era, state law has granted to the boards of directors of school districts the authority "to suspend or expel from the school all pupils found guilty on full examination and hearing, of refractory or incorrigibly bad conduct."[42] In 1895's compulsory school law, the language was changed from "refractory or incorrigible bad conduct" to "insubordinate or disorderly during their attendance upon instruction in the public schools."[43] In addition, authority was granted to have "a general supervision over the discipline and conduct of the schools of their respective subdistricts, and may adopt suitable rules and regulations for the preservation of order, the protection of property, and the general decorum of teachers and pupils during the school hours."[44] This language evolved through the school codes of 1911 and 1949 so that the statute now reads "disobedience or misconduct."[45]

Department of Education regulations further elaborate on this authority:

> 22 Pa. Code § 12.3. School rules.
>
> (a) The governing board[46] has the authority to make reasonable and necessary rules governing the conduct of students in school. The rulemaking power, however, is not unlimited; it must operate within statutory and constitutional restraints. A governing board has only those powers that are enumerated in the statutes of the Commonwealth, or that may reasonably be implied or necessary for the orderly operation of the school.

[42] Act of April 7, 1849, (P.L.441, No.316).
[43] Act of May 16, 1895, (P.L.72, No.53).
[44] Act of July 3, 1895, (P.L.588, No.453).
[45] PSC § 1318; 24 P.S. § 13-1318.
[46] Governing board is "the board of school directors of a school district, joint school committee of a joint school or joint vocational school, intermediate unit board of directors, or the board of trustees of a charter school or cyber-charter school." 22 Pa. Code § 12.16.

(b) Governing boards may not make rules that are arbitrary, capricious, discriminatory or outside their grant of authority from the General Assembly. A rule is generally considered reasonable if it uses a rational means of accomplishing some legitimate school purpose.

(c) Each governing board shall adopt a code of student conduct that includes policies governing student discipline and a listing of students' rights and responsibilities as outlined in this chapter. This conduct code shall be published and distributed to students and parents or guardians. Copies of the code shall also be available in each school library.

In the individual school's Code of Conduct, the specifics of offenses and punishments are detailed.[47] Codes of conduct typically describe levels of offenses and levels of punishment. Most school districts use four levels, although there are some three-level districts. Level I offenses are described as minor misbehavior that disrupts orderly classroom procedures or the orderly operation of the school. Level II offenses include misbehavior whose seriousness or frequency tends to disrupt the classroom learning climate and the orderly operations of the school. Level III includes acts directed against persons or property, but whose consequences do not seriously endanger the health and safety of those in school. Level IV includes acts that result in violence to another's person or property or pose a direct threat to the safety of others in school. Some school districts have multiple codes of conduct for each type of school – elementary, middle and high school. Others apply the same rules across the board. One school provides one four-level list of offenses but different levels of responses based on whether the student is in elementary, middle or high school.

Out-of-school suspensions usually become available at Level II offenses. Expulsion tends to be reserved for Level III and IV offenses.

Examples of Level II offenses include:

- A continuation of unmodified Level I behavior
- Cutting class
- Leaving the classroom or building without permission
- Truancy
- Repeated or excessive tardiness
- Stealing or minor theft
- Forgery
- Possession and/or use of a laser pointer
- Minor vandalism
- Motor vehicle violations (violation of parking privileges, etc.)
- Cafeteria misconduct
- Minor physical confrontations
- Inappropriate, vulgar or profane language
- Improper dress

[47] Staff surveyed Dauphin County's 12 school district Codes of Conduct and the observations noted here are based on that survey.

- Harassment
- Disorderly conduct
- Failure to report to detention or in-school suspension
- Possession of inappropriate media
- Scholastic dishonesty
- Violation of Acceptable Use Policy (school-supplied computers, tablets, iPads, etc.)
- Use of personal communication devices at school
- Minor insubordination

Level III violations include:

- Continuation of unmodified Level II behaviors
- Threats to others
- Defiance of authority
- Profanity or abusive language/gestures toward school employees
- Fighting
- Gang activity
- Terroristic language
- Unlawful harassment (race, ethnicity, gender, age, disability, sexual orientation, religion)
- Sexual harassment
- Leaving school facilities without permission
- Possession of incendiary devices
- Major vandalism
- Hazing
- Forgery
- Gambling
- Possession of tobacco products
- Violation of Acceptable Use Policy
- Possession of inappropriate media

Level IV offenses include:

- Continuation of unmodified Level III behavior
- Physical attack on another student resulting in injuries that require medical treatment
- Acts of violence
- Vandalism
- Malicious mischief
- False fire alarm
- Bomb threats
- Arson
- Theft or robbery
- Extortion
- Tampering with official school records and documents
- Aggravated assault on school employees
- Threatening or intimidating school personnel
- Violation of weapons policy
- Violation of drugs and alcohol policy
- Prohibited steroid use

- Use of tobacco products
- Disorderly conduct
- Terroristic threats
- Harassment
- Sexting

In several instances, an offense that is a Level II in one school is a Level III in another school. Level III is the most problematic of the levels, in that expulsion, the ultimate penalty, is an option at this level, even though there is much room for subjectivity in determining, for example, what behaviors meet the definitions of offenses such as disorderly conduct or defiance and insubordination. A "smart remark" to a teacher that escalates into a confrontation could result in anything from parental contact and loss of privileges through detention, in-school suspension, out-of-school suspension, a recommendation for expulsion, and/or a referral to law enforcement.

The list of disciplinary responses for each level of misconduct is shorter than the list of offenses and does not vary as much from level to level.

Level II responses can include:

- Detention
- In-school suspension
- Saturday school
- Lunch detention
- Repair, clean or replace damaged property
- Behavioral management plan
- Parent/guardian conference, phone call or other contact
- Loss of privileges
- Out-of-school suspension
- Referral to outside agency

Level III responses include:

- In-school suspension
- Student conference with guidance counselor
- Saturday detention
- Out-of-school suspension
- Referral to law enforcement
- Parent conference/immediate contact
- Behavioral management plan
- Referral to Student Assistance Plan
- Recommendation for expulsion

Level IV responses include:

- Out-of-school suspensions
- Saturday detention
- Referral to Alternative Education
- Recommendation for expulsion
- Parent conference
- Behavior management plan
- Referral to law enforcement

Several elementary schools do not have a tier-level of offenses and responses but instead use a school-wide positive behavioral support system. Steelton-Highspire School District does not use levels of offenses and responses in any of its schools but instead has a school-wide behavioral support process in place.[48]

More generally, there is also language in the Public School Code of 1949 that grants teachers and principals the same authority over the conduct and behavior of students as their parents or other persons in parental relation to them may exercise.[49]

Prevalence of Various Types of Discipline

While remedial and counseling options are available in most schools, as identified in the codes of conduct, out-of-school suspensions are by far the most frequently used form of discipline in Pennsylvania's public schools. The second most common disciplinary action is parental contact, whether in the form of a written notice, a telephone call, or an in-person conference. The following table shows the various types of discipline that are reported to the Office for Safe Schools and the number of times each type was used in a given school year. The specific number of incidents varies slightly from year to year, and most are not statistically significant changes, but a few are worth noting. Specifically, referrals to alternative education placements decreased in 2014-2015 to less than half the number occurring in 2011-2012. This may well have been influenced by the "Kids for Cash" scandal that occurred in Luzerne County, Pennsylvania. The Interbranch Commission on Juvenile Justice released its report in May 2010 and 2011 was the year the juvenile court judge involved in the case was sentenced. Another area that similarly dropped is referrals to other remedial programs. While not as substantial a decline, notable decreases occurred in referrals to Student Assistance Programs, in-school suspensions, guidance counseling, peer mediation/conflict resolution and family counseling.

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[48] This report with delve more deeply into these positive behavioral intervention support plans and programs in the chapter entitled "Alternative Methods of School Discipline," *infra*, pp. 81-103.

[49] "Every teacher, vice principal and principal in the public schools shall have the right to exercise the same authority as to conduct and behavior over the pupils attending his school, during the time they are in attendance, including the time required in going to and from their homes, as the parents, guardians or persons in parental relation to such pupils may exercise over them." PSC § 1317; 24 P.S. § 13-1317. This provision was originally from the act of May 18, 1911 (P.L.309, No.191), which established the public school system, and then preserved in the PSC in 1949 as § 1317; 24 P.S. § 13-1317.

Table 1

Types of Discipline Used in Pennsylvania Public Schools
2011-2015

Type of Discipline	2011-12	2012-13	2013-14	2014-15
Expulsions	1,319	1,130	1,154	985
Out-of-school suspensions	37,200	33,764	29,747	28,836
In school suspensions	10,310	7,382	6,239	5,315
Detentions	5,359	5,399	4,467	3,810
Special education student moved to interim alternative education setting	188	70	114	81
Alternative Education Placement	2,207	1,736	967	952
Anger Management	62	55	43	51
Drug/Alcohol Counseling/Treatment	297	210	141	153
Guidance Counseling	1,596	1,156	862	1,063
Home Study Instruction	27	16	15	15
Homebound Instruction	0	0	0	-
Other remedial programs	1,881	1,378	1,086	968
Peer Mediation/Conflict Resolution	709	491	269	315
Psychological Counseling Evaluation	116	94	66	82
Student Assistance (SAP) Referral	828	676	467	448
Family Counseling	741	577	476	463
Law enforcement/legal involvement	4,860	4,512	4,243	3,407
Other parental involvement	1,992	1,914	1,725	1,405
School conference	17,716	15,261	14,501	14,428
Telephone conference	18,477	17,454	19,066	17,126
Written notification	23,552	21,564	19,874	18,692
Other (dispositions for misconduct qualifying for referral to law enforcement)	3,277	4,948	4,872	3,992
None (no dispositions for misconduct qualifying for referral to law enforcement)	5,496	4,623	5,633	3,894

Source: Pennsylvania Department of Education, Office for Safe Schools, Statewide Report, 2011-2012, 2012-2013, 2013-2014 and 2014-2015.

Expulsion and Out-Of-School Suspension

The Pennsylvania School Boards Association provides model policies for school boards on numerous topics within the boards' domain, including disciplinary actions. The model rule for expulsion for out-of-school suspension (OSS) and expulsion defines an OSS as a period of one to ten consecutive school days. An expulsion is more than ten days and can include permanent removal from the school rolls. This is a universal definition found nationwide. Compared to other states, Pennsylvania has an above average level of expulsions, using expulsion more often than 75 percent of other states nationwide. Its OSS rate reveals that Pennsylvania uses OSS as a means of discipline more often that 61 percent of all U.S. states.

State-by-State Expulsion and Suspension Data, 2011-2012 School Year

These data were collected by the U.S. Department of Education's Office for Civil Rights for the 2011-2012 school year. The percent of students receiving out of school suspensions in the 50 states plus the District of Columbia ranges from a low of 1.37 percent (in Hawaii) to a high of 13.17 percent (in the District of Columbia). Pennsylvania's rate of 6.11 percent places it just slightly above the average rate for the United States as a whole (6.4 percent) while more significantly above the median rate of 5.56 percent. Approximately 25 percent of the states have rates of suspension below 4.57 percent while the top quartile of states have rates of suspension exceeding 7.60 percent.

Table 2

Percentage of Students Suspended from Public Elementary and Secondary Schools by State 2011-12

State	Percent Receiving Out of School Suspension	Rank from Highest to Lowest	State	Percent Receiving Out of School Suspension	Rank from Highest to Lowest
United States	**6.40**				
District of Columbia	13.17	1	New Hampshire	5.42	27
Florida	11.64	2	Wisconsin	5.41	28
South Carolina	10.31	3	Washington	5.40	29
Mississippi	10.31	4	Texas	5.39	30
Delaware	10.30	5	Kentucky	5.35	31
Alabama	9.63	6	Oregon	5.25	32
Louisiana	9.49	7	Massachusetts	5.00	33
Georgia	8.94	8	Alaska	4.99	34
Rhode Island	8.77	9	Colorado	4.87	35
North Carolina	8.64	10	New Jersey	4.68	36
West Virginia	8.43	11	Nebraska	4.64	37
Michigan	8.39	12	Connecticut	4.61	38
Tennessee	7.92	13	Vermont	4.53	39
Arkansas	7.66	14	Montana	4.39	40
Indiana	7.44	15	Maine	4.01	41
New Mexico	7.25	16	Kansas	4.01	42
Missouri	7.11	17	Wyoming	3.65	43
Ohio	6.84	18	Minnesota	3.64	44
Virginia	6.78	19	Iowa	3.64	45
Pennsylvania	**6.11**	**20**	New York	3.43	46
Arizona	6.08	21	South Dakota	3.37	47
Oklahoma	5.96	22	Idaho	3.27	48
Illinois	5.94	23	Utah	2.45	49
California	5.75	24	North Dakota	1.94	50
Maryland	5.63	25	Hawaii	1.37	51
Nevada	5.56	26	--		

Expulsion rates amongst the 50 states and the District of Columbia range from a low of .01 percent (found in both Rhode Island and Hawaii) to a high of 1.04 percent in Oklahoma. Three states, Oklahoma, Louisiana and Tennessee, have expulsion rates that are significantly higher than the rest of the states (1.04 percent, .83 percent and .81 percent respectively). Pennsylvania's expulsion rate is .24 percent, which places it above the percent expelled in the United States as a whole (.22 percent) and even further above the median rate of .17 percent.

Table 3
Percentage of Students Expelled from Public Elementary and Secondary Schools by State 2011-12

State	Percent Expelled	Rank from Highest to Lowest	State	Percent Expelled	Rank from Highest to Lowest
United States	**0.22**				
Oklahoma	1.04	1	Arkansas	0.15	27
Louisiana	0.83	2	Idaho	0.15	28
Tennessee	0.81	3	Alabama	0.14	29
Indiana	0.59	4	Kansas	0.14	30
South Carolina	0.40	5	Delaware	0.14	31
Oregon	0.36	6	Montana	0.11	32
Washington	0.35	7	Virginia	0.11	33
Ohio	0.32	8	New York	0.09	34
Texas	0.28	9	Alaska	0.07	35
Georgia	0.26	10	Vermont	0.07	36
Colorado	0.25	11	North Dakota	0.07	37
California	0.25	12	Arizona	0.06	38
Pennsylvania	**0.24**	**13**	Maine	0.06	39
Connecticut	0.24	14	South Dakota	0.05	40
West Virginia	0.24	15	North Carolina	0.04	41
Wisconsin	0.23	16	Massachusetts	0.04	42
District of Columbia	0.22	17	Iowa	0.04	43
New Mexico	0.22	18	New Jersey	0.04	44
Nebraska	0.22	19	Florida	0.04	45
Mississippi	0.21	20	Kentucky	0.04	46
Michigan	0.21	21	Utah	0.03	47
Wyoming	0.19	22	New Hampshire	0.03	48
Minnesota	0.18	23	Nevada	0.02	49
Illinois	0.18	24	Hawaii	0.01	50
Maryland	0.17	25	Rhode Island	0.01	51
Missouri	0.16	26	--		

Survey of Laws of Other States –
Mandatory Expulsion and Out-of-School Suspension

While possession of federally defined firearms are grounds for mandatory expulsion in every state, states other than Pennsylvania list a variety of activities that can trigger expulsion. Twenty-one states, in addition to Pennsylvania, have broader definitions of weapons than does the federal law. Controlled substance violations are grounds for expulsion in 11 other states. Physical violence against a school employee is a ground for expulsion in at least seven other states. Other grounds include bomb threats, hazing, sexual assault, and arson. A few other states make these offenses grounds for mandatory out-of-school suspension. In Tennessee, a student will receive an out-of-school suspension for immoral and disreputable conduct or vulgar or profane language, while membership in a sorority, fraternity, or other secret society will trigger suspension in Illinois and Mississippi. All of these offenses can trigger discipline in other states, but there are not mandatory responses. The tables below provide more detail as to which states mandate expulsion or out-of-school suspension for specific offenses.

Table 4

Survey of State Laws Governing Mandatory Discipline for Student Offenses
2015-2016 Academic Year[50]

OFFENSE	STATES
MANDATORY EXPULSION	
Other weapons in addition to federally-defined firearms	Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Kentucky, Louisiana (if student over age 16), Maine, Mississippi, Missouri, North Dakota, Ohio, Texas, Virginia, West Virginia
Causing physical injury to another	California, Texas (murder, manslaughter, criminally negligent homicide, aggravated assault)
Possession of an explosive	Delaware
Conviction for hazing	Arkansas, Florida
Controlled substance violations/drugs or alcohol	California, Connecticut, Delaware, Hawaii, Indiana, Louisiana (if over age 16), Maine, Nevada (2nd offense), Tennessee, Virginia, West Virginia
Any threat that results in evacuation or closure of educational institution	Arizona
Bomb threat	Florida
Physical violence against a school official or employee (includes bus driver)	California, Georgia, Michigan (pupil in grade 6+), Nevada (2nd offense); Tennessee (aggravated assault), Texas, West Virginia
Robbery or extortion	California; Texas (aggravated robbery)

[50] This survey was derived from information provided in "Compendium of School Discipline Laws and Regulations for the 50 States, District of Columbia and the U.S. Territories" https://safesupportivelearning.ed.gov/sites/default/files/discipline-compendium/School%20Discipline%20Laws%20and%20Regulations%20Compendium.pdf (April 2016) Some states have since enacted major education reforms affecting school discipline which are discussed *infra*, at pp. 60.

Table 4

Survey of State Laws Governing Mandatory Discipline for Student Offenses
2015-2016 Academic Year[50]

OFFENSE	STATES
Physical assault of another pupil	Michigan (pupil in grade 6+)
Arson	Michigan, Texas
Criminal sexual assault	Michigan, Texas (sexual assault or aggravated sexual assault)
Indecency with a child; continuous sexual abuse of a young child	Texas
Commits a violent act on educational property	Mississippi
Aggravated kidnapping	Texas
MANDATORY OUT-OF-SCHOOL SUSPENSION	
Drugs/controlled substances	Alabama, California, Nevada (1st offense), Tennessee (barbital or legend drugs), Utah, West Virginia
Alcohol	Alabama
Other weapons	Alabama, California, Utah, Tennessee
Physical harm or threatened physical harm to a person	Alabama, Tennessee (another student)
Commit/attempt sexual assault	California
Commit sexual battery	California
Possession of an explosive	California, Utah
Violation of electronic communications device policy	Alabama
Membership in a fraternity, sorority or other secret society	Illinois, Mississippi
Physical violence against a school official or employee	Iowa; Nevada (1st offense); New Jersey, Oklahoma; Tennessee (or threatened)
Verbal assault of school employee or volunteer	Michigan (pupil in grade 6+)
Bomb threat	Michigan (pupil in grade 6+); Tennessee
Failure or refusal to participate in assigned detention	Louisiana
Three or more drug or weapons violation suspensions	Louisiana
A felony if committed by an adult	West Virginia
Vandalism of school property	Mississippi; Tennessee
Willful and persistent violation of school rules	Tennessee
Immoral and disreputable conduct or vulgar or profane language	Tennessee

Source: Information gathered from websites of individual States' legislative service agencies.

EFFECT OF DISCIPLINE POLICIES ON SPECIFIC CATEGORIES OF STUDENTS

House Resolution No. 540 includes a directive for the study analyze the prevalence of various school discipline policies, including their "effects on students, including students with disabilities and students who are under 12 years of age." This chapter discusses the effect of exclusionary discipline policies on students with disabilities and younger children.

Disparity in Administration of Discipline

Disparity in the administration of exclusionary school discipline is a nationwide phenomenon. The U.S. Department of Education Office for Civil Rights (OCR) compiled information for the 2011-2012 school year from 99 percent of the public school districts nationwide (the first year it had included all school districts). The Civil Rights Data Collection (CRDC) found disproportionally high suspension and expulsion rates for students of color, who were suspended and expelled at a rate three times greater than white students. Further, boys received 2 out of every 3 suspensions. Students with disabilities were twice as likely to be suspended as students without disabilities. Arrests and referrals to law enforcement were also disproportionate in both racial and disability categories.[51] Data for the 2013-2014 school year have indicated similar findings. Additionally, the data reveal that 24 percent of all elementary schools and 42 per cent of high schools have sworn law enforcement officers, including school resource officers. Additionally, 51 percent of high schools with high black and Latino student total enrollment have sworn law enforcement officers. The final data collection is to be released in the fall of 2016.[52]

The Pennsylvania Department of Education collects data about school discipline and truancy from schools and school districts through its Pennsylvania Information Management System (PIMS). Safe School Reports are generated annually and organized by school district, county, individual public school, charter school, intermediate unit, and vocational-technical school. Data is identified by misconduct category, weapons offenses and methods of detection, offender demographics, including grade, age, race/ethnicity, offender type (*e.g.*, parent, student, student with IEP, student from another school), location and time frame of incident, sanctions, remedial programs, parental involvement, number of school security staff, number of injuries (with injuries requiring medical treatment

[51] U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection (CRDC), *Data Snapshot: School Discipline*, Issue Brief No. 1, (March 2014).
[52] U.S. Department of Education, Office for Civil Rights, *2013-2014 Civil Rights Data Collection: A First Look*, (June 7, 2016).

counted separately), expulsions and out-of-school suspensions by grade, race and gender and type (*e.g.*, academic, conduct, drug/alcohol, tobacco, violence and weapons). Additionally, total enrollment, number of incidents involving law enforcement, number of arrests and number of alternative educational placements are reported.[53] This information is, in turn provided to U.S. Department of Education, Office for Civil Rights, Data Collection (CRDC), where the information is similarly categorized and organized. The information set forth in the tables accompanying this chapter was compiled from these two sources, unless otherwise noted.[54] Totals may vary slightly due to data collection methods.

Allegations have been made that some school districts underreport safe schools data, particularly suspensions and expulsions. Since it is difficult to prove a negative, schools that report zero expulsions and suspensions should be flagged for review. These schools could then be compared to demographically similar schools to determine if their reporting is inconsistent with their peers. If an inconsistency is noted, an audit of the school discipline records can occur, and remedial action begun, if necessary.

Racial Disparity

An overview of Pennsylvania's public education data reveals that, as in the rest of the country, there is disparity in school discipline along racial and disability lines. Table 5 indicates that for school year 2011-2012, 71 percent of Pennsylvania's total enrollment is made up of white students. However, white students received only 41 percent of the out-of-school suspensions (Table 6), 53 percent of the expulsions with educational services (Table 7) and 44 percent of the expulsions without services (Table 7). Nonwhite students, comprising 29 percent of the student Total Enrollment, receive 59 percent of out-of-school suspensions, 47 percent of expulsions with educational services, and 56 percent of expulsions without educational services. Nonwhite students, while comprising less than a third of all students, receive around half of all disciplinary actions. They even receive the greater share of expulsions without educational services versus expulsions with educational services.[55]

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[53] Pennsylvania Department of Education, Office for Safe Schools, "Safe Schools Reporting of Historical Data," http://www.education.pa.gov/k-12/safe%20schools/pages/default.aspx#tab-1, where the link to School Safety/Data Reporting can be found.

[54] 2011-2012 was the first year OCR surveyed all the public schools and districts nationwide. It did not evaluate data for school year 2012-2013. While some preliminary findings are available, the database has not yet been updated for school year 2013-2014, so that staff could not do a year by year analysis. The Pennsylvania Office for Safe Schools produces a statewide report annually, and staff used the latest information available for those reports.

[55] An in-depth analysis of data from 2009-2010 and 2011-2012 can be found in *Beyond Zero Tolerance: Discipline and Policing in Pennsylvania Public Schools*, p. 3.

Table 5

Student Total Enrollment by Race or Ethnicity, Pennsylvania Grades K-12, 2011-2012 Academic Year

Population	Number	Percent
American Indian/Alaska Native	3,080	0.2
Asian	56,784	3.2
Hispanic or Latino of any race	144,823	8.3
Black or African American	265,615	15.2
White	1,242,023	71.0
Native Hawaiian or Other Pacific	1,511	0.1
Two or more races	35,443	2.0
Total	*1,749,279*	--

Source: CRDC, 2011-2012.

Table 6

Out-of-School Suspensions by Race or Ethnicity, Pennsylvania Grades K-12, 2011-2012 Academic Year[56]

Population	One out-of-school		More than one out-of-school		Total out-of-school	
	Number	Percent	Number	Percent	Number	Percent
American Indian/Alaska Native	71	0.1	58	0.1	129	0.1
Asian	561	0.9	267	0.6	822	0.8
Hispanic or Latino of any race	8,283	13.8	5,897	12.8	14,166	13.3
Black or African American	23,428	39.0	22,088	47.8	45,520	42.8
White	26,410	44.0	16,656	36.0	43,092	40.5
Native Hawaiian or Other Pacific	26	0.0	12	0.0	39	0.0
Two or more races	1,287	2.1	1,231	2.7	2,509	2.4
Total	*60,066*	--	*46,209*	--	*106,277*	--

Source: CRDC, 2011-2012.

[56] Breakdown by race/ethnicity includes IDEA but excludes those served under Section 504.

Table 7

Expulsions by Race or Ethnicity, Pennsylvania
Grades K-12, 2011-2012 Academic Year

Population	With Educational Services		Without Educational Services		Total	
	Number	Percent	Number	Percent	Number	Percent
American Indian/Alaska Native	4	0.2	2	0.1	4	0.1
Asian	9	0.3	9	0.6	19	0.5
Hispanic or Latino of any race	449	17.3	250	15.6	1,336	17.9
Black or African American	717	27.7	844	52.6	2,886	38.7
White	1,370	52.9	486	30.3	3,108	41.7
Native Hawaiian or Other Pacific	4	0.2	4	0.2	8	0.1
Two or more races	38	1.5	11	0.7	78	1.0
Total	*2,591*	--	*1,606*	--	*7,462*	--

Source: CRDC, 2011-2012.

Staff examined the 12 school districts in Dauphin County to determine if disparity existed in these districts and if it was consistent with the statewide data. The first line of each school district entry shows the total enrollment and the percent of students who are white and non-white, as well as the overall percent of students who are covered under IDEA. For example, Central Dauphin School District's enrollment of 10,651 students is 58.4 percent white and 41.6 percent non-white. Of that total student body, 11.4 percent of the students are covered under IDEA. The remaining rows under each school district represent types of disciplinary responses, i.e., number of out-of-school suspensions, number of expulsions and number of referrals to law enforcement and show total numbers of each discipline type. These disciplinary actions are then categorized by the percent of students who are white, nonwhite or under IDEA who have been the subjects of these actions. Using the test of whether a particular discipline level is one and one-half times the enrollment level of a particular class of students, we find that racial disability is notably different from disparity based on disability.

For the purposes of this evaluation disparity means that the rate of a particular form of discipline for a subgroup was 1.5 times the enrollment rate.[57] For example, if the total enrollment of a school is 100, and 50 percent of the student body is white and 50% is nonwhite, a discipline rate of 75 percent or higher for nonwhite students would indicate disparity [enrollment rate plus one-half of enrollment rate equals minimum level of disparity]. Using this criteria, racial disparity occurred in at least one type of discipline in one-half (six) of the sample school districts. Only one school district showed racial disparity in all three categories of discipline. Of the remaining five, all showed disparity in out-of-school suspensions, and two showed disparity in referrals to law enforcement. Six of the school districts did not meet the criteria for racial disparity, and three of those actually had lower rates of out-of-school suspension, expulsion and referrals that the enrollment rates would reflect.

Table 8

Expulsions and Suspensions in Selected Pennsylvania School Districts
Dauphin County, 2011-2012

School District	Type of Discipline	Total	Percent of Disciplinary Actions by Student Characteristics		
			White	Non-white	IDEA
Central Dauphin	*Total Enrollment*	*10,651*	*58.4%*	*41.6%*	*11.4%*
	OSS	1,081	31.5%	78.5%	29.7%
	Expulsion	51	31.4%	78.6%	22.6%
	Referral to LEA	278	30.2%	69.8%	34.5%
Derry Township	*Total Enrollment*	*3,606*	*79.8%*	*20.2%*	*10.5%*
	OSS	20	90.0%	10.0%	60.0%
	Expulsion	2	100.%	0%	0%
	Referral to LEA	41	95.1%	4.9%	43.9%
Halifax Area	*Total Enrollment*	*1,065*	*92.8%*	*7.2%*	*16.2%*
	OSS	36	77.8%	22.2%	36.1%
	Expulsion	6	100%	0%	66.7%
	Referral to LEA	13	69.2%	30.8%	46.2%
Harrisburg City	*Total Enrollment*	*6,702*	*4.2%*	*95.7%*	*20.8%*
	OSS	1,144	31.6%	68.4%	31.6%
	Expulsion	48	0%	100%	0%
	Referral to LEA	121	34.7%	65.3%	34.7%
Lower Dauphin	*Total Enrollment*	*3,792*	*87.4%*	*12.6%*	*16.0%*
	OSS	171	75.4%	24.6%	33.3%
	Expulsion	4	100%	0%	50.0%
	Referral to LEA	22	81.8%	18.2%	54.5%
Middletown Area	*Total Enrollment*	*2,306*	*72.0%*	*28.0%*	*13.6%*
	OSS	225	53.3%	46.7%	28.9%
	Expulsion	6	66.7%	33.3%	33.3%
	Referral to LEA	47	48.9%	51.1%	21.3%
Millersburg Area	*Total Enrollment*	*844*	*95.6%*	*4.4%*	*13.2%*
	OSS	14	100%	0%	28.6%
	Expulsion	0	0%	0%	0%
	Referral to LEA	8	100%	0%	50.0%

[57] This factor, 1.5, is the level of out-of-school suspensions for students with disabilities statewide. *See* Table 11, *infra*, p. 58.

Table 8

Expulsions and Suspensions in Selected Pennsylvania School Districts
Dauphin County, 2011-2012

School District	Type of Discipline	Total	Percent of Disciplinary Actions by Student Characteristics		
			White	Non-white	IDEA
Steelton-Highspire	*Total Enrollment*	*1,305*	*19.9%*	*80.1%*	*15.7%*
	OSS	200	12.5%	87.5%	30.5%
	Expulsion	4	0%	100%	50.0%
	Referral to LEA	68	5.9%	94.1%	23.5%
Susquehanna Township	*Total Enrollment*	*2,914*	*40.7%*	*59.3%*	*12.7%*
	OSS	291	20.6%	79.4%	31.3%
	Expulsion	11	18.2%	81.8%	0%
	Referral to LEA	77	19.5%	80.5%	32.5%
Susquenita	*Total Enrollment*	*1,779*	*93.9%*	*6.3%*	*18.9%*
	OSS	67	88.1%	11.9%	47.8%
	Expulsion	7	100%	0%	0%
	Referral to LEA	4	100%	0%	0%
Upper Dauphin Area	*Total Enrollment*	*1,249*	*94.2%*	*5.8%*	*14.7%*
	OSS	41	95.1%	4.9%	34.1%
	Expulsion	0	0%	0%	0%
	Referral to LEA	9	100%	0%	22.2%
Williams Valley	*Total Enrollment*	*1,039*	*94.3%*	*5.7%*	*19.7%*
	OSS	53	88.7%	11.3%	54.7%
	Expulsion	0	0%	0%	0%
	Referral to LEA	8	100%	0%	25.0%

Source: CRDC, 2011-2012.

Staff attempted to determine if socioeconomic status and academic performance levels correlated to disparity. The top 20 and bottom 20 academically performing high schools in Pennsylvania were evaluated on the same basis as the Dauphin County school districts. Ranking of the schools was derived from the Pennsylvania School Performance Profile, 2011-2012. Geographically, it is interesting to note that most of the poorest performing high schools were in the Philadelphia School District and had significant levels of economically disadvantaged students enrolled. Conversely, most of the highest performing high schools were in the suburban counties surrounding Philadelphia and had mostly low levels of economically disadvantaged students. Clearly, poverty and academic performance can be correlated to disparity.

In the analysis of the 20 highest performing high schools, 15 had racial disparity in out-of-school suspensions, and 12 had disparity in referrals to law enforcement. One school showed disparity in expulsions, while six showed zero percent expulsions of nonwhite students and 100 percent expulsions of white students. However, 13 school districts reported no expulsions at all, and two showed no referrals to law enforcement. It should be noted that with the exception of Central High School in the Philadelphia School District, these schools are primarily populated with white students. Central High School, which is 74% nonwhite, showed no disparity in any of the reported categories of discipline.

Table 9

Expulsions and Suspensions in Selected Pennsylvania High Schools
Top 20 Academically Performing High Schools
In Order from Highest to Lowest[58]
2011-2012

Rank	School Name and Location	ED[59]	Disciplinary Actions	Total	White	Non-white	IDEA
1	Haverford Senior HS Haverford Twp. SD Delaware County	13.54%	Enrollment	1,718	87%	13%	17%
			OSS	132	77%	23%	26%
			Expulsion	0	0%	0%	0%
			Referral to LEA	20	60%	40%	40%
2	Downingtown STEM Academy Downingtown Area SD Chester County	3.3%	Enrollment	414	83%	17%	4%
			OSS	2	100%	0%	100%
			Expulsion	0	0%	0%	0%
			Referral to LEA	0	0%	0%	0%
3	West Chester Bayard Rustin H.S. West Chester Area SD Chester/Delaware Cos.	10.74%	Enrollment	1,335	84%	16%	9%
			OSS	59	64%	36%	32%
			Expulsion	2	100%	0%	0%
			Referral to LEA	33	70%	30%	30%
4	Harriton Senior HS Lower Merion SD Montgomery County	11.7%	Enrollment	1,083	80%	20%	14%
			OSS	37	38%	62%	41%
			Expulsion	-	-	-	-
			Referral to LEA	31	45%	55%	36%
5	Perkiomen Valley HS Perkiomen Valley SD Montgomery County	13.63%	Enrollment	1,796	85%	15%	17%
			OSS	84	74%	26%	44%
			Expulsion	2	100%	0%	0%
			Referral to LEA	20	80%	20%	0%
6	Abington Heights HS Abington Heights SD Lackawanna County	12.28%	Enrollment	1,094	92%	8%	9%
			OSS	17	100%	0%	59%
			Expulsion	-	-	-	-
			Referral to LEA	6	67%	33%	33%
7	North Penn Senior HS North Penn SD Bucks/Montgomery Cos.	25.83%	Enrollment	2,921	71%	39%	17%
			OSS	27	56%	44%	59%
			Expulsion	-	-	-	-
			Referral to LEA	33	61%	39%	42%
8	Central HS Philadelphia City SD Philadelphia County	51.82%	Enrollment	2,364	26%	74%	1%
			OSS	29	24%	76%	7%
			Expulsion	-	-	-	-
			Referral to LEA	4	50%	50%	0%

[58]Pennsylvania Department of Education, Pennsylvania School Performance Profile, 2011-2012. http://www.paschoolperformance.org/SelectCounty. Ranking of schools based on Building Level Academic Score.

[59] This column represents the percentage of the student body considered to be economically disadvantaged.

Table 9

Expulsions and Suspensions in Selected Pennsylvania High Schools
Top 20 Academically Performing High Schools
In Order from Highest to Lowest[58]
2011-2012

Rank	School Name and Location	ED[59]	Disciplinary Actions	Total	White	Non-white	IDEA
9	Spring-Ford Senior HS Spring-Ford Area SD Chester/Montgomery Cos.	15.09%	Enrollment	1,743	87%	13%	17%
			OSS	76	80%	20%	41%
			Expulsion	-	-	-	-
			Referral to LEA	-	-	-	-
10	Penncrest HS Rose Tree Media SD Delaware County	13.61%	Enrollment	1,339	86%	14%	17%
			OSS	99	74%	26%	38%
			Expulsion	2	100%	0%	50%
			Referral to LEA	9	56%	44%	78%
11	Central Bucks HS – East Central Bucks SD Bucks County	8.66%	Enrollment	1,639	92%	8%	13%
			OSS	47	77%	23%	28%
			Expulsion	-	-	-	-
			Referral to LEA	14	14%	86%	29%
12	Garnet Valley HS Garnet Valley SD Delaware County	7.4%	Enrollment	1,491	91%	9%	21%
			OSS	56	79%	21%	27%
			Expulsion	-	-	-	-
			Referral to LEA	17	100%	0%	77%
13	Souderton Area Senior HS Souderton Area SD Bucks/Montgomery Co.	18.2%	Enrollment	2,267	87%	13%	16%
			OSS	82	77%	23%	66%
			Expulsion	4	50%	50%	100%
			Referral to LEA	12	33%	67%	50%
14	Ephrata Senior HS Ephrata Area SD Lancaster County	38.01%	Enrollment	1,247	87%	13%	12%
			OSS	75	68%	32%	29%
			Expulsion	-	-	-	-
			Referral to LEA	29	41%	59%	21%
15	West Chester East HS West Chester Area SD Chester/Delaware Cos.	14.92%	Enrollment	1,367	82%	18%	12%
			OSS	70	63%	37%	31%
			Expulsion	-	-	-	-
			Referral to LEA	41	63%	37%	32%
16	Palmyra Area Senior HS Palmyra Area SD Lebanon County	17.64%	Enrollment	1,010	93%	7%	15%
			OSS	41	76%	24%	44%
			Expulsion	7	100%	0%	71%
			Referral to LEA	18	78%	22%	78%
17	Methacton HS Methacton SD Montgomery County	11.67%	Enrollment	1,731	78%	13%	15%
			OSS	32	63%	37%	56%
			Expulsion	0	0%	0%	0%
			Referral to LEA	30	60%	40%	53%
18	Hampton HS Hampton Twp. SD Allegheny County	7.89%	Enrollment	1,111	97%	3%	8%
			OSS	56	89%	11%	20%
			Expulsion	5	100%	0%	0%
			Referral to LEA	7	100%	0%	0%
19	Hershey HS Derry Twp. SD Dauphin County	19.26%	Enrollment	1,146	82%	18%	9%
			OSS	10	100%	0%	60%
			Expulsion	2	100%	0%	0%
			Referral to LEA	23	100%	0%	44%
20	Moon Senior HS Moon Area SD Allegheny County	15.69%	Enrollment	1,161	89%	11%	11%
			OSS	106	72%	28%	11%
			Expulsion	-	-	-	-
			Referral to LEA	33	61%	39%	36%

Overall, the 20 poorest performing high schools are considerably smaller than the highest performing ones. Five of the schools reported no referrals to law enforcement, and 17 reported no expulsions. This high incidence of no reported expulsions could be due to the small size of the schools or may be attributable in part to the Philadelphia Police Diversion Program (discussed in the "Alternative Methods of Student Discipline" chapter of this report). All of these schools have high poverty levels, and are predominately populated by non-white students. Interestingly, in the area where all but two of the schools report data, out-of-school suspensions, there are no occurrences of racial disparity. Out-of-school suspensions of both white and nonwhite students fall within expected levels based on overall enrollment. This analysis lends some credence to the argument that disparity occurs primarily in predominately white school districts with low levels of poverty. However, it should be noted that disparity does not necessarily mean that discrimination is occurring, as any number of socio-economic factors may have an impact.

Table 10

Expulsions and Suspensions in Selected Pennsylvania High Schools
Bottom Academically Performing High Schools
In Order from Lowest to Highest[60]
2011-2012

	School Name and Location	ED	Disciplinary Actions	Total	White	Non-white	IDEA
1	David H. Oliver HS Pittsburgh SD Allegheny County	89.91%	Enrollment	376	15%	85%	28%
			OSS	232	9%	91%	36%
			Expulsion	2	0%	100%	0%
			Referral to LEA	-	-	-	-
2	Widener Memorial School Philadelphia City SD Philadelphia County	100%	Enrollment	166	13%	87%	97%
			OSS	-	-	-	-
			Expulsion	-	-	-	-
			Referral to LEA	-	-	-	-
3	Kensington Urban Ed. Academy Philadelphia City SD Philadelphia County	80.46%	Enrollment	170	9%	91%	15%
			OSS	-	-	-	-
			Expulsion	-	-	-	-
			Referral to LEA	4	-	100%	-
4	Strawberry Mansion HS Philadelphia City SD Philadelphia County	100%	Enrollment	360	1%	99%	28%
			OSS	156	-	100%	18%
			Expulsion	-	-	-	-
			Referral to LEA	13	-	100%	0%
5	Phoenix Academy Lancaster SD Lancaster County	93.19%	Enrollment	278	7%	93%	23%
			OSS	102	10%	90%	31%
			Expulsion	-	-	-	-
			Referral to LEA	8	0%	100%	25%

[60] Pennsylvania Department of Education, Pennsylvania School Performance Profile, 2011-2012. http://www.paschoolperformance.org/SelectCounty. Ranking of schools based on Building Level Academic Score.

Table 10

Expulsions and Suspensions in Selected Pennsylvania High Schools
Bottom Academically Performing High Schools
In Order from Lowest to Highest[60]
2011-2012

	School Name and Location	ED	Disciplinary Actions	Total	White	Non-white	IDEA
6	Kensington Culinary Arts Philadelphia City SD Philadelphia County	100%	Enrollment	420	8%	92%	18%
			OSS	89	7%	93%	9%
			Expulsion	-	-	-	-
			Referral to LEA	6	0%	100%	-
7	William L. Sayre MS Philadelphia City SD Philadelphia County	100%	Enrollment	606	2%	98%	110
			OSS	89	2%	98%	8
			Expulsion	0	-	-	-
			Referral to LEA	31	0	100%	-
8	Frankford HS Philadelphia City SD Philadelphia County	100%	Enrollment	1,611	8%	92%	22%
			OSS	269	6%	94%	17%
			Expulsion	-	-	-	-
			Referral to LEA	68	6%	94%	-
9	Samuel Fels HS Philadelphia City SD Philadelphia County	78.72%	Enrollment	1,345	3%	97%	17%
			OSS	319	3%	97%	11%
			Expulsion	-	-	-	-
			Referral to LEA	58	3%	97%	-
10	Chester HS Chester-Upland SD Delaware County	82.07%	Enrollment	723	716	99%	29%
			OSS	177	173	98%	30%
			Expulsion	0	0	0	-
			Referral to LEA	0	0	0	-
11	Kensington Intern Business, Finance and Entrepreneurship Philadelphia City SD/Cty	100%	Enrollment	441	10%	90%	29%
			OSS	11	7%	93%	17%
			Expulsion	-	-	-	-
			Referral to LEA	8	0	100%	-
12	Martin Luther King HS Philadelphia City SD Philadelphia County	100%	Enrollment	845	1%	99%	26%
			OSS	320	1%	99%	9%
			Expulsion	0	0	0	-
			Referral to LEA	39	0	100%	-
13	Science and Discovery HS (STEM at Showalter) Chester-Upland SD Delaware County	82.65%	Enrollment	363	1%	99%	12%
			OSS	13	0%	100%	0%
			Expulsion	-	-	-	-
			Referral to LEA	-	-	-	-
14	Kensington Creative and Performing Arts HS Philadelphia City SD Philadelphia County	100%	Enrollment	439	10%	90%	22%
			OSS	74	11%	89%	-
			Expulsion	-	-	-	-
			Referral to LEA	10	20%	80%	-
15	Horace Furness HS Philadelphia City SD Philadelphia County	100%	Enrollment	588	11%	89%	21%
			OSS	61	23%	76%	16%
			Expulsion	-	-	-	-
			Referral to LEA	6	33%	67%	-
16	Lincoln HS Philadelphia City SD Philadelphia County	78.41%	Enrollment	1,857	34%	66%	21%
			OSS	421	29%	71%	16%
			Expulsion	-	-	-	-
			Referral to LEA	79	20%	80%	-

Table 10

Expulsions and Suspensions in Selected Pennsylvania High Schools
Bottom Academically Performing High Schools
In Order from Lowest to Highest[60]
2011-2012

	School Name and Location	ED	Disciplinary Actions	Total	White	Non-white	IDEA
17	Overbrook HS Philadelphia City SD Philadelphia County	100%	Enrollment OSS Expulsion Referral to LEA	1,391 455 - 91	1% 0% - 2%	99% 100% - 98%	18% 9% - -
18	Benjamin Franklin HS Philadelphia City SD Philadelphia County	100%	Enrollment OSS Expulsion Referral to LEA	592 172 - 19	1% 1% - 0%	99% 99% - 100%	22% 9% - -
19	Academy at Westinghouse Pittsburgh SC Allegheny County	83.75%	Enrollment OSS Expulsion Referral to LEA	633 367 6 -	1% 0% 0% -	99% 100% 100% -	21% 25% 67% -
20	Penn Treaty MS Philadelphia City SD Philadelphia County	100%	Enrollment OSS Expulsion Referral to LEA	276 86 - 6	24% 13% - 33%	76% 87% - 67%	29% 14% - -

Disparity Based on Disability

Two federal laws determine treatment of students with disabilities in public schools. Section 504 of the Rehabilitation Act of 1973[61] prohibits discrimination in federally assisted programs based upon disability, which is defined as a physical or mental condition that substantially limits at least one major life activity. Students identified under Section 504 may or may not need special education services. The Individuals with Disabilities Education Act (IDEA)[62] mandates that each student with a disability have an individualized education plan (IEP) to provide a free appropriate public education to the student in the least restrictive setting possible. IDEA is the nation's special education law. Almost all students under IDEA would also qualify under Section 504. Not all students identified under Section 504 need special education services and an IEP, although one way to meet Section 504 requirements is compliance with IDEA.

Disparity in some disciplinary measures also occur among children with disabilities. In academic year 2011-2012, students identified as covered under either IDEA or Section 504 comprised 17 percent of all students, yet they received 25.5 percent of all out-of-school suspensions enforcement. The expulsion rates for students under IDEA, at 12.4 percent, is consistent with the proportion of total enrollment.

[61] 29 U.S.C. § 794.
[62] 20 U.S.C. § 1400-1975.

Table 11

Discipline Measures Involving Students with Disabilities, Pennsylvania Grades K-12, 2011-2012 Academic Year[63]

Students Receiving Discipline	Total General and Special Education	Total IDEA and Section 504	
		Number	Percent
One out-of-school suspension	60,066	14,960	24.7
More than one out-of-school suspension	46,209	12,281	26.5
Total out-of-school suspensions	***106,277***	***27,258***	***25.5***
Expulsion with educational services	2,591	421	16.0
Expulsion without educational services	1,606	96	5.9
Total expulsions	***4,197***	***522***	***12.4***

Using the disparity standard and data established in Table 8, above, Staff's review of Dauphin County's 12 school districts revealed that all 12 districts (100 percent) had disparate out-of-school suspension rates for students with disabilities. Seven of the districts had no expulsions for students with disabilities and one of those seven also did not have any referrals to law enforcement. On the other hand, five school districts had expulsion levels above the standard and nine school districts had law enforcement referrals above it.

Disparity among students with disabilities also differed along economic or school performance criteria as seen in Tables 9 and 10. Eighteen of the 20 highest performing high schools showed disparate treatment of students with disabilities with respect to out-of-school suspensions, while 15 reflected it in referrals to law enforcement. Twelve of the high performing schools showed no expulsions of students with disabilities. Four of the schools reported expulsions but all the students involved were general education students. None of the 20 poorest performing schools reported disparity in out-of-school suspensions for students with disabilities. Five schools reported no referrals to law enforcement of any students and 17 reported no expulsions of any students. Three schools reported expulsions, but all the students involved were general education students.

The greatest area of disparity noted was in the out-of-school suspension of children with disabilities. This was consistent across economic and school performance criteria. This could be interpreted as evidence of universal discrimination against students with disabilities, but it is equally attributable to the notion that students with disabilities present more behavioral problems and thus are subject to more exclusionary discipline than other students. While the determination of a manifestation of a disability is intended to protect students with disabilities from punishment for actions they cannot control, it may not be sufficient.

[63] Breakdown by race/ethnicity includes IDEA but excludes those served under Section 504.

Effect of Discipline Policies on Very Young Children

As a general rule, children in Pennsylvania under the age of 10 cannot be adjudicated delinquent under the Juvenile Act.[64] Accordingly, separate disciplinary rules and procedures for this age group may be appropriate. While the very youngest children is our school systems are rarely suspended or expelled, there are instances in which suspension or expulsion is, and should be, used as a last resort to help these children sort out the behavioral adjustments that a structured educational environment requires. It should be noted that there are individuals on the Advisory Committee who feel that expulsion is never an appropriate disciplinary response for children in this age group.

Concerns about exclusionary discipline and its effect on young children has received a great deal of attention in the past two years. Originally discussed in the early childhood education/preschool context, findings and recommendations have quickly expanded into the elementary school setting.

In the OCR's data reports for school year 2011-2012, it was reported that while black children make up 18% of all preschool enrollment, they constitute 48% of preschool children who are suspended more than once. Additionally, boys in general receive more than three out of four preschool suspensions.[65] On the heels of the OCR report, the secretaries of the United States Departments of Health and Human Services (HHS) and Education issued a joint "Dear Colleague" letter announcing the issuance of a policy statement and recommendations on exclusionary discipline in early childhood settings.[66]

> Early childhood programs are strongly encouraged to establish policies that eliminate or severely limit expulsion, suspension, or other exclusionary discipline; these exclusionary measures should be used only as a last resort in extraordinary circumstances where there is a determination of a serious safety threat that cannot otherwise be reduced or eliminated by the provision of reasonable modifications. . . . Even in such extraordinary cases, the program should assist the child and family in accessing services and an alternative placement.[67]

Additionally, the report noted that determinations of safety threats must be based on actual risks, best available objective evidence, and cannot be based on stereotypes or generalizations. The Administration for Children and Families of HHS has a resource webpage entitled "Reducing Suspension and Expulsion Practices in Early Childhood Settings" where much of its guidance can be found.[68]

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[64] 42 Pa.C.S. § 6302, definition of "delinquent child."
[65] U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, "Data Snapshot: Early Childhood Education," Issue Brief No. 2, (March 2014).
[66] U.S. Department of Health and Human Services, U.S. Department of Education, "Policy Statement on Expulsion and Suspension Policies in Early Childhood Settings," (December 2014).
[67] *Ibid.*, at p. 6.
[68] www.acf.hhs.gov/ecd/child-health-development.

Pennsylvania's Office of Child Development and Early Learning in the Department of Human Services is studying implementation of changes to its guidance to early childhood programs on expulsions and suspensions.[69] In April 2016, the Commonwealth's Early Intervention Interagency Coordinating Council adopted a resolution to ban exclusionary discipline in early learning programs. This recommendation calls for an outright ban for children from birth through age five. The Council further urged that the General Assembly and the Department of Education extend the ban to include all public school programs for children in kindergarten through third grade.[70]

State and Local Policies Specifically Addressing Discipline of Younger Children

A number of state and local educational agencies have adopted policies, and some states have enacted laws that specifically address discipline policies affecting younger children. The definition of "younger children" varies from entity to entity, so that there is no standard age recognized. The directives of this study require analysis of school discipline policies in Pennsylvania's public schools, and thus the summary set for below excludes policies and laws affecting preschool children only.

Philadelphia

The School Reform Commission, the School District of Philadelphia's equivalent of a school board of directors revised the Student Code of Conduct in 2016 by banning the suspension of kindergarten students "unless their actions result in serious bodily injury."[71]

Baltimore

The Baltimore City Public Schools Code of Conduct 2014-2015 promotes developing a positive school climate and states "the use of suspensions only as a disciplinary measure of last resort to minimize the amount of time that students spend out of the classroom." Extended suspension (defined as a 10 to 45 day removal from school) must be authorized by an administrator and may only be used if the students "presence in school presents an imminent threat of serious harm to other students or staff, or the student has engaged in chronic and extreme disruption of the educational process across the school day." Expulsion may only be recommended if an extended suspension is inadequate to address the continuing behavior. Permanent expulsion may occur if the behavior "results in serious injury or places others in substantial risk of serious injury or death."[72] Students

[69] The Office noted in its Draft State Plan Child Care Development Block Grant that it intended to issue Announcement 15-#1, addressing these issues. The public comment period ended on January 8, 2016 but the guidance has not been released as of this writing.

[70] A copy of the Council's resolution is on file in the JSGC offices.

[71] Murphy, Darryl and Dale Messacappa, "SRC bans suspension of kindergartners and students who violate dress code," The Philadelphia Public School Notebook, http://thenotebook.org (August 18, 2016).

[72] Baltimore City Public Schools Code of Conduct 2014-2015 at pp. 2-4. http://www.baltimorecityschools.org/cms/lib/MD01001351/Centricity/Domain/8832/2014-15_PDFs/2014-15-CodeOfConduct-English.pdf.

in pre-kindergarten or kindergarten may not be suspended without consultation with the school's suspension services office for guidance and support.[73]

Chicago

The Chicago Public Schools severely restricted the use of suspensions for children in preschool through second grade in 2014.[74] This revision of the Student Code of Conduct prohibits in- or out-of-school suspension for students in grades pre-kindergarten through second. A student may be suspended on an emergency basis if the behavior in question presents an imminent endangerment to the physical, emotional, or mental safety of specific students or staff. The suspension may only be for one day, parents must be notified, and a plan developed for future prevention, restoration and the student's needs.[75]

Houston

The Houston Independent School District modified its Code of Student Conduct for the 2016-2017 year "to emphasize that removal of students to In-School Suspension and to Out-of-School Suspension should be consequences of last resort after implementation of recommended behavioral interventions."[76] Additionally, school board policy prohibits suspension, placement in an alternative education program or expulsion prior to third grade unless required by law.[77]

Minneapolis

The Minneapolis Public Schools implemented a moratorium on suspensions for non-violent behavior for students in pre-K and kindergarten in 2014. This moratorium was extended to all students through fifth grade in 2015.[78]

[73] *Ibid.,* at p. 9.
[74] Press Release, Chicago Public Schools, "CPS Continues Reduction of Suspensions and Expulsions to Keep Students Connected to Schools," (February 12, 2016).
[75] Chicago Public School Student Code of Conduct Booklet, at p. 13. http://cps.edu/SiteCollectionDocuments/SCC_StudentCodeConduct_English.pdf
[76] Houston Independent School District, Code of Student Conduct 2016-2017 at p. 1. http://www.houstonisd.org/cms/lib2/TX01001591/Centricity/Domain/7905/2016-17EnglishCodeofConduct.pdf.
[77] *Ibid.,* at p. 5.
[78] Press Release, "Suspending Suspensions," Minneapolis Public Schools, http://www.mpls.k12.mn.us/suspending_suspensions (October 2, 2015).

New York City

The New York City School District is dropping the use of suspensions for students in kindergarten through second grade and instead use age-appropriate discipline measures. Additionally, schools must document positive supports and interventions before suspending older students.[79]

Seattle

The Seattle School Board adopted a resolution in 2015, placing a moratorium on out-of-school suspensions for elementary grade students. Elementary student behaviors that fall into the categories of disruptive conduct, rule-breaking and disobedience would no longer receive out-of-school suspensions (OSS). A district-wide plan is being developed to further reduce OSS for all grades.[80]

California

California education law provides that students in grades K through third may not be suspended or expelled for sexual harassment; hate violence; or harassment, threats against, or intimidation of school personnel. Additionally, no student in any grade may be expelled for disrupting school activities.[81]

Connecticut

Connecticut amended its law in 2015 to limit OSS except under narrowly drawn circumstances and following a hearing. Students in grades three through twelve can receive OSS if the pupil being suspended is found to pose such a danger to persons or property or such a disruption of the educational process that the pupil shall be excluded from school during the period of suspension, or if the administration determines that an OSS is appropriate for such pupil based on evidence of previous disciplinary problems that have led to suspensions or expulsion of such pupil, and efforts by the administration to address such disciplinary problems through means other than OSS or expulsion, including positive behavioral support strategies have failed. Students in grades preschool to two, may receive an OSS based on evidence that such pupil's conduct on school grounds is of a

[79] Superville, Denisa R., "New York City Will End Suspensions for Students in K-2," Education Week, http://blogs.edweek.org/edweek/District_Dossier/2016/07/new_york_city_will_end_suspensions_for_K-2_students.html (July 22, 2016).
[80] Press Release, Seattle Public Schools, "Seattle Public Schools Places Moratorium on Out-of-school Suspensions," (September 24, 2015).
http://www.seattleschools.org/cms/One.aspx?portalId=627&pageId=2391903.
[81] Calif. Education Code § 48900(k).

violent or sexual nature that endangers persons. Children below third grade may not be expelled except for weapons or drug violations.[82]

Louisiana

Louisiana's school discipline law has additional procedures for the discipline of students in kindergarten through fifth grade involving removal from a classroom, firearms possession, possession of a knife and drug violations. Additionally, pre-K to fifth grade students may not be expelled or suspended for uniform violations that are not tied to willful disregard for school policies.[83]

Maine

The Maine State Legislature established a Study Commission on the Social Emotional Learning and Development of Maine's Young Children to make recommendations to reduce expulsions of children from birth through second grade. Begun in 2015, the study is ongoing.[84]

Michigan

Michigan's law provides that only students in grades six and above can be expelled for physical assault against another pupil, school employee or volunteer; verbal assault of school employee or volunteer or bomb threat.[85] The provision regarding verbal assault was found unconstitutional in *Smith v. Mt. Pleasant Pub. Schs.*, 285 F. Supp. 2nd 987 (E.D. March 2003).

New Jersey

New Jersey enacted a new law in September 2016 that prohibits expulsion of students in kindergarten through second grade, except as provided in the state's Zero Tolerance for Guns Act. Further, preschool students may not be suspended or expelled except under that act. Students in kindergarten through second grade may only receive an out-of-school suspension if it is based on conduct that is of a violent or sexual nature that endangers others. Schools are further mandated to develop an early detection and prevention program and provide behavioral supports for students in preschool through grade two.[86] The act becomes effective in the first full school year following the date of enactment.

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[82] Conn. Gen. Stat. §§ 10-233c(g), 10-233d(a).
[83] La. Rev. Stat. § 17:416.
[84] U.S. Department of Health and Human Services, Administration for Children and Families, "State and Local Action to Prevent Expulsion and Suspension in Early Learning Settings," at p. 11. (Originally issued in 2014, updated through 2016).
[85] Mich. Comp. Laws §§ 380-1310, 380-1311a.
[86] N.J. Rev. Stat. §§ 18A-3702a, 18A-37-2b, 18A-36A-9.

Oklahoma

Like Michigan, Oklahoma's law provides that only students in grades six through twelve found to have assaulted, attempted to cause physical bodily injury, or acted in a manner that could reasonably cause bodily injury to a school employee or a person volunteering for a school may receive an out-of-school suspension for those acts.[87]

Oregon

Oregon amended its school discipline law in 2015 to restrict the use of OSS or expulsion for students who are in fifth grade or lower. In these circumstances, OSS or expulsion can only be imposed for non-accidental conduct causing serious physical harm to a student or school employee; if the student's conduct poses a direct threat to the health or safety of students or school employees; or when the suspension or expulsion is required by law. Additionally the school district must "take steps to prevent the recurrence of the behavior that led to the OSS and return the student to a classroom setting so that the disruption of the student's academic instruction is minimized.[88]

Texas

In Texas, if a student under the age of 10 is expelled, the district or other local educational agency must provide educational services in a disciplinary alternative education program; older students may be provided services.[89]

[87] Okla. Stat. tit. 70, § 24.101.3(c)(3).
[88] Or. Rev. Stat. § 339.250(2)(e).
[89] Tex. Educ. Code § 37.007(e).

Another directive of House Resolution No. 540 requires inclusion in this report of "a general description of the types of memoranda of understanding (MOU) between school entities and police departments in place throughout this Commonwealth, including a general description of the types of protocols for immediate and discretionary notification of police departments set forth in those memoranda of understanding, and an analysis of those types of memoranda of understanding which provide for immediate notification of police departments with respect to offenses in addition to those requiring immediate notification under applicable law".

Federal Mandate

Under the Gun Free Schools Act, federal funds are also tied mandatory reporting of weapons violations to local law enforcement. This is the only offense that the federal government requires be referred to law enforcement.

> 20 U.S.C. § 7961. (h) Policy regarding criminal justice system referral--
>
> (1) In general--No funds shall be made available under any subchapter of this chapter to any local educational agency unless such agency has a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school served by such agency.
>
> (2) Definition--For the purpose of this subsection, the term "school" has the same meaning given to such term by section 921(a) of title 18.

Pennsylvania Policy

Under Pennsylvania law, the Department of Education is charged with developing a model MOU between school entities and local police departments. The model is to be reviewed biennially and revised when necessary. The MOU is to include the protocol of when police are to be notified of offenses defined as mandatory or discretionary for reporting purposes. Protocols should also include emergency and non-emergency response provisions as well as procedures and protocols for the response and handling of students with a disability.[90]

[90] PSC § 1302.1-A; 24 P.S. § 13-1302.1-A. 22 Pa. Code Chapter 10, Safe Schools.

Model Memorandum of Understanding

Pennsylvania's Office for Safe Schools provides a Model Memorandum of Understanding (MOU) that school districts may use in entering into an agreement with local law enforcement as to the procedures to be followed and the crimes to be reported pursuant to the state mandate. Pennsylvania has listed additional offenses beyond the federally-mandated weapons offenses in both the mandatory and discretionary categories that are reported to local law enforcement.[91] Many of these offenses mirror those listed in the Juvenile Act as crimes for which a student could be tried as an adult and not permitted to proceed as a juvenile delinquent.

The Model MOU between a school district and a law enforcement authority lists the following crimes as "Mandatory Notification" under section II.A "Notification of Incidents to Law Enforcement":

- 18 Pa.C.S. § 908 (relating to prohibited offensive weapons)
- 18 Pa.C.S. § 912 (relating to possession of a weapon on school property)
- Chapter 25 (relating to criminal homicide)
- 18 Pa.C.S. § 2702 (relating to aggravated assault)
- 18 Pa.C.S. § 2709.1 (related to stalking) [Note: I believe this refers to §2709(b)]
- 18 Pa.C.S. § 2901 (related to kidnapping)
- 18 Pa.C.S. § 2902 (relating to unlawful restraint)
- 18 Pa.C.S. § 3121 (relating to rape)
- 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault)
- 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse)
- 18 Pa.C.S. § 3124.1 (relating to sexual assault)
- 18 Pa.C.S. §3124.2 (relating to institutional sexual assault)
- 18 Pa.C.S. § 3125 (relating to aggravated indecent assault)
- 18 Pa.C.S. § 3126 (relating to indecent assault)
- 18 Pa.C.S. § 3301 (relating to arson and related offenses)
- 18 Pa.C.S. § 3307 (relating to institutional vandalism), when the penalty is a felony of the third degree
- 18 Pa.C.S. § 3502 (relating to burglary)
- 18 Pa.C.S. § 3503(a) and (b)(1)(v) (relating to criminal trespass)
- 18 Pa.C.S. § 5501 (relating to riot)
- 18 Pa.C.S. § 6110.1 (relating to possession of a firearm by a minor)
- 35 P.S. §§ 780-101 – 780-144, The Controlled Substance, Drug, Device, and Cosmetic Act," the act of April 14, 1972 (P.L.233, No.64).
- Any offense for which registration is required under 42 Pa.C.S. § 9795.1

[91] *Ibid*., § 1303-A(b)(4.1); 24 P.S. §13-1303-A(b)(4.1).

Local School District Variations in MOUs

Staff summarized and compared how well the school districts within Dauphin County adhere to the Model MOU when drafting their respective MOUs with local law enforcement, with special attention paid to any discrepancies between the districts and the Model concerning the organization of "Mandatory Notice" and "Discretionary Notice" criminal offenses.

Central Dauphin School District

The Central Dauphin School District has MOUs with four separate law enforcement authorities. They are all identical but for the names of the parties, as certain law enforcement agencies only have jurisdiction over certain individual schools. It should also be noted that the MOU with the Lower Paxton Township Police Department lists § 3127, relating to indecent exposure, a "Discretionary Notification" crime, *except* when it is committed by an adult. The other three Central Dauphin School District MOUs do not make such a distinction, and leave § 3127 as a "Discretionary Notification" crime.

Derry Township School District

The Derry Township School District has one MOU between itself and the Township of Derry Police Department, and a separate MOU between itself and the Dauphin County Probation Services. The Derry Township School District has a policy of referring virtually all criminal acts to law enforcement, as all of the offenses listed in the Model MOU as "Discretionary Notification" are included in the "Mandatory Notification" section of the Derry Township School District's MOU.

Further, in section I.C of the Memorandum, titled "Procedures," it is specified that "[t]his Memorandum does not cover incidents that are outside of those school setting and create no substantial disruption … with the exception … [of] when a school official is made aware that a violation of the PA Crimes Code has occurred." In other words, if the school finds out about it, the school will make a report to law enforcement of a student's unlawful behavior even if such behavior takes place off school grounds, outside of school hours, and not in connection with a school event.

This policy is likely due to the fact that Derry Township School District has created a School Resource Officer (SRO) position, and would like the SRO to know about students' out-of-school criminal activities. The fact that The Derry Township School District has an SRO position also likely explains why the District considers basically all violations of the crimes code to be "Mandatory Notice"; the District wants the SRO to be informed of any and all incidents, even if they are minor and do not result in criminal charges. Section "V – General Provisions" of the MOU is dedicated to outlining the SRO's role and responsibilities.

There is also a separate MOU between The Derry Township School District and Dauphin County Probation Services. This MOU was created in order to place a Juvenile Probation Officer ("JPO") in Derry Township School District schools. Sections I.B

(purpose of the MOU) and I.C (school district responsibilities and priorities) appear identical to the sections covering those subjects in the MOU between The Derry Township School District and the Township of Derry Police Department, which in turn are identical to the provisions in the Model MOU. Section I.D. covers probation officer responsibilities and priorities.

Halifax Area School District

The Halifax Area School District has one MOU between itself and the Pennsylvania State Police ("PSP"). PSP acts as local law enforcement in rural areas or communities that do not have their own police force. The Halifax Area School District MOU is identical to the Model MOU.

Harrisburg City School District

The MOU between the Harrisburg City School District and the Harrisburg Police Department appears to be the most divergent from the Model MOU of all the Dauphin County school districts.

With regard to "Mandatory Notice" and "Discretionary Notice" crimes, the term "Mandatory Notice" is not used. Instead, the MOU states "The School Entity shall immediately report … to the Law Enforcement Authority … the following incidents…." The incidents listed are the same as the "Mandatory Notice" crimes, but also include:

- § 2701 (simple assault) "if the offense would reasonably result in the expulsion of the perpetrator or if the victim requires outside medical assistance."
- § 2706 (terroristic threats)
- § 3701 (robbery)
- § 3702 (robbery of a motor vehicle)
- Purchase, consumption, possession, or transportation of alcoholic beverages
- Gang-related activity
- § 2710 (ethnic intimidation)
- § 2709(a) (harassment)

These crimes appear to be the "Mandatory Notice" offenses, as they are introduced using the term "shall" rather than "may." The MOU does not delineate which offenses are "Discretionary Notice," but offenses which are not "Mandatory Notice" would be, by default, "Discretionary Notice."

Although Sections III and IV are substantially similar in content to the Sections III and IV of the Model MOU, the Harrisburg City School District has changed the wording and did not take these provisions verbatim from the Model MOU. The Harrisburg City School District also has a Section V that outlines how to deal with the media.

Lower Dauphin School District

Staff did not obtain a copy of the Lower Dauphin School District's MOU, although notes on its website indicate that one is in place. The Hummelstown Borough Police Department has jurisdiction over most of the school district and provides an SRO to the school.

Middletown Area School District

Middletown Area School District has three separate MOUs covering its constituent schools. One with the Lower Swatara Township Police Department, one with the Middletown Borough Police Department, and one with the Royalton Borough Police Department. All three Middletown Area School District MOUs have left identical brief instructions under Sections II.D.6 and IV.D.e, where the Model MOU leaves space for the school to write procedures for students with individual education plans ("IEPs") and record-keeping, respectively. Other than this variation, all three Middletown Area School District MOUs appear to be indistinguishable from the Model MOU.

Millersburg Area School District

The Millersburg Area School District has two separate MOUs covering its constituent schools. One with the Millersburg Borough Police and one with the Pennsylvania State Police, Lykens Station (Troop H). Both Millersburg Area School District MOUs have left identical brief instructions under Section IV.D.e, where the Model MOU leaves space for the school to write procedures for record-keeping. Other than this variation, both Millersburg Area School District MOUs appear to be indistinguishable from the Model MOU.

Steelton-Highspire School District

The Steelton-Highspire School District has one MOU with the Swatara Township Police Department. Unlike other Dauphin County school districts, Steelton-Highspire's MOU specifically states that its purpose is to "establish and delineate the mission of the School Resource Officer Program." The Steelton-Highspire MOU's goals are substantially similar to those outlined in the Model MOU. However, much of the Steelton-Highspire MOU is dedicated to creating policies and procedures specific to an SRO position, such as selection, duties and responsibilities of the SRO and the school, cost-sharing, and supervision and oversight. Instead of listing "Mandatory Notice" and "Discretionary Notice" offenses, the Steelton-Highspire MOU defers to the SRO and police department policy when deciding to intervene in order to prevent a criminal act or to make a legal disposition.

Susquehanna Township School District

The Susquehanna Township School District has one MOU with the Susquehanna Township Police Department. This MOU appears to diverge from the Model MOU, and the drafter of the Susquehanna Township School District's MOU did not copy the Model MOU. The District's MOU states that the District "shall" report certain criminal offenses to the police. The listed offenses cover those listed as "Mandatory Notice" offenses by the Model MOU, but also includes simple assault, "if the offense would reasonably result in the expulsion of the perpetrator or if the victim requires outside medical assistance," robbery, harassment, disorderly conduct, gang-related activity, ethnic intimidation, and then goes on to list "harassment, stalking and disorderly conduct" again.

The sections "Law Enforcement Response," "Assistance of School Districts," and "Scope of School District's Involvement" appear to be the same as the Model MOU. However, the rest of it appears to have been drafted independently, albeit with reference to the Model MOU. Based on the wording of Section G.3, "Incidents Requiring Law Enforcement Notification and Response," the drafter of the Susquehanna Township School District's MOU may have been using Harrisburg City School District's MOU as a model or guide in addition to or instead of the Model MOU. This MOU also includes a brief section on handling media relations.

Susquenita School District

Susquenita School District has two MOUs, one with the Pennsylvania State Police, Troop H, Newport ("PSP"), and one with the Penn Township Police Department. The two MOUs differ from each other, with the Penn Township MOU mirroring the Model MOU and the PSP MOU diverging from the Model MOU in several ways.

Regarding Susquenita's MOU with the PSP, it lists, in addition to those found in the Model MOU, several additional offenses as those which "shall" be reported. Those offenses are terroristic threats, robbery, robbery of a motor vehicle, alcohol-related incidents, gang-related activity, ethnic intimidated, and harassment. The MOU does not use the terms "Mandatory Notice" or "Discretionary Notice" but does state that "the School Entity shall immediately report" the above-listed offenses.

One distinguishing feature of the Susquenita School District MOU with the PSP is that it designates two specific officers as the district's "law enforcement liaison." The MOU goes on to state that "…the school is thereby enabled to disclose information from a student's education records to these designated officers without limitations of [FERPA]…." Section I.F and from Section II.B onward, the Susquenita School District PSP MOU is organized the same as the Model MOU. However, most sections appear to have been re-worded from the Model MOU by the drafter. The Susquenita School District PSP MOU also includes a brief section on handling media relations. Regarding the Susquenita School District MOU with the Penn Township Police, it is identical to the Model MOU.

Upper Dauphin Area School District

The Upper Dauphin Area School District has one MOU with the Pennsylvania State Police, Troop H, Lykens. The Upper Dauphin Area School District MOU and the Model MOU are identical, except for brief instructions specific to this MOU under Sections II.D.6 and IV.D.e, where the Model MOU leaves space for the school to write procedures for students with individual education plans ("IEPs") and record-keeping, respectively.

Williams Valley School District

The Williams Valley School District has one MOU with the Pennsylvania State Police, Troop H, Lykens. The Williams Valley School District MOU and the Model MOU are identical, except for brief instructions specific to this MOU under Sections II.D.6 and IV.D.e, where the Model MOU leaves space for the school to write procedures for students with individual education plans ("IEPs") and record-keeping, respectively.

Outlier School Districts

Staff reviewed the MOUs of an additional six school districts that are believed to have MOUs that substantially alter the model MOU. These were Allentown (Lehigh County), Northern Allegheny (Allegheny County), Lower Merion (Montgomery County), Rose Tree Media (Delaware County), Southern Columbia (Columbia County), and Wallingford-Strathmore (Delaware County).

Most of the school districts examined followed the model MOU regarding mandatory notification. Two districts did not include kidnapping, unlawful restraint, institutional vandalism, burglary, criminal trespass, riot of possession of a firearm by a minor. Additionally, Southern Columbia did not include stalking in their list. Several school districts used offenses that are discretionary under state law and included them as mandatory in their MOUs. These include simple assault, recklessly endangering another person, terroristic threats, harassment, indecent exposure and alcohol-related offenses. Additionally, several school districts added ethnic intimidation, robbery, robbery of a motor vehicle as offenses requiring mandatory notification to law enforcement.

To the extent they were not made mandatory, discretionary offenses were listed as such by most of the school districts. Gang-related activity is an additional mandatory reportable offense in Southern Columbia School District, while Northern Allegheny School District adds it as a discretionary reportable offense.

Lower Merion created three categories of offenses: Mandatory, Recommended and Discretionary. Recommended offenses are those listed by the state as discretionary. A separate discretionary list was created in Lower Merion to include false alarms to agencies of public safety, intimidation of victim or witness, retaliation against witness, victim or party, and computer offenses. It is our understanding that this level of categorization applies to all Montgomery County school districts.

Referrals Versus Arrests

Not every referral to law enforcement results in juvenile proceedings, criminal charges or an arrest. Statewide, in the 2011-2012 school year, student arrests occurred at a rate equivalent to 42 percent of student referrals to law enforcement. For students with disabilities, the arrest rate was even lower, at 38 percent. The 2012-2013 school year saw similar results, while preliminary data for school years 2013-2014 and 2014-2015 indicate a decrease of approximately 10 percent in overall referrals to law enforcement, as well as slightly decreased arrest rates (35 percent and 31 percent, respectively). Not all data is complete and available for the two latter school years, but early indicators suggest that the need for and use of law enforcement intervention is declining.[92] While the overall decline in these figures is laudatory, it should be noted that racial disparity is found in this area as well. While 71 percent of Pennsylvania's public school students in 2011-2012 were white, they represented only 56.4 percent of all law enforcement referrals and 48.9 percent of all arrests.

Table 12

Pennsylvania Statewide Law Enforcement Involvement with General Education Students 2011-2012

Population	Referrals to Law Enforcement		School-Related Arrests	
	Number	Percent	Number	Percent
American Indian/Alaska Native	25	0.2%	10	0.2%
Asian	93	0.7%	32	0.6%
Hispanic or Latino of any race	1,696	12.5%	788	13.8%
Black or African American	3,836	28.4%	1,987	34.9%
White	7,621	56.4%	2,785	48.9%
Native Hawaiian or Other Pacific	4	0.0%	2	0.0%
Two or more races	244	1.8%	93	1.6%
Total	*13,519*	*100%*	*5,697*	*100%*

Students with disabilities also face disparate treatment with regard to law enforcement encounters. While students with disabilities comprised 16.5 percent of the public school students in school year 2011-2012, the constituted 27.6 percent of all referrals to law enforcement and 25 percent of all school-related arrests.

[92] *See* Pennsylvania Department of Education, Office for Safe Schools, School Safety Reports database.

Table 13 Pennsylvania Statewide Law Enforcement Involvement with Students with Disabilities School Year 2011-2012				
Population	**Referral to Law Enforcement**		**School-related Arrests**	
	Number	**Percent**	**Number**	**Percent**
IDEA only	3,665	26.9	1,399	24.4
Section 504 only	95	0.7	36	0.6
Total IDEA and Section 504	3,760	27.6	1,435	25.0

School Resource Officers

Under Pennsylvania's education law, school resource officers may be assigned by the local municipality to the school district or the school district may choose to employ its own school police officers. In either event, the Office for Safe Schools may target grants to employ such officers, support anti-school violence programs and purchase school security equipment. Sixty percent of the amount allocated annually for safe schools targeted grants is earmarked for employment of school resource or police officers; each grant is capped at $60,000 for an SRO, and $40,000 for an SPO. In school year 2015-2016, $3.9 million was used to hire 34 new SROs and 33 new SPOs at 78 individual schools. Remaining 40 percent is allocated for programs and equipment, and most of that money goes to purchase security equipment. Of the $2.6 million allocated for programs and equipment, less than 10% was used to support programs (individual grants for programs and equipment are capped at $25,000).[93]

The Office for Safe Schools provides outreach to school districts to help apply for grants and to make recommendations on non-SRO grants based on the individual school's safe school report. Many of the programs that are authorized to be funded under these grants are alternatives to exclusionary discipline already available in Pennsylvania, but not always utilized to their full potential. Programs available for safe schools grant money can include:

- Conflict resolution or dispute management, including restorative justice strategies
- School-wide positive behavior support that includes primary or universal, secondary and tertiary supports and interventions in school entities
- School-based diversion programs

[93] Pennsylvania Department of Education, Office for Safe Schools, 2016-2017 Safe Schools Targeted Grants.

- Peer helpers programs
- Risk assessment, safety-related, violence prevention curricula, including, but not limited to, dating violence curricula and restorative justice strategies
- Classroom management
- Student codes of conduct
- Training to undertake a districtwide assessment of risk factors that increase the likelihood of problem behaviors among students
- Development and implementation of research-based violence prevention programs that address risk factors to reduce incidents of problem behaviors among students including, but not limited to, bullying
- Comprehensive, districtwide school safety, violence prevention, emergency preparedness and all-hazards plans, including revisions or updates to such plans and conducting emergency preparedness drills and related activities with local emergency responders
- Security planning, purchase of security-related technology which may include metal detectors, protective lighting, surveillance equipment, special emergency communications equipment, electronic locksets, deadbolts and theft control devices and training in the use of security-related technology. Security planning and purchase of security-related technology shall be based on safety needs identified by the school entity's board of directors
- Institution of student, staff and visitor identification systems, including criminal background check software
- Provision of specialized staff and student training programs, including training for Student Assistance Program team members in elementary, middle and high schools in the referral of students at risk of violent behavior to appropriate community-based services, including mental health services
- Alternative education programs
- Counseling services for students enrolled in alternative education programs
- An Internet web-based system for the management of student discipline, including misconduct and criminal offenses
- Staff training programs in the use of positive behavior supports, de-escalation techniques and appropriate responses to student behavior that may require immediate intervention

The use of school resources officers (SROs) is not unanimously supported and the preference given to funding the hiring of them has been criticized by those who feel a law enforcement officer's presence is school can be problematic. On September 8, 2016 the secretaries of the United States Departments of Education and Justice, Office of Community Oriented Policing Services, simultaneously released "Dear Colleague Letters" advocating for a limited role for school resources officers and providing guidance to communities and law enforcement agencies to help implement the most effective SRO programs. The Education Secretary John B. King, Jr. urged that schools "ensure that they [SROs] have no role in administering school discipline." Instead, strong partnerships between school districts, law enforcement and juvenile justice entities "can enable SROs to improve safety, while keeping students out of the criminal justice system."

Additionally, the King letter stated

> In order to eliminate overreliance on SROs in schools, school staff and administrators should be well trained to address behavioral issues through a variety of corrective, nonpunitive interventions, including restorative justice programs and mental health supports. . . . any approach to improving school safety, security, and discipline should also focus on creating a positive school climate that helps students thrive, including employing a multi-tiered behavioral support framework such as Positive Behavioral Interventions and Supports. These strategies can prevent and resolve students' behavioral issues without relying on SROs while reducing unnecessary detentions, suspensions, expulsions, citations, and arrests in schools. Further, any consequences for negative student behaviors should be nondiscriminatory, fair, and age-appropriate.

The joint guidance was released in the form of a State and Local Policy Rubric under their joint statement "Safe School-based Enforcement through Collaboration, Understanding and Respect." Pennsylvania's MOU regulation, found at 22 Pa.Code 10.11, is cited in the rubric as an example state policy. [94]

Currently, training for school resource officers is available in Pennsylvania through the National Association of School Resource Officers (NASRO). The Basic School Resource Officer Certification Course Manual contains an explanation of disabilities qualifying for IDEA status, and basic procedural information on assessment, the IEP process and placement options. The manual also contains some case law related to students with special needs. The manual does not cover de-escalation techniques, child development and psychology, or how a disability impacts a student's cognition, communication, and behavior. In 2014-2015, nine school security officers, 38 school police officers and 72 school resource officers from the Commonwealth participated in

[94] U.S. Department of Education, Press Release, "Obama Administration Releases Resources for Schools, Colleges to Ensure Appropriate Use of School Resource Officers and Campus Police," (September 8, 2016). Links to the two "Dear Colleague" letters and the SECURe Rubric can be found at this link: http://www.ed.gov/news/press-releases/obama-administration-releases-resources-schools-colleges-ensure-appropriate-use-school-resource-officers-and-campus-police.

NASRO training. In 2015-2016, four school security officers, 43 school police officers and 49 school resource officers also participated in NASRO training.[95]

Other State Mandatory Referral Laws

A review of the school discipline laws of the other 49 states indicates that 24 other states required mandatory referral to law enforcement for offenses committed by students that are in addition to weapons offenses, as mandated by federal law. Most of the extra offenses involve violence against other persons and drug and alcohol offenses. Another 10 states also include some property offenses as subject to mandatory reporting.

Table 14

Survey of State Laws Regarding Mandatory Notification Of Student Offenses to Law Enforcement (Not Including Weapons Offenses) Types of Offenses

State	Personal Offenses	Drug and Alcohol Offenses	Property Offenses
Alabama	Any act of physical violence, with or without a weapon; physical harm or threatened physical harm to a person; local boards of education may promulgate more stringent rules	Yes	Trespass, vandalism, property damage
Arizona	--	Sell, transfer, possess or use marijuana, peyote, prescription-only drugs, dangerous drugs or narcotic drugs; manufacture dangerous drugs in a drug free school zone	--
Arkansas	Any act of violence: purposely or knowingly causes or threatens to cause death or serious physical injury to another person	--	--
California	Assault with a deadly weapon	Controlled substance violations	--
Colorado	Assault conviction	Controlled substance conviction	Robbery conviction
Connecticut	Physical assault upon school employees	--	--
Delaware	--	Use, possession or sale of controlled substances	--

[95] E-mail from Office for Safe Schools, Pa. Department of Education, September 12, 2016.

Table 14

Survey of State Laws Regarding Mandatory Notification Of Student Offenses to Law Enforcement (Not Including Weapons Offenses) Types of Offenses

State	Personal Offenses	Drug and Alcohol Offenses	Property Offenses
Florida	Hazing (in grades 9-12); bomb threat	--	--
Idaho	Assault; extortion; fighting; homicide; sexual offenses; terroristic threatening; bullying; cyberbullying; disorderly conduct; false alarm; harassment; hazing	Yes	Burglary; possession or use of a dangerous instrument; property damage or vandalism; robbery; forgery; gambling; questionable use of Internet; theft, trespassing
Illinois	--	Drugs	--
Indiana	Threats against a school employee or intimidation, battery or harassment of school employee	Yes	--
Kansas	Serious bodily injury	Illegal drugs	--
Kentucky	Serious physical injury; sexual offense; kidnapping; assault, menacing or stalking	Possession of illegal drugs/controlled substances	Damage to school property
Massachusetts	Bullying; retaliation; hazing	Controlled substances	--
Mississippi	Murder, kidnapping, aggravated assault, simple assault of a school employee, rape, sexual battery, child sexual abuse	Controlled substances	--
Missouri	1st & 2nd degree murder; 1st & 2nd degree kidnapping; felonious restraint; voluntary manslaughter; 1st & 2nd involuntary manslaughter; 1st & 2nd degree assault; 1st & 2nd degree rape; 1st & 2nd degree sodomy; sexual assault; child molestation; deviate sexual assault; sexual misconduct involving a child; sexual abuse; 1st degree harassment; 1st degree stalking	Distribution of drugs; manufacture of controlled substances	1st & 2nd degree burglary; 1st degree robbery; 1st degree arson; 1st degree property damage

Table 14

Survey of State Laws Regarding Mandatory Notification Of Student Offenses to Law Enforcement (Not Including Weapons Offenses) Types of Offenses

State	Personal Offenses	Drug and Alcohol Offenses	Property Offenses
Nebraska	Use of violence, force, coercion, threat, intimidation or similar conduct; causing or attempting to cause personal injury to a school employee or volunteer or any student; threatening or intimidating any student to obtain money or anything of value; public indecency (students 12-18 only); bullying; sexual assault; any unlawful activity that constitutes a danger to other students or interferes with school purposes	Unlawful possession, selling, dispensing or use of a controlled substance or an imitation controlled substance or alcoholic liquor or being under the influence of either	Willfully causing or attempt to cause substantial damage to property; stealing of attempt to steal property of substantial value or repeated damage or theft involving property
New Hampshire	Homicide; 1st or 2nd degree assault; simple assault; felonious or aggravated felonious sexual assault; criminal threatening	Illegal sale or possession of a controlled drug	Criminal mischief; arson; burglary; robbery, theft
New Jersey	Assaults on school employees other school –related authority figures	Unlawful possession or any involvement in distribution of controlled substance, anabolic steroids and drug paraphernalia	--
North Carolina	Assault resulting in serious personal injury, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor	Possession of a controlled substance	--
Ohio	Aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, rape, gross sexual imposition	Knowingly obtained, possession or use of a controlled substance	--
South Carolina	which may result or results in injury or serious threat of injury to the person or to another person or his property as defined in local board policy	--	--

Table 14 Survey of State Laws Regarding Mandatory Notification Of Student Offenses to Law Enforcement (Not Including Weapons Offenses) Types of Offenses			
State	**Personal Offenses**	**Drug and Alcohol Offenses**	**Property Offenses**
Texas	Murder, aggravated kidnapping, indecency with a child, sexual assault, aggravated sexual assault, aggravated assault, injury to a child, elderly or disabled person, sexual performance by a child, criminal solicitation, compelling prostitution, human trafficking, organized criminal activity, criminal street gang, deadly conduct (discharging a firearm indoors), terroristic threat	Use, sale or possession of a controlled substance, drug paraphernalia or marihuana	Arson, robbery, aggravated robbery, burglary
Virginia	Assault & battery that results in bodily injury, sexual assault, death, shooting, stabbing, cutting or wounding any person; stalking; threats against school personnel	Any conduct involving alcohol, marijuana, a controlled substance, an imitation controlled substance or an anabolic steroid; theft/attempted theft of student prescription medications	Any illegal conduct involving firebombs, explosive materials or devices, or hoax explosive devices, explosive or incendiary devices, chemical bombs, any threats or false threats to bomb

Notes:

Alabama: Incident involving students from the same school where no dangerous weapon was involved and no bodily injury requiring medical attention occurred is not required to be reported

Idaho: Offenses to be reported only if there is perceived danger and school staff is unable to handle situation.

Kansas: If the child is age 13 or older.

House Resolution No. 540 also calls for "a study of alternative school discipline approaches at the elementary and secondary education levels, including diversion programs and possible alternatives to suspension, expulsion and referral to law enforcement".

The Pennsylvania Constitution of 1776 provide for schools to be established in each county by the legislature, "for the convenient instruction of youth" with teacher salaries paid by the Commonwealth and instruction provided to students at "low prices."[96] By 1790, this had become "the establishment of schools throughout the state, in such manner that the poor may be taught gratis."[97] A "thorough and efficient" system of public education has been constitutionally mandated since 1784.[98]

Pennsylvania's juvenile justice community observed 20 years of "balanced and restorative justice" in 2015. The Juvenile Act's purpose includes the importance of supervision, care and rehabilitation of juvenile offenders balanced with the need to protect the community and to impose accountability for offenses committed. Additionally, the act strives to develop competencies to enable children to become responsible and productive members of the community. Evidence-based practices are recommended with the goal of "using the least restrictive intervention that is consistent with the protection of the community, the imposition of accountability for offenses committed and the rehabilitation, supervision and treatment needs of the child."[99] This system, which addresses those children whose acts are the equivalent of adult criminal offenses, should be adaptable to those children whose behavior disrupts the educational environment.

National Movement Away From Exclusionary Discipline Policies

While the exclusionary practices of expulsion and suspension very effectively remove disruptive influences from the classroom, benefit falls solely to the classroom teacher and the student's non-disruptive classmates. Order is restored and a stable learning environment is re-established. However, the students who are subject to these exclusionary practices don't receive comparable benefits. Studies have shown that missing classroom time can have negative long-term impacts on students including poor academic

[96] Pa. Const. of 1776, § 44.
[97] Pa. Const. of 1790, art. VII, § 1.
[98] Pa. Const. of 1874, art. X, § 1. Current cite in PA. Const. Art. III, § 14.
[99] 42 Pa.C.S. § 6301(b).

performance, higher dropout rates, increased risk of involvement with the juvenile justice system, and student disengagement.[100]

Federal Initiative on School Discipline

In 2011, the United States Departments of Education and Justice began collaborating on the Supportive School Discipline Initiative, designed to "support the use of school discipline practices that foster safe, supportive and productive learning environments while keeping students in school." Among its stated goals are "to provide schools with effective alternatives to exclusionary discipline while encourage new emphasis on reducing disproportionality for students of color and students with disabilities."[101] The initiative resulted in a broader and deeper use of data from school districts by the U.S. Department of Education's Office for Civil Rights Data Collection. All school districts in the country are now represented, and among information collected is the number of students who have received in-school and out-of-school suspensions and expulsions, referrals to law enforcement and arrests, broken down by both race and ethnicity as well as disability status. Grants were awarded and guidance was issued, including a "Dear Colleague" letter issued jointly by the two agencies on January 8, 2014, that gave advice on how to identify, avoid and remedy discriminatory discipline.

In response to the 2014 "Dear Colleague" letter, the American Federation of Teachers recommended the following strategies:

- Professional development for all school staff on classroom management, child psychology, cultural competency and conflict resolution.

- Restorative practices in which students can assume responsibility for their actions.

- Social and emotional learning integrated into the curriculum.

- High-quality alternative educational settings for students who must be removed from the classroom.

- Social, health and psychological services to address students' needs.[102]

[100] Losen, Daniel Jr. and Tia Elena Martinez, "Out of School and Off Track: The Overuse of Suspensions in American Middle and High Schools," The Center for Civil Rights Remedies, UCLA, at p. 20, (April 8, 2013).
[101] U.S. Department of Education, "Supportive School Discipline Initiative," http://www2.ed.gov/policy/gen/guid/school-discipline/appendix-3-overview.pdf.
[102] Weingarten, Randi, American Federation of Teachers President, "Moving Past Punishment Toward Support," *American Educator*, at p. 1. (Winter 2015-2016).

The Pennsylvania State Education Association (PSEA) offered similar suggestions in comments submitted to the Advisory Committee in August 2016. Additionally, PSEA offered recommendations as to:

- Data collection should be reviewed to determine if information requested determines which evidence-based strategies could best fit the need of schools to improve safety conditions.

- Ensure clarity and consistency in interpretations and utilization of subjective terms such as "disruption," "disorderly conduct," "defiant behavior," *etc.*, as well as in defining offenses that are reportable to law enforcement.

- Eliminate "persistently dangerous school" terminology, which can serve as a disincentive for school administrators to report incidents of school violence.

- Encourage further development of interagency cooperation in providing services to students and their families.

- Foster increased interaction of families and schools to support students.

- Review the current allocation of grants from the Office for Safe Schools.[103]

Recent Efforts in Other States

Several states have made efforts to restrict the use of expulsion and suspension in addressing truancy. Other areas where exclusionary discipline has been restricted has been in enforcement of uniform codes and other nonviolent, non-drug-related infractions. Additionally, a number of states are moving toward severely limiting the use of exclusionary discipline with younger students.[104]

In the fall of 2014, California amended its law to eliminate willful defiance or disruption of school activities as a reason to expel students, and it may not be used to justify suspension of students in grades kindergarten through third grade. This amendment became effective on January 1, 2016. A bill that would have limited suspensions for older students was vetoed by Governor Brown. Additionally, the California Commission on Teacher Credentialing added a requirement for training in positive discipline for new school principals and administrators.[105]

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[103] Memorandum from Jerry Oleksiak, President, Pennsylvania State Education Association, "Re: Student Discipline – PSEA recommendations for consideration," August 24, 2016, on file at the Commission offices.
[104] Kralik, Joellen, "New State Approaches to Student Discipline," National Conference of State Legislatures, *Legisbrief*, Vol. 24, No.2, (January 2016). *See* "Effect of Discipline Policies on Very Young Children," *infra.*, p. 59.
[105] Frey, Susan, "New law limits student discipline measure," September 28, 2014, EdSource, http://edsource.org/2014/new-law-limits-student-discipline-measure/67836; Cal. Educ. Code § 48900.

September 2016 is the deadline to implement of Illinois' new law on school discipline. The law prohibits zero tolerance discipline policies, permitting suspension or expulsion only when all other "appropriate or available disciplinary interventions have been exhausted." The only exception is when a student's actions immediately threaten student safety. Teacher training and limitations on suspensions were also enacted.[106]

In June 2016, Rhode Island enacted a school reform statute. School superintendents are directed to review discipline data from their schools annually to decide if there is an unequal impact on any protected class of students and to respond to any disparity. Each school district is required to submit a report to the state on any actions taken on disparity, which report is a public record. Out-of-school suspensions are reserved for those students meeting the definition of "disruptive" (persistent, substantial misconduct and failure to respond to corrective action) or students who represent a demonstrable threat to students, teachers of administrators.[107]

Alternative Education for Disruptive Youth

One exclusionary method that is in use in the Commonwealth is the Alternative Education for Disruptive Youth ("AEDY") program. AEDY is a placement for students in grades 6-12 who have been removed from the classroom for certain disciplinary reasons.[108] Placements in the AEDY program are supposed to be temporary, as the goal of the program is to reintegrate these students back into their regular classrooms.[109] Students may be placed in AEDY for one of the following reasons:[110]

- Disregard for school authority, including persistent violation of school policy and rules
- Display of or use of controlled substances on school property or during school-affiliated activities
- Violent or threatening behavior on school property or during school-related activities

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[106] "Activists hail new law on school discipline; districts say few changes needed," *The News-Gazette*, Champlain, Ill., http:www.news-gazette.com/news/local/2015-8-27/activists-hail-new-law-school-discipline-districts-say-few-changes-needed.html (August 27, 2015)

[107] Borg, Linda. "Law limits school suspensions for minor infractions," *Providence* Journal, (June 29, 2016). R.I. Gen. Laws §§ 16-2-17; 16-2-17.1.

[108] Pennsylvania Department of Education, *Alternative Education for Disruptive Youth*, "AEDY Parent Flyer," http://www.education.pa.gov/Documents/K-12/Alternative%20Education%20for%20Disruptive%20Youth/AEDY%20Parent%20Flyer.pdf. (accessed September 21, 2016)

[109] *Ibid*.

[110] *Ibid*.

- Possession of a weapon on school property
- Commission of a criminal act on school property
- Misconduct that would merit suspension or expulsion under school policy
- Habitual truancy (truancy elimination plan must be implemented prior to placement)

AEDY programs must still provide students with a "sound educational course of study that meets or exceeds state standards." The program must provide at least 20 hours of instruction, and "must comply with the informal hearing procedures set forth in the Pennsylvania Code prior to placement of students." Further, a student can only be placed in an AEDY program if "established methods of discipline and intervention have been utilized and have failed." An AEDY teacher must "possess a Level I or Level II Pennsylvania Professional Teaching Certificate in the area of instructional assignment," and special education students must be taught by a teacher with a Special Education Certificate.[111]

As noted above, the AEDY programs are designed to change the disruptive student's behavior and see that he or she is returned to the regular classroom. To that end, "[p]rograms must develop a behavior plan for each student that has clear and measurable goals." The programs "must have a formal, documented process for periodic review and evaluation" of each student's academic and behavioral progress. The reviews must take place at the end of every semester, at minimum. Further, each AEDY program school must provide very detailed year-end reports. Importantly, the Pennsylvania Department of Education states in its AEDY Guidelines for 2013-2015 that it is the responsibility of each school to monitor the AEDY program school in which they place their disruptive students.[112]

There have been numerous criticisms of the AEDY program. The AEDY schools are supposed to provide detailed year-end reports, but none have been produced (or at least made available to the public) in almost a decade.[113] Although the General Assembly probably intended these programs to apply only to the most disruptive students, the catchall of "disregard for school authority" is broad and vague and is not necessarily akin to the more specific, dangerous and violent offenses in the other categories. According to the last publicly available report from PDE, 40.3% of placements in AEDY programs were based on either "disregard for authority" or "misconduct that would merit suspension or

[111] Pennsylvania Department of Education, *Alternative Education for Disruptive Youth*, "2013-2015 Program Guidelines,"
http://www.education.pa.gov/Documents/K12/Alternative%20Education%20for%20Disruptive%20Youth/2013-15%20Alternative%20Education%20for%20Disruptive%20Youth%20Program%20Guidelines.pdf (March 2013).
[112] *Ibid*.
[113] Education Law Center, "Improving 'Alternative Education for Disruptive Youth' in Pennsylvania," http://www.elc-pa.org/wp-content/uploads/2013/12/ELC_AltEdPA_FullReport_03_2010.pdf (March 2010).

expulsion."[114] It is impossible to determine whether the schools are effectuating the General Assembly's intent of only using these programs for the most disruptive students when a plurality of the students sent to these programs are sent there for a reason as vague as "disregard for authority" or any type of misconduct for which an administrator could plausibly suspend a student.

It is commonplace for districts to place students returning from juvenile detention straight into Public School Code of 1949 AEDY programs. These districts appear to be misreading Article XIX-C of the Education Code, which states that "[p]rograms may include services for students returning from placements or who are on probation resulting from being adjudicated delinquent."[115] No Pennsylvania court has ever held that a student could be placed in an AEDY program solely on the basis that he or she has been adjudicated delinquent or is returning from a juvenile corrections placement. In fact, a review of applicable case law suggests that schools do not have such authority. In Hoke v. Elizabethtown Area Sch. Dist., 833 A.2d 304, 310 (Pa. Commw. Ct. 2003), the court determined that a school district simply does not have the authority to punish a student for behavior that occurred before he enrolled in the district.[116] Further, the court has also instructed that placement in an AEDY program is only permissible if, after a hearing, the school can articulate why the student is disruptive based one of the reasons outlined above.[117]

Because PDE has given responsibility of overseeing the AEDY programs to the schools themselves, there is little monitoring of compliance with IDEA. According to the Education Law Center, PDE provided them with data pursuant to a 2012 Right to Know request which indicated that while 15 percent of Pennsylvania students were identified as students with disabilities, 43.66 percent of students in an AEDY program were classified as disabled.[118] Although Article XIX-C of the Public School Code of 1949 provides that "[n]o student who is eligible for special education services pursuant to the Individuals with Disabilities Education Act shall be deemed a disruptive student for the purposes of this act, except as provided for in 22 Pa. Code § 14.35," there is no way to tell if that provision is being respected by the schools themselves.[119] The inference could be drawn that they are not, as nearly half of AEDY program participants were disabled. Moreover, the reference to 22 Pa. Code §14.35 is not informative, as that provision of the code was left "reserved" and does not contain any law.[120]

A formal complaint was filed by the Education Law Center ("ELC") to the U.S. Department of Justice's Educational Opportunities Section. The core of the complaint is that the AEDY program discriminates against disabled and African-American students

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[114] *Ibid*. (citing Pennsylvania Department of Education, *Alternative Education for Disruptive Youth, 2005/2006 Annual Report for Public Schools*, April 2008. This report is no longer available from PDE).
[115] 24 P.S. §19-1901-C (2008).
[116] Hoke v. Elizabethtown Area Sch. Dist., 833 A.2d 304, 310 (Pa. Commw. Ct. 2003).
[117] D.C. et al. v. Sch. Dist. Of Philadelphia¸879 A.2d 408, 419 (Pa. Commw. Ct. 2005).
[118] Education Law Center, *Formal Complaint to the Department of Justice*, August 7, 2013, n.30.
[119] PSC § 1901-C; 24 P.S. §19-1901-C.
[120] 22 Pa. Code §14.35 (2016).

because they are disproportionally sent to AEDY programs.[121] However well intentioned, the complaint might not succeed.

The ELC's complaint is grounded in a theory of disparate impact discrimination, meaning that a facially neutral law disproportionally impacts a certain group of people.[122] ELC cited a U.S. Supreme Court ruling[123] for the principle that § 504 of the Rehabilitation Act of 1973[124] permits disparate impact claims against state educational departments. However, the judicial ruling assumed rather than decided that some programs could be barred by § 504 on a disparate impact theory and then ruled that there was no violation of § 504 by the program at issue in the case.[125] U.S. Supreme Court did not create a right of action under § 504 on a disparate impact theory but said that, even if a disparate impact cause of action is available, the challenged rule of the program at issue in the case did not disparately impact the disabled.[126]

There have also been positive reports about AEDY programs. One comprehensive study by the Center for Rural Pennsylvania concluded "current alternative education programs are viewed as moderately effective in reducing dropout, improving academic performance, reducing truancy, reducing disruptive behavior, improving school, attendance, changing target behaviors, and assisting students in the development of academic goals."[127] It also indicated that roughly 75 percent of students did eventually return to their regular classroom within one school year.[128]

Since the 2013 complaint to the DOJ, PDE has taken steps to have more uniform curriculum, training, and policies surrounding sending a student to an AEDY program. PDE has overhauled the AEDY site monitoring process, including conducting site visits and providing technical support. PDE has created a uniform AEDY referral form for the school districts to use, has developed a standard AEDY student review form for the AEDY programs to use in order to better monitor students' progress, and requires local education agencies, intermediate units and private AEDY program providers to provide a progressive behavior management system designed to help students "overcome disruptive behavior and transition back to the regular education setting."[129] In addition, PDE has provided onsite technical assistance on culturally responsive discipline to AEDY faculty.[130]

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[121] "Formal Complaint."
[122] *Ibid.*
[123] *Alexander v. Choate*, 469 U.S. 287 (1985).
[124] 29 U.S.C.A. § 794.
[125] A*lexander*, 469 U.S. at 309. The program at issue was Tennesee's Medicaid program.
[126] *Ibid.* It is facially neutral, not motivated on discrimination and the handicapped weren't excluded because the benefit of coverage was equally accessible to them. *Ibid.*
[127] Nathaniel S. Hosley *et al*., "Survey and Analysis of Alternative Education Programs II," *Center for Rural Pennsylvania*, http://www.rural.palegislature.us/alternative_ed2009.pdf. (September 2009).
[128] *Ibid*. at Table 5.
[129] Draft Alternative Education for Disruptive Youth (AEDY) Behavior Support Plan, including Sample Plan, provided by Pennsylvania Department of Education and on file in the Commission offices.
[130] E-mail from David Volkman, Executive Deputy Secretary, Pennsylvania Department of Education, to Yvonne Hursh, Counsel, Jt. State Gov't. Comm'n. (October 1, 2016).

Restorative Practices

Like restorative justice, restorative practices seek to balance punishment, accountability, redemption and rehabilitation.

> A central goal of this approach is to change the mindset of misbehaving students to help them gain greater respect for individuals in their community, including themselves, and more accountability to the community at large. Central to the concept of accountability is repairing any harm caused to victims and making the community whole, and doing so in a manner that also addresses the needs of the offenders so they are less likely to misbehave in the future.[131]

This is not a new concept in Pennsylvania school policy. Throughout the 19th century, much attention and debate was given to the need for both penal and "moral" discipline. In an 1874 speech reproduced in the Pennsylvania School Journal, the Reverend A.D. Mayo urged:

> There is a style of school discipline that can always be used in the beginning of transgression, such as private conversation by the teacher and most mature companions of the erring pupil; a slight withdrawal of the social privileges or pleasures of the room; a co-operation with the parents and friends outside – all handled with a tact that still holds the child within the circle of school society while under a firm and loving discipline. Here is the region where the great work of discipline can be done. Thousands of children can be saved from flagrant disobedience and disgrace, if brought thus within the loving influence of the whole body and kept in sympathy with the order of the school. Just as in society no man or woman should be thrust out until all social influences have been exhausted, no child in school should be ostracized till teachers, scholars, parents and officials have done their best to keep him in line with the public opinion that is the real moral law of the school.[132]

Over 140 years later, these sentiments were echoed by the young people who testified at the Advisory Committee's public hearing on July 28, 2016. The witnesses talked about how many students live in communities where violence predominates. Many have lost family members to gun violence, have absentee (sometimes voluntarily, sometimes because of incarceration) fathers and live in a home environment of grief and trauma. School becomes an escape from home life, but the issues with trust, abandonment and mental health stemming from those home environments follow them to school. They urged that schools create a climate of support that proactively helps students address the issues underlying and motivating their undesirable behavior. Additionally, they pleaded

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[131] *Supra* note 49, at p. 22.

[132] Mayo, Rev. A.D. "Moral Discipline in the Common Schools," *Pennsylvania School Journal*, Vol. 23, No. 2, pp. 33-39, (August 1874). *See also* Joyce, William, "Discipline in School," *Pennsylvania School Journal*, Vol. 12, pp. 248-250 (July 1863-July 1864).

that if a violent incident occurs and suspension is deemed necessary, a child should not just be sent home to an empty house with no support or counseling, which just perpetuates a cycle of acting out and expulsion. As one young man implored:

> If we take the actions necessary after something happens, as far as addressing that student in their home and what's going on in their life and really caring about that person, I mean because we are all people, we do need somebody to care about us, somebody to love us, I don't think that suspending somebody is showing somebody love, of course, you have to discipline, there is always discipline, there always has to be discipline, but there can be discipline with love.

According to the International Institute for Restorative Practices, "[r]estorative practices has its roots in restorative justice, a way of looking at criminal justice that emphasizes repairing the harm done to people and relationships rather than only punishing offenders."[133] With a restorative practices approach, the goal is to shift away from traditional punishments like detention toward "strategies that help students acquire the skills to engage in positive behaviors."[134] With these practices, "students participate in conversations with their teachers and peers to discuss problems at school and at home."[135] It is analogous to victim-offender remediation, but in a school setting and including behaviors in which the school community at large is affected.

There are several different restorative practices, but they are all similar in that they seek to "provide opportunities for students to share their feelings build relationships and solve problems, and when there is wrongdoing, to play an active role in addressing the wrong and making things right." One practice is the restorative conference, which is a meeting between the offending student, the victim of his or her behavior, and a teacher, administrator, or staff member who acts as a facilitator. The conference is voluntary and must be agreed to by all parties, and can be used either in lieu of other disciplinary measures or as a supplement.

The conferences address the consequences of the offending student's actions and work to determine the best course of action towards repairing the harm inflicted on the victim. This process not only gives the victim the opportunity to have her voice heard, but allows the offending student to hear firsthand how his or her behavior has affected others. During the conference, the facilitator will ask the offending student restorative questions such as "what happened," "what were you thinking about at the time," "what have you thought about since the incident," "who do you think has been affected by your actions," and "how have they been affected?"

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[133] "Defining Restorative," *International Institute for Restorative Practices*, http://www.iirp.edu/pdf/Defining-Restorative.pdf. (accessed September 14, 2016).
[134] Jennifer Dubin, "Learning to Switch Gears: In New Haven, a Restorative Approach to School Discipline," *American Educator*, (Winter 2015-2016).
[135] *Ibid*.

Conversely, the victims are also asked restorative questions, such as "what was your reaction at the time of the incident," "how do you feel about what happened," "what has been the hardest thing for you," and "how did your family and friends react when they heard about the incident?" The victim is also asked what he or should would like to be the outcome of the conference. The parties discuss the issue until an agreement is reached.

Restorative conferences provide the flexibility needed to gain a complete understanding of complex situations prior to determining the appropriate action. This unique forum prevents offending students from feeling singled out or that they are being treated unfairly, as is often the case with current punitive disciplinary measures, such as zero tolerance, automatic suspensions. Importantly, it empowers students who are victimized by the offending student's behavior to be a part of the solution. Through improving communication and understanding between all parties, this approach has been shown to facilitate healing and prevent future harms.

Another common restorative practice is the restorative circle, which can be used either in response to specific problems, concerns, or grievances, or to develop relationships and build community ties amongst the students. Circles tend to go in a sequential format, which is a structured format where one person is given the opportunity to speak at a time. Often, turns are taken in one direction around the circle or speakers are given a "talking piece" to be passed from person to person. Sequential circles are designed to prohibit back-and-forth augments and typically revolve around set topics where questions are raised by a circle facilitator, which would most likely to be a teacher in the school setting. Additionally, a sequential restorative circle may be used as a less formal alternative to restorative conferencing. One benefit of this format is that it "maximizes the opportunity for the quiet voices, those that are usually inhibited by louder and more assertive people, to speak without interruption."[136]

Another restorative practice that can be used informally or "on the fly" is the "affective question" method. Affective statements and questions encourage students to reflect on their behavior. For example, if a student is disruptive in class, a teacher can make statements like "when you disrupt the class, I feel disappointed." The idea is that students will learn how their behavior affects others. Moreover, teachers can pose questions used for restorative conferences without the structure and time contains of the more formal approaches. Asking students questions such as "who do you think has been affected by your behavior" and "how do you think they've been affected" can facilitate behavior change through reflection.[137]

[136] *Supra*, note 82.
[137] *Ibid*.

Examples of "Real World" Applications of Restorative Practices

One example of restorative practices in action is at Pittsfield Middle School in New Hampshire. There, lower-level offenses are referred to the school's "Justice Committee,"

> which is made up of student mediators, with school administrators and teachers serving as advisors. The Justice Committee is like a non-adversarial tribunal or arbitration, with other students as the mediators. The goal is to provide a non-confrontational forum for students to talk through their problems, address their underlying reasons for their own behaviors, and make amends both to individuals who have been affected as well as to the larger school community.

The Justice Committee has been helping students develop empathy for their peers and build trust and understanding. If all parties do not agree to participate in the Justice Committee hearing, then the school's normal discipline procedures are followed. [138]

Seeking to reduce harm, build community, and ensure successful re-integration of marginalized students coming from the juvenile justice system, the Oakland Unified School District ("OUSD") started the Whole School Restorative Justice ("WSRJ") program in 2005. The program utilizes restorative justice practices, including restorative circles, as well as family and group conferencing. OUSD's program uses a three-tiered model; prevention, intervention, and supported reentry. The tiered approach allows the school to address problems at every level with an emphasis on prevention. The third tier – supported re-entry – allows for students who have faced suspension, expulsion, and even incarceration, to be accepted and supported back into the school system.

Overall, OUSD has seen positive impacts due to the implementation of WSRJ. Oakland Schools has seen reduced suspensions, particularly for African-American students, reduced referrals for disruptive behaviors, improved conflict resolution and management, including the ability to understand peers and manage emotions, and even improved academic outcomes including a reduction chronic absenteeism among middle school students. Oakland Schools have also seen a rise in reading levels, on-time graduation rates, and a decline in dropouts. High schools utilizing restorative justice practices saw a 56 percent decline in dropout rates, compared to 17 percent for those high schools which did not adopt restorative justice practices. In addition, four-year graduation rates saw a cumulative increase of 60 percent; while non-restorative schools saw a 7 percent increase.

Over 60 percent of school staff members believed that the implementation of restorative practices helped to reduce suspensions. In 2014, within three years of implementation WSRJ student participant suspensions halved. The most significant decrease was seen in African-American students suspended for disruption or willful

[138] Emily Richmond, "When Restorative Justice in Schools Works," *The Atlantic*, http://theatlantic.com/education/archive/2015/12/when-restorative-justice-works/422088/ (December 29, 2015).

defiance, which fell by 40 percent, down to 630 from 1,050. During this time, middle schools in the OUSD that implemented restorative practices saw chronic absenteeism drop by 24 percent. In contrast, middle schools that did not implement restorative justice practices saw an increase of 62.3 percent. Regarding academic improvements, schools implementing restorative justice practices also saw their reading levels more than double in the 9th grade, from 14 percent to 33 percent, as measured by the Scholastic Reading Inventory.

Restorative justice practices have received commendation from the schools' faculty and staff as well. Within the OUSD, over half of the staff said it was easy or very easy to conduct restorative practices. Additionally, approximately 80 percent of the surveyed staff felt their school should continue using restorative justice practices. However, implementing restorative justice practices has not been without its challenges. Faculty and staff listed the major challenges for school-wide restorative practices as limited time to implement policies and procedures, trainings, information sharing, unclear discipline policies for serious offenses, student attitudes and student misuse of practices, and inconsistency in application.[139]

In January 2014, Chicago Public Schools ("CPS"), the country's third largest school district, implemented a comprehensive strategy to reduce the overuse of exclusionary disciplinary practices. The Suspension and Expulsion Reduction Plan ("SERP"), provided guidance on restorative practices and social emotional learning ("SEL") within their schools, aiming to address misconduct while keeping students in the classroom.

Since CPS implemented the plan, they have added over 100 restorative practice coaches, 72 climate support teams, 65 trained classroom management coaches, and a dedicated network of SEL support specialists. Through SERP, schools are providing "training and supports to all schools, provid[ing] enhanced clarity in discipline data reporting, and … continuously engag[ing] parents and other stakeholders in the efforts to improve school climates."

CPS are relying less on exclusionary practices and more on restorative practices. The 2014-2015 schools year saw a 61 percent decrease in out of schools suspensions, down to 9,907 from 25,218. Expulsion rates among District and charter schools saw a 38 percent decrease in the first semester of the 2014-2015 school year compared to the first semester in the previous year. For Districts schools, just 13 students were expelled in the first semester of 2014-2015 compared to 42 during the same time period the previous year.[140]

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[139] Sonia Jain and Henrissa Bassey, *et al.*, "Restorative Justice in Oakland Schools: Implementation and Acts: An Effective Strategy to Reduce Racially Disproportionate Discipline, Suspensions[,] and Improve Academic Outcomes," *Data in Action LLC,* http://www.ousd.org/cms/lib07/CA01001176/Centricity/Domain/134/OUSD-RJ%20Report%20revised%20Final.pdf. (October 15, 2014).

[140] Chicago Public Schools, "CPS Announces Mid-Year Data," http://cps.edu/News/Press_releases/Pages/PR1_3_19_2015.aspx (March 19, 2015).

The lynchpin of restorative practices is accountability. If such practices are properly integrated with a "whole school" approach, students will feel a responsibility to act in accordance to their "social contact" between themselves and the school community.[141] These programs have shown promising results in multiple case studies across the country, with many schools seeing improvements both in overall school climate and in tangible metrics such as suspension and drop-out rates. However, restorative practices are not a panacea or quick-fix, and they cannot just be shoe-horned into a school. There is concern that schools will take "things that are working" and then "replicat[e] them quickly and badly," and as a consequence discredit the otherwise good idea of restorative practices.[142] "Restorative justice has become a hot issue … but it may not be what every school needs."[143] Restorative practices can be implemented but should be done as part of an overall reform of the school's climate and culture.[144]

Positive Behavior Intervention and Support

A number of alternatives designed to help curtail the use of expulsions and out-of-school suspensions focus on addressing problem behaviors early, before they become offenses for which the school could reasonably suspend a student. Positive Behavior Intervention and Support (PBIS) is one proposed solution, as mentioned in the report *Guiding Principles: A Resource Guide for Improving School Climate and Discipline*, a non-regulatory guidance from the U.S. Department of Education.[145] The Department of Education's report is not intended to be a primer on PBIS, however its recommendations on creating "positive school climates" are indistinguishable from the concept of PBIS.[146] In fact, the PBIS Technical Assistance Center, a website for promoting and teaching about PBIS, was established by the U.S. Department of Education's Office of Special Education Programs.[147]

PBIS is "a framework or approach for assisting school personnel in adopting and organizing evidence-based behavioral interventions into an integrated continuum that enhances academic and social behavior outcomes for all students."[148] It is not a specific program or curriculum.[149] "The underlying theme" of PBIS "is teaching behavioral

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[141] Thalia Gonzalez, "Keeping Kids in Schools: Restorative Justice, Punitive Discipline, and the School to Prison Pipeline," *Journal of Law & Education* 41, no. 2 : 281-335. (April 2012).
[142] *Supra* note 139.
[143] *Ibid*.
[144] *Ibid*.
[145] U.S. Department of Education, *Guiding Principles: A Resource Guide for Improving School Climate and Discipline*, Washington, D.C., (2014).
[146] *Ibid*.
[147] Positive Behavioral Interventions and Supports Technical Assistance Center, www.pbis.org. (accessed September 6, 2016).
[148] "PBIS Frequently Asked Questions," *Positive Behavioral Interventions and Supports Technical Assistance Center*, https://www.pbis.org/school/swpbis-for-beginners/pbis-faqs. (accessed September 7, 2016).
[149] *Ibid*.

expectations in the same manner as any core curriculum subject."[150] PBIS functions by setting behavioral expectations for students, telling them what to do instead of what not to do.[151] The objective of PBIS is to create a culture or climate within the school where students feel accountable to themselves, their peers, their teachers, and staff, and where students expect appropriate behavior from others.

To provide different levels of care to students based on their disciplinary needs, PBIS utilizes a three-tiered system of disciplinary measures, called "supports." Tier one "consists of rules, routines, and physical arrangements that are developed and taught by school staff to prevent initial occurrences of behavior the school would like to target for change."[152] This tier is the foundation and defines and teaches appropriate behaviors the children are expected to follow. The goal is to intervene before student misconduct occurs, by instructing the students to exhibit correct behavior.[153] These rules, routines, and expected behaviors should be the same throughout the school, and there should be a "consistent application of positive and negative reinforcement."[154]

As part of the "positive reinforcement," teachers and administrators should implement a points-reward system, where good behavior is rewarded with "points" that can then be exchanged like money for certain "rewards." The points are earned in a generally transparent manner, so that, for example, not being late to class for one quarter earns a pre-determined amount of points. Conversely, there are typically separate levels of consequences, such that different misbehaviors fall into different categories. For example, the Halifax Elementary School in Halifax, a suburb of Harrisburg, provides for three "Levels of Consequences," the first level being "concerns," the second "fouls," and the third "strikes." There are specific consequences after a number of fouls and strikes, and these are communicated to the students and their parents through the student handbook. For example, after three "fouls" the teacher will contact the parent regarding the student's behavior.

Tier two is designed to get students who commit minor infractions on a regular basis back on track. It is referred to on the PBIS Technical Assistance Center website as "targeted group support."[155] PBIS World, a webpage devoted to providing teachers resources to implement PBIS, describes a number of these "group supports."[156] This website was created by a school social worker with no input from any organization or governmental agency.[157] One example of tier two support methods is called "check-in/check-out" and "consists of students daily checking in with an adult at the start of school

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[150] "SWPBIS for Beginners," *Positive Behavioral Interventions and Supports Technical Assistance Center*, https://www.pbis.org/school/swpbis-for-beginners. (accessed September 7, 2016).
[151] *Ibid.* "[R]ather than telling students what not to do, the school will focus on the preferred behaviors."
[152] "Tier One Supports," *Positive Behavioral Interventions and Supports Technical Assistance Center*, https://www.pbis.org/school/tier1supports. (accessed September 7, 2016).
[153] *Ibid*.
[154] *Ibid*.
[155] "Tier Two Supports," *Positive Behavioral Interventions and Supports Technical Assistance Center*, https://www.pbis.org/school/tier2supports (accessed September 7, 2016).
[156] PBIS World Homepage, www.pbisworld.com/ (accessed September 8, 2016).
[157] "About," *PBIS World*, http://www.pbisworld.com/about/ (accessed September 8, 2016).

to retrieve a goal sheet and encouragement," having "teachers provide feedback on the sheet throughout the day, students check out at the end of the day with an adult, and the student tak[ing] the sheet home to be signed," and then returning the parent-signed sheet at school the next morning at check-in.[158] Other tier two interventions include small-group teaching sessions, where students are taught things like social skills, relaxation techniques, relationship skills, coping skills, and conflict resolution skills.[159]

If a student continues to engage in disruptive or otherwise inappropriate behavior, tier three interventions are initiated for the student. Tier three interventions are "designed to focus on the needs of individuals who exhibited patterns of problem behavior."[160] When tier three support is initiated for a student, a "behavioral support team" is created for him or her, consisting of people who know the student best, such as the student's teacher and administrators who have had frequent contact with the student. Tier three support is individualized and tailored to the students' specific needs and circumstances. Generally, the behavioral support team will conduct a "functional behavioral assessment" of the student and develop and "behavioral intervention plan" for him or her.[161]

The "functional behavioral assessment" typically consists of reviewing what behaviors the student is commonly engaging in, where, when, and with whom are they usually occurring (*e.g.* in the classroom in the afternoon with Curly and Moe), and reviewing the student's previous disciplinary history.[162] A "behavioral intervention plan" consists of formulating a plan that lists the problem behaviors (*e.g.* instigating, provoking, annoying, or aggravating other students), the objectives to be accomplished with the intervention plan (*e.g.* increase coping skills and eliminate disruptions), and preventative strategies (*e.g.* sit nearer to the teacher and eat lunch in an alternate setting).[163] The behavioral intervention plan also lists which positive behaviors the student needs to be taught or needs to work on (*e.g.* teaching the student to ask to take a break when he or she feels a conflict will escalate, and teaching the student to verbalize thoughts and feelings rather than act them out).[164]

Additionally, the behavioral intervention plan should also specify what the consequences would be for the student's for non-compliance. The behavioral intervention plan should also include detailed home interventions, such as having the parent maintain regular communication with teachers and administrators and having the parent reinforce and practice conflict resolution and coping skills with the student. These tier three supports can be used in conjunction with ongoing tier two supports, such as check-in/check-out and small group support classes.

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[158] "Check In Check Out (CICO)," *PBIS World*, http://www.pbisworld.com/tier-2/check-in-check-out-cico/. (accessed September 8, 2016).
[159] "Tier Two Interventions," *PBIS World*, http://www.pbisworld.com/tier-2/. (accessed September 8, 2016).
[160] "Tier Three FAQs," *Positive Behavioral Interventions and Supports Technical Assistance Center*, https://www.pbis.org/school/tier3supports/tier3faqs. (accessed September 8, 2016)
[161] *Ibid*.
[162] *Ibid.*
[163] "Behavioral Intervention Plan," *PBIS World*,
http://www.pbisworld.com/tier-3/behavior-intervention-plan-bip/. (accessed September 9, 2016)
[164] *Ibid.*

Recording data is the primary way of measuring students' responses to PBIS. The data show which interventions are effective and which need to be reformed or replaced. It is recommended that, when utilizing the PBIS framework, teachers and administrators keep detailed records of student behavior and the interventions utilized, and then compile this information into school-wide data sets to determine how effective PBIS techniques are in eliminating negative behaviors and encouraging positive ones. Logging events that take place between students, teachers, and administrators should be detailed and precise.

Other schools across the country have adopted PBIS frameworks, and as a result of the emphasis on good record keeping and data compilation, it can be seen that PBIS has been used with promising results. Surveying the literature, as of 2007 more than 7,000 schools across the United States have adopted PBIS or are in the process of adopting it. Implementation of PBIS is "associated with reduction in both observed rates of problem behavior" and "reported office discipline referrals."[165] Proper implementation of PBIS even resulted in academic gains, conjectured by creating a classroom culture where students are present, attentive, and engaged.[166]

More locally, the Pennsylvania Positive Behavior Support Network ("PAPBS") provides "training and technical assistance, [and] supports schools and their family and community partners to create and sustain comprehensive, school-based behavioral health support systems in order to promote the academic, social and emotional well-being."[167] According PAPBS, there were 173 schools implementing PBIS programs as of June 2016.[168] Pennsylvania schools began using PBIS in earnest after a 2007 pilot program involving 33 schools from across the Commonwealth.[169] The pilot program was deemed to be a success, with tangible metrics trending in the right direction, such as much lower disciplinary rates compared with non-implementing schools after four years.[170]

Because of the number of variables at play, most notably how committed faculty and administrators are to implementing PBIS and the diversity of PBIS tools that schools may opt to employ, "little organized research utilizing randomized controlled test patterns has been conducted on the influence of PBIS."[171] However, in the studies that have been published, it has been observed that a variety of behavioral challenges, including

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[165] *Ibid.* (internal citations omitted)
[166] *Ibid.*
[167] "About Us," *Pennsylvania Positive Behavior Support Network,* http://www.papbs.org/ContentLoader.aspx?PageID=6bb7b9ef-606e-42e7-8238-a57dbd42d58a. Please note that the reference to "behavioral health" is a typo. It should read "behavioral support." (accessed September 29, 2016)
[168] "June 17, 2016 Update – SW PBIS Schools Implementing with Fidelity," *Pennsylvania Positive Behavior Support Network,* http://www.papbs.org/ContentLoader.aspx?PageID=cf2251ed-cee8-467b-9ddd-d00d80e7a330. (accessed September 29, 2016)
[169] Timothy J. Runge *et al.*, *Pennsylvania School-Wide Positive Behavioral Intervention & Supports: 3rd Annual Summary of Implementation Fidelity and Impact on PA PBS Network Schools in Year 2006-2011,* (September 2011).
[170] *Ibid*.
[171] Sezgin Vuran and Kursat Ogulmus, "Schoolwide Positive Behavioral Interventions and Support Practices: Review of Studies in the Journal of Positive Behavior Interventions," *Educational Sciences: Theory and Practice*: 1517. DOI: 10.12738/estp.2016.5.0264 (October 2016).

aggressive or disruptive behavior and office discipline referrals, were positively impacted by the introduction of PBIS. It has also been observed that the younger the student is when he or she is exposed to PBIS methods, the stronger the impact those methods have on the student's behavior.[172]

Other states which have been experimenting with PBIS techniques appear to be having positive outcomes. For example, the Georgia Department of Education is actively working to implement PBIS statewide, and had 200 schools as of 2013 using PBIS frameworks, the 16th most of any state.[173] In Virginia, statewide use of PBIS resulted in a 75 percent reduction of out-of-school suspension in general education students, and an 86 percent reduction for special education students.[174] Virginia's implementation of PBIS also reduced in-school suspensions by 45.3 percent and office disciplinary referrals by 29 percent for general education students.[175] In 2015, the Saint Paul Public Schools, Minnesota expanded PBIS district-wide. While most teachers have supported the less punitive approach to discipline, concerns have been raised that the district is so reluctant to punish students that it has allowed low-level misbehavior to be ignored, which can allegedly lead to more troublesome behaviors. In negotiating with the teacher's union at its schools, the district has committed to increasing student supervision and teach training.[176]

In recent non-binding regulatory guidance from the U.S. Department of Education, failure to consider, properly implement, or consistently apply PBIS methods for a child with an Individual Education Plan (IEP) pursuant to the Individuals with Disabilities in Education Act (IDEA) may be considered a failure to provide a fair and appropriate public education (FAPE) and therefore violate that child's rights under that statute and its subsequent regulations.[177] As more and more elementary and secondary schools adopt PBIS for general education students, its application may become *de facto* mandatory in the special education setting, as tolerance by the federal courts of suspensions and expulsions of students protected under IDEA for minor infractions wanes.

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[172] *Ibid*.
[173] Georgia Department of Education. Positive Behavioral Intervention & Supports of Georgia: The Strategic Plan 2014-2020, http://www.gadoe.org/Curriculum-Instruction-and-Assessment/Special-Education-Services/Documents/PBIS/GaDOE%20PBIS%20Strategic%20Plan.pdf.
[174] "Educate Every Child," *Legal Aid Justice Center*, http://www.njjn.org/uploads/digital-library/VA_Educate-Every-Child-Report_Legal-Aid-Justice-Center_Nov17-2011.pdf. (November 2011).
[175] *Ibid*.
[176] Wastvedt, Solvejg, "Student discipline approach divides St. Paul school teachers, leaders," MPRNews, (February 11, 2016).
[177] U.S. Department of Education, Office of Special Education and Rehabilitative Services, Dear Colleague Letter, Washington, D.C., (August 1, 2016).

Other Programs and Alternatives Used in Pennsylvania

Philadelphia Police School Diversion Program

One unique approach being taken by Philadelphia schools involves working more closely with law enforcement and social workers to reduce incidences of students entering the juvenile justice system. From 2002 to 2011, the School District of Philadelphia ("SDP"), which includes 214 public schools, utilized a strict zero tolerance school discipline policy. In an effort to change course, the SDP abandoned its overuse of zero tolerance policies in 2012 and the new Police School Diversion Program was introduced as an alternative approach in the spring of 2014. The program requires coordination between multiple agencies within Philadelphia, consisting of SDP staff, the Philadelphia Police Department (PPD), including 320 SDP police officers and 84 specially trained PPD school police officers, the Juvenile Justice Services Division of the City's Department of Human Services (DHS), including social workers and other community-based service providers, and Philadelphia's other juvenile justice system agencies.

The program provides services to meet students' underlying needs, relying on the City DHS's community-based Intensive Prevention Services providers to work with youth and their families to overcome challenges and provide support. Supports are determined on an individual basis by a social worker from the City's DHS. The issues to be addressed may include preventing truancy, providing positive role models, improving academic performance, enhancing life and social skills, and helping build family relationships though counseling and constructive activities.

When a student has been involved in a behavioral incident or delinquent act, the principal or school police officer contacts the PPD's school police officer (an officer at the department who deals with school students but is not posted at the school), who then reviews the incident. If the incident is a low-level summary offense or misdemeanor, the PPD schools police officer contacts the Diversion Intake Center to determine if the student has had a previous finding of delinquency by a juvenile court or if the student is currently supervised under juvenile probation. If the student has had prior contact with the juvenile justice system, they are ineligible for the diversionary program. The student is also ineligible if he or she has committed a high-level offense, such as an offense relating to sexual misconduct or a weapons offense.

If the student has no such juvenile justice history, the student may return to class while arrangements are made for him or her to be given the opportunity to enter the Police School Diversion Program. Within 72 hours, a social worker from the city's DHS visits the student's home and speaks with both the student and the parent or guardian. The social worker tries to identify issues that may be affecting the student's attitude and behavior. These issues can include the student's physical environment, such as access to sufficient food and clothing and stable housing, psychological issues, such as family conflicts and parental issues like unemployment or legal problems, and health issues in the family, such as a disability.

With this information, the social worker then determines whether a referral for social services is warranted, and which services are the most appropriate for the student and his or her family. The social worker explains the terms and conditions of the Police School Diversion Program and its value to the student and his or her parent or guardian. Nevertheless, the program is voluntary, and if the student chooses not to participate, the PPD will then handle the matter within the juvenile justice system. If the student does agree to participate in the program, he or she is referred to an Intensive Prevention Service provider, who conducts a thorough intake to identify the specific services that are needed. The Intensive Prevention Services provider then assigns a case manager to the student and his or her family and begins scheduling services. The social worker maintains contact with the family, visiting them bi-weekly.

During the first year of the Police School Diversion Program (2014-2015), there was a 54 percent decrease in arrests within the SDP schools. This was accompanied by a 75 percent reduction in the number expulsions and disciplinary transfers. Overall, the District had 1,051 fewer behavioral incidences than in the previous school year – a 17 percent reduction. For the 2015-2016 school year, the SDP saw further decreases in arrests, down another 14 percent from the previous year.[178]

Youth Aid Panels

Youth aid panels are designed to use trained community volunteers to hear cases of first-time offenders. There hearings are intended to help the juvenile understand all the aspects and effects of the charges they are facing. A contract is developed to help the youth engage in balanced and restorative justice principles. Tasks may include actions like community service, writing an essay, writing a letter of apology to the victim, paying restitution, completing an art project or joining an extracurricular activity. If the contract is successfully completed, the youth avoids being adjudicated delinquent of the charges involved in the incident.[179]

Currently, 18 Pennsylvania counties have Youth Aid Panels.[180] Generally, youth aid panels are available for first-time, non-violent summary and misdemeanor offenders. Some data from the Lower Merion (Montgomery County) Police Department provide an example of the ability of such panels to divert youth from delinquency adjudications.

[178] "Keeping Kids in School and Out of Court: Philadelphia Police School Diversion Program," *Stoneleigh Foundation*, http://www.stoneleighfoundation.org/sites/default/files/SchoolDiversionProgram-Spreads.pdf. (accessed September 19, 2016).
[179] "What is a Youth Aid Panel/", *Community Justice Report*, Newsletter of the Pennsylvania Council on Community Youth Aid Panels, (Fall 2006).
[180] Berks, Bucks, Centre, Chester, Columbia, Columbia, Delaware, Erie, Fayette, Franklin, Lancaster, Lehigh, Luzerne, Montgomery, Philadelphia, Union, Westmoreland, York.

Table 15

Juveniles Processed by Lower Merion Township Police Department
Montgomery County, Pennsylvania
January 2012 to June 2016

Year	Total Number Processed	Handled through District Justice	Referred to Juvenile Probation Department	Referred to Youth Aid Panel
2012	127	40	58	29
2013	167	61	43	63
2014	112	46	42	25
2015	130	48	43	39
Jan-Jun 2016	63	15	29	19
Total	*599*	*210*	*215*	*175*

Source: Email from Michael J. McGrath, Superintendent of Police, Lower Merion Township Police Department

Alternative Disciplinary Approaches Used in Other States

The large majority of states have laws that allow students to be transferred to an alternative learning environment or an alternative school. Though the circumstances that allow (or require) students to be transferred to an alternative setting vary by state, this option is often a last resort. Less disruptive laws exists in few other states that allow students to either rearrange their class schedule or be reassigned to another appropriate class or placement. In-school suspension and detention are also common among states. Over one-third of states allow corporal punishment as a means of correcting behaviors. Pennsylvania is not one of these states.

In most states, laws exist that allow the teacher to remove, seclude, or separate a disruptive student from the classroom and the rest of their peers. This measure, however, is often saved as a last resort. Overall, states only allow these actions to be taken if there is imminent danger to the students and/or staff.

Parental involvement in various forms is also popular. The most common tactic is to have a conference with parents about the student's actions. Three states have adopted laws that allow the parent or guardian of the student to attend school with the pupil in order to correct their behavior. Other less common means of reform, which are often an imposition on the parent or guardian, include the imposition of fines or restitution and removal from state sponsored transportation.

Assigning community service is another method states have invoked to alter student behavior. Other lesser-used punishments include assigning additional course work, reflective activities, and graduation restrictions. Very few have laws that aim to connect students with outside services to help the student overcome any challenges they are facing, which may be resulting in the negative conduct.

Methods such as counseling, behavior and anger management, and other prosocial interventions are gaining traction and have been implemented in a number of states. California and Maine have executed the greatest number of programs with this approach. These alternative methods generally aim to rehabilitate the student, rather than simply punishing them for their unwanted behavior.

Though states may not have specific laws allowing these interventions, they may be practicing some of these measures of discipline. The Commission is unaware of how often these alternatives are implemented or how effective these measures are.

Alternative Disciplinary Approaches	**State**
Alternative learning environment/ Alternative School	AL, AZ, AR, DE, FL, GA, IL, IN, KY, LA, MD, MA, MI, MN, MS, MO, NE, NV, NH, NJ, NM, NY, OR, PA, SC, TN, TX, VT, VA, WA, WV, WI
Removal, seclusion, or separation of pupils creating disciplinary problems	AL[181], AR, CO, DE, FL, GA, IL, IN, LA, MD, MI, MN, MS, MT, NV, NH, NC, ND, SC, TN, TX, VA, WA, WV, WI
Corporal punishment	AL, AZ, AR, FL, GA, LA, MI, MS, MO, NC, OK, SC, SD, TN, TX, UT, WI, WY
In-school suspension	AL, AR, CA, CO, CT, FL, GA, HI, IL, LA, ME, MD, MA, MO, NM, OH, PA, RI, SC, TN, TX, UT
Community service	AZ, IN, ME, NC, OH, TX
Conference with the student(s) and the parent(s)	CA, IN, ME, MD, MA, NE, NC, OK, RI
Referrals to the school counselor, psychologist, social worker, child welfare attendance personnel, or other school support service personnel	CA, OK, TX
Study teams, guidance teams, resource panel teams, or other intervention-related teams that assess the behavior, and develop and implement individualized plans to address the behavior in partnership with the pupil and his or her parents.	CA
Referral for a comprehensive psychosocial or psychoeducational assessment, including for purposes of creating an individualized education program	CA
Behavior or anger management programs	AR, CA, ME, MA, NY, NC, VT
Participation in a restorative justice program.	CA, MA

[181] State approval necessary for rules implementing such measures; deprivation of right to equal and adequate education may not result.

Alternative Disciplinary Approaches	State
A positive behavior support approach with tiered interventions that occur during the school day on campus	CA
After-school programs that address specific behavioral issues or expose pupils to positive activities and behaviors, including, but not limited to, those operated in collaboration with local parent and community groups	CA
Reassignment to another appropriate class or placement	CT[182], IN, OK
Imposition of fines/ restitution	DE, OK, SC
Withholding grades, diplomas or transcripts	DE, MT
Dropout prevention and academic intervention program	FL
Restriction or prohibition from attending or participating in school-sponsored or school-related activities	FL, IN, MA, NE, OK, RI
Evening or weekend high school/detention	IL, IN[183], LA, ME, MN, NE, NM, NC, OR, RI, SC
In-school tutoring and mentoring programs	IL, MN
Reassignment to another appropriate class or placement	IN, WI
Counseling with a student or group of students	IN, LA, ME, MD, NE, NY, SC, OR, WA
Assigning additional work.	IN, NE
Rearranging class schedules.	IN, NE
Removal from school sponsored transportation	IN, NH, RI, WV
Reflective activities, such as requiring the student to write an essay about the student's misbehavior	ME
Health counseling or intervention	ME
Participation in skills building and resolution activities, such as social-emotional cognitive skills building, resolution circles and restorative conferencing	ME
Having the parent or guardian of the pupil attend school with the pupil	MN, MS, UT
Petition the juvenile court that the student is in need of services	MN
Behavior contracts	AR, NC, TX
Loss of the opportunity to participate in graduation exercises or middle school promotional activities	RI
Police contact	RI

[182] A local or regional board of education may reassign a pupil to a regular classroom program in a different school in the school district.
[183] To do additional school work or for counseling

Alternative Disciplinary Approaches	State
Withdrawal of privileges	SC
Demerits	SC
Transfer	SC
Referral to community based services	TX

APPENDIX A:
PENNSYLVANIA SCHOOL DISCIPLINE LAWS AND REGULATIONS

Selected Provisions of The Public School Code of 1949

Section 1317.2. Possession of Weapons Prohibited.[184]

(a) Except as otherwise provided in this section, a school district or area vocational-technical school shall expel, for a period of not less than one year, any student who is determined to have brought onto or is in possession of a weapon on any school property, any school-sponsored activity or any public conveyance providing transportation to a school or school-sponsored activity.

(b) Every school district and area vocational-technical school shall develop a written policy regarding expulsions for possession of a weapon as required under this section. Expulsions shall be conducted pursuant to all applicable regulations.

(c) The superintendent of a school district or an administrative director of an area vocational-technical school may recommend modifications of such expulsion requirements for a student on a case-by-case basis. The superintendent or other chief administrative officer of a school entity shall, in the case of an exceptional student, take all steps necessary to comply with the Individuals with Disabilities Education Act (Public Law 91-230, 20 U.S.C. § 1400 et seq.).

(d) The provisions of this section shall not apply to the following:

(1) a weapon being used as part of a program approved by a school by an individual who is participating in the program; or

(2) a weapon that is unloaded and is possessed by an individual while traversing school property for the purpose of obtaining access to public or private lands used for lawful hunting, if the entry on school premises is authorized by school authorities.

(e) Nothing in this section shall be construed as limiting the authority or duty of a school or area vocational-technical school to make an alternative assignment or provide alternative educational services during the period of expulsion.

(e.1) A school district receiving a student who transfers from a public or private school during a period of expulsion for an act or offense involving a weapon may assign that student to an alternative assignment or provide alternative education services, provided that the assignment may not exceed the period of expulsion.

(f) All school districts and area vocational-technical schools shall report all incidents involving possession of a weapon prohibited by this section as follows:

(1) The school superintendent or chief administrator shall report the discovery of any weapon prohibited by this section to local law enforcement officials.

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[184] 24 P.S. § 13-1317.2.

(2) The school superintendent or chief administrator shall report to the Department of Education all incidents relating to expulsions for possession of a weapon on school grounds, school-sponsored activities or public conveyances providing transportation to a school or school-sponsored activity. Reports shall include all information as required under section 1303-A.

(g) As used in this section, the term "weapon" shall include, but not be limited to, any knife, cutting instrument, cutting tool, nunchaku, firearm, shotgun, rifle and any other tool, instrument or implement capable of inflicting serious bodily injury.

Section 1318. Suspension and Expulsion of Pupils.[185]

Every principal or teacher in charge of a public school may temporarily suspend any pupil on account of disobedience or misconduct, and any principal or teacher suspending any pupil shall promptly notify the district superintendent or secretary of the board of school directors. The board may, after a proper hearing, suspend such child for such time as it may determine, or may permanently expel him. Such hearings, suspension, or expulsion may be delegated to a duly authorized committee of the board, or to a duly qualified hearing examiner, who need not be a member of the board, but whose adjudication must be approved by the board.

Section 1302.1-A. Regulations.[186]

(a) Within one year of the effective date of this section, the State Board of Education shall promulgate final-omitted regulations pursuant to the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act," necessary to implement this article. The regulations shall include the following:

(1) A model memorandum of understanding between school entities and local police departments. The model memorandum of understanding shall be reviewed on a biennial basis and revised where necessary. The State Board of Education may revise the model memorandum of understanding by publishing a notice in the Pennsylvania Bulletin that contains the complete revised model memorandum of understanding. The revised model memorandum of understanding shall be incorporated into the Pennsylvania Code in place of the existing model memorandum of understanding.

(2) Protocol for the notification of the police department when an offense listed under section 1303-A(b)(4.1) occurs on school property, which shall include a requirement that the local police department be notified immediately when such an offense occurs.

(3) Protocol for the notification of the police department at the discretion of the chief school administrator regarding an offense listed under section 1303-A(b)(4.2) or any other offense that occurs on school property.

(4) Protocol for emergency and nonemergency response by the police department, which shall include a requirement that the school district shall supply the police department with a copy of the comprehensive disaster response and emergency preparedness plan as required by 35 Pa.C.S. § 7701(g) (relating to duties concerning disaster prevention).

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[185] 24 Pa.C.S. § 13-1318.

[186] 24 Pa.C.S. § 13-1302.1-A.

(5) Procedures and protocols for the response and handling of students with a disability, including procedures related to student behavior as required by 22 Pa. Code §§ 14.104 (relating to special education plans) and 14.133 (relating to positive behavior support).

(b) (1) In promulgating the regulations required under subsection (a), the State Board of Education shall convene and consult with a Statewide advisory committee which shall include a police chief, juvenile public defender, school superintendent, school principal, district attorney, solicitor of a school district, special education supervisor, special education advocate and in-school probation officer and one designee from the Department of Education, the Pennsylvania Commission on Crime and Delinquency, the Municipal Police Officers' Education and Training Commission, the Juvenile Court Judges' Commission and the Pennsylvania State Police.

(2) Members of the committee shall be selected to be representative of the rural, suburban and urban school entities of this Commonwealth.

(3) The advisory committee shall be convened no later than sixty (60) days after the effective date of this section and shall meet regularly to fulfill the requirements of this section.

Section 1303-A. Reporting.[187]

(a) The office [Office for Safe Schools] shall conduct a one-time survey of all school entities to determine the number of incidents involving acts of violence on school property and all cases involving possession of a weapon by any person on school property which occurred within the last five (5) years. The survey shall be based on the best available information provided by school entities.

(b) Each chief school administrator shall report to the office by July 31 of each year all new incidents involving acts of violence, possession of a weapon or possession, use or sale of controlled substances as defined in the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or possession, use or sale of alcohol or tobacco by any person on school property. The incidents to be reported to the office shall include all incidents involving conduct that constitutes a criminal offense listed under paragraphs (4.1) and (4.2). Reports on a form to be developed and provided by the office shall include:

(1) Age or grade of student.

(2) Name and address of school.

(3) Circumstances surrounding the incident, including, but not limited to, type of weapon, controlled substance, alcohol or tobacco, the date, time and location of the incident, if a person other than a student is involved in the incident and any relationship to the school entity.

(3.1) Race of student.

(3.2) Whether the student has an Individualized Education Plan under the Individuals with Disabilities Education Act (Public Law 91-230, 20 U.S.C. § 1400 et seq.), and if so, the type of disability.

(4) Sanction imposed by the school.

(4.1) A list of criminal offenses which shall, at a minimum, include:

(i) The following offenses under 18 Pa.C.S. (relating to crimes and offenses):

[187] 24 Pa.C.S. § 13-1303-A.

Section 908 (relating to prohibited offensive weapons).

Section 912 (relating to possession of weapon on school property).

Chapter 25 (relating to criminal homicide).

Section 2702 (relating to aggravated assault).

Section 2709.1 (relating to stalking).

Section 2901 (relating to kidnapping).

Section 2902 (relating to unlawful restraint).

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3124.2 (relating to institutional sexual assault).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

Section 3301 (relating to arson and related offenses).

Section 3307 (relating to institutional vandalism) when the penalty is a felony of the third degree.

Section 3502 (relating to burglary).

Section 3503(a) and (b)(1)(v) (relating to criminal trespass).

Section 5501 (relating to riot).

Section 6110.1 (relating to possession of firearm by minor).

(ii) The possession, use or sale of a controlled substance or drug paraphernalia as defined in "The Controlled Substance, Drug, Device and Cosmetic Act."

(iii) Attempts, solicitation or conspiracy to commit any of the offenses listed in subclauses (i) and (ii).

(iv) An offense for which registration is required under 42 Pa.C.S. § 9795.1 (relating to registration).

(4.2) The following offenses under 18 Pa.C.S., and any attempt, solicitation or conspiracy to commit any of these offenses:

Section 2701 (relating to simple assault).

Section 2705 (relating to recklessly endangering another person).

Section 2706 (relating to terroristic threats).

Section 2709 (relating to harassment).

Section 3127 (relating to indecent exposure).

Section 3307 (relating to institutional vandalism) when the penalty is a misdemeanor of the second degree.

Section 3503(b)(1)(i), (ii), (iii) and (iv), (b.1) and (b.2) (relating to criminal trespass).

Chapter 39 (relating to theft and related offenses).

Section 5502 (relating to failure of disorderly persons to disperse upon official order).

Section 5503 (relating to disorderly conduct).

Section 6305 (relating to sale of tobacco).

Section 6306.1 (relating to use of tobacco in schools prohibited).

Section 6308 (relating to purchase, consumption, possession or transportation of liquor or malt or brewed beverages).

(5) Notification of law enforcement.

(6) Remedial programs involved.

(7) Parental involvement required.

(8) Arrests, convictions and adjudications, if known.

(b.1) Prior to submitting the report required under subsection (b), each chief school administrator and each police department having jurisdiction over school property of the school entity shall do all of the following:

(1) No later than thirty (30) days prior to the deadline for submitting the report to the office required under subsection (b), the chief school administrator shall submit the report to the police department with jurisdiction over the relevant school property. The police department shall review the report and compare the data regarding criminal offenses and notification of law enforcement to determine whether the report accurately reflects police incident data.

(2) No later than fifteen (15) days prior to the deadline for the chief school administrator to submit the report required under subsection (b), the police department shall notify the chief school administrator, in writing, whether the report accurately reflects police incident data. Where the police department determines that the report accurately reflects police incident data, the chief of police shall sign the report. Where the police department determines that the report does not accurately reflect police incident data, the police department shall indicate any discrepancies between the report and police incident data.

(3) Prior to submitting the report required under subsection (b), the chief school administrator and the police department shall attempt to resolve discrepancies between the report and police incident data. Where a discrepancy remains unresolved, the police department shall notify the chief school administrator and the office in writing.

(4) Where a police department fails to take action as required under paragraph (2) or (3), the chief school administrator shall submit the report required under subsection (b) and indicate that the police department failed to take action as required under paragraph (2) or (3).

(c) Each chief school administrator shall form an advisory committee composed of relevant school staff, including, but not limited to, principals, security personnel, school resource officers, guidance counselors and special education administrators, to assist in the development of a memorandum of understanding pursuant to this section. In consultation with the advisory committee, each chief school administrator shall enter into a memorandum of understanding with police departments having jurisdiction over school property of the school entity. Each chief school administrator shall submit a copy of the memorandum of understanding to the office by June 30, 2011, and biennially update and re-execute a memorandum of understanding with local law enforcement and file such memorandum with the office on a biennial basis. The memorandum of understanding shall be signed by the chief school administrator, the chief of police of the police department with jurisdiction over the relevant school property and principals of each school building of the school entity. The memorandum of understanding shall comply with the regulations promulgated by the State Board of Education under section 1302.1-A and shall also include:

(1) The procedure for police department review of the annual report required under subsection (b) prior to the chief school administrator filing the report required under subsection (b) with the office.

(2) A procedure for the resolution of school violence data discrepancies in the report prior to filing the report required under subsection (b) with the office.

(3) Additional matters pertaining to crime prevention agreed to between the chief school administrator and the police department.

(d) Pursuant to section 615 of the Individuals with Disabilities Education Act (Public Law 91-230, 20 U.S.C. § 1415(k)(6)), nothing in section 1302.1-A or this section shall be construed to prohibit a school entity from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(e) (1) Notwithstanding any provision of law to the contrary, the Department of Education may initiate disciplinary action before the Professional Standards and Practices Commission pursuant to the act of December 12, 1973 (P.L.397, No.141), known as the "Professional Educator Discipline Act," against a chief school administrator or principal of a school entity who intentionally fails to submit the report as required under subsection (b) or enter into the memorandum of understanding with the police department with jurisdiction over the relevant school property, report an incident involving an act of violence, possession of a weapon or an offense listed under subsection (b)(4.1) that occurs on school property to a police department or submit a copy of the memorandum of understanding to the office as required under subsection (c) or who intentionally falsifies a report submitted as required under this section.

(2) In addition to any other disciplinary actions set forth in the "Professional Educator Discipline Act," a chief school administrator or principal of a school entity who intentionally fails to submit the report as required under subsection (b) or enter into the memorandum of understanding with the police department with jurisdiction over the relevant school property, report an incident involving an act of violence, possession of a weapon or an offense cited under subsection (b)(4.1) that occurs on school property to a police department or submit a copy of the memorandum of understanding to the office as required under subsection (c) or who intentionally falsifies a report submitted as required under this section shall be subject to prosecution for violation of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities). The following civil penalties may be imposed by the Professional Standards and Practices Commission for violations of this article:

(i) for a first violation, $2,500;

(ii) for a second violation, $3,500; or

(iii) for a third or subsequent violation, $5,000.

Any penalty imposed under this paragraph shall be paid to the Department of Education and used for the support of the office.

22 Pa. Code § 10.11. Memorandum of understanding.

(a) Each chief school administrator shall execute and update, on a biennial basis, a memorandum of understanding with each local police department having jurisdiction over school property of the school entity.

(b) A memorandum of understanding between a school entity and a local police department, including its development and implementation, must meet the requirements of section 1303-A(c) of the Safe Schools Act (24 P. S. § 13-1303-A(c)).

(c) In developing a memorandum of understanding to execute with a local police department, a school entity shall consult and consider the model memorandum of understanding promulgated by the Board in Appendix A (relating to model memorandum of understanding).

(d) On a biennial basis, a school entity shall file with the Department's Office for Safe Schools a memorandum of understanding with each local police department having jurisdiction over property of the school entity. As part of its filing with the Department, a school entity shall identify substantive differences between the memorandum of understanding adopted by the school entity and the model memorandum of understanding and provide a statement of reasons for the differences.

(e) The Board, on a biennial basis, will review and, as necessary, revise its model memorandum of understanding in Appendix A. As part of its biennial review, the Board will consider the memoranda of understanding filed by school entities with the Department's Office for Safe Schools and statements explaining school entities' reasons for adopting memoranda of understanding having substantive differences with the model memorandum of understanding.

22 Pa. Code § 10.21. Immediate notification.

(a) The chief school administrator, or a designee, shall immediately notify the local police department when an offense listed in section 1303-A(b)(4.1) of the Safe Schools Act (24 P. S. § 13-1303-A(b)(4.1)) occurs on school property, at a school sponsored activity or on a conveyance as described in the Safe Schools Act, such as a school bus, providing transportation to or from a school or school sponsored activity.

(b) Notification shall be made to the local police department by the most expeditious means practicable.

(c) As part of its notification of the incident to the local police department, the chief school administrator or a designee shall provide as much of the information in this subsection as is available at the time of notification. The gathering of information should not unnecessarily delay notification.

(1) Whether the incident is in-progress or has concluded.
(2) Nature of the incident.
(3) Exact location of the incident.
(4) Number of persons involved in the incident.
(5) Names and ages of the individuals involved.
(6) Weapons involved in the incident.
(7) Whether the weapons have been secured and the custodian of the weapons.
(8) Injuries.

(9) Whether emergency medical services or the fire department was notified.

(10) Identity of the school contact person.

(11) Identity of the witnesses.

(12) Whether the incident involves a student with a disability, the type of disability and its impact on the student's behavior.

(13) Other information as is known to the school entity and believed to be relevant to the incident.

(d) In responding to students who commit an incident listed in section 1303-A(b)(4.1) of the Safe Schools Act, a school entity may consider the propriety of utilizing available school-based programs, such as school-wide positive behavior supports, to address the student's behavior and shall notify the local police department of the student's placement in the program. This subsection does not limit law enforcement's discretion.

22 Pa. Code § 10.22. Discretionary notification.

(a) The chief school administrator, or a designee, may notify the local police department having jurisdiction when an offense listed in section 1303-A(b)(4.2) of the Safe Schools Act (24 P. S. § 13-1303-A(b)(4.2)) occurs on school property, at a school sponsored activity or on a conveyance as described in the Safe Schools Act, such as a school bus, providing transportation to or from a school or school sponsored activity.

(b) In determining whether to notify the local police department of an incident described in subsection (a), the chief school administrator, or a designee, may consider the following factors:

(1) The seriousness of the situation.

(2) The school's ability to defuse or resolve the situation.

(3) The child's intent.

(4) The child's age.

(5) Whether the student has a disability, the type of disability and its impact on the student's behavior.

(6) Other factors believed to be relevant.

(c) In making a determination whether to notify law enforcement when an offense listed in section 1303-A(b)(4.2) of the Safe Schools Act occurs on school property, at a school sponsored activity or on a conveyance as described in the Safe Schools Act, such as a school bus, providing transportation to or from a school or school sponsored activity, and to the extent that it has authority, a school entity may consider addressing the student's behavior through the use of available school-based diversion programs and available school-wide positive behavior supports.

(d) Upon notification of the incident to the local police department, the chief school administrator or a designee shall provide as much of the information in this subsection as is available at the time of notification. The gathering of information should not unnecessarily delay notification.

(1) Whether the incident is in-progress or has concluded.

(2) Nature of the incident.

(3) Exact location of the incident.

(4) Number of persons involved in the incident.

(5) Names and ages of the individuals involved.

(6) Weapons involved in the incident.

(7) Whether the weapons have been secured and the custodian of the weapons.

(8) Injuries.

(9) Whether emergency medical services or the fire department was notified.

(10) Identity of the school contact person.

(11) Identity of the witnesses.

(12) Whether the incident involves a student with a disability, the type of disability and its impact on the student's behavior.

(13) Other information known to the school entity and believed to be relevant to the incident.

22 Pa. Code § 12.3. School rules.

(a) The governing board[188] has the authority to make reasonable and necessary rules governing the conduct of students in school. The rulemaking power, however, is not unlimited; it must operate within statutory and constitutional restraints. A governing board has only those powers that are enumerated in the statutes of the Commonwealth, or that may reasonably be implied or necessary for the orderly operation of the school.

(b) Governing boards may not make rules that are arbitrary, capricious, discriminatory or outside their grant of authority from the General Assembly. A rule is generally considered reasonable if it uses a rational means of accomplishing some legitimate school purpose.

(c) Each governing board shall adopt a code of student conduct that includes policies governing student discipline and a listing of students' rights and responsibilities as outlined in this chapter. This conduct code shall be published and distributed to students and parents or guardians. Copies of the code shall also be available in each school library.

22 Pa. Code § 12.6. Exclusions from school.

(a) The governing board shall define and publish the types of offenses that would lead to exclusion from school. Exclusions affecting certain students with disabilities shall be governed by § 14.143 (relating to disciplinary placements) and 34 CFR 300.519-300.529 (relating to discipline procedures).

(b) Exclusion from school may take the form of suspension or expulsion.

(1) Suspension is exclusion from school for a period of from 1 to 10 consecutive school days.

(i) Suspensions may be given by the principal or person in charge of the public school.

(ii) A student may not be suspended until the student has been informed of the reasons for the suspension and given an opportunity to respond. Prior notice of the intended suspension need not be given when it is clear that the health, safety or welfare of the school community is threatened.

(iii) The parents or guardians and the superintendent of the district shall be notified immediately in writing when the student is suspended.

[188] "Governing board" is the board of school directors of a school district, joint school committee of a joint school or joint vocational school, intermediate unit board of directors, or the board of trustees of a charter school or cyber-charter school. 22 Pa. Code § 12.16.

(iv) When the suspension exceeds 3 school days, the student and parent shall be given the opportunity for an informal hearing consistent with the requirements in § 12.8(c) (relating to hearings).

(v) Suspensions may not be made to run consecutively beyond the 10 school day period.

(vi) Students shall have the responsibility to make up exams and work missed while being disciplined by suspension and shall be permitted to complete these assignments within guidelines established by the governing board.

(2) Expulsion is exclusion from school by the governing board for a period exceeding 10 school days and may be permanent expulsion from the school rolls. Expulsions require a prior formal hearing under § 12.8.

(c) During the period prior to the hearing and decision of the governing board in an expulsion case, the student shall be placed in his normal class except as set forth in subsection (d).

(d) If it is determined after an informal hearing that a student's presence in his normal class would constitute a threat to the health, safety or welfare of others and it is not possible to hold a formal hearing within the period of a suspension, the student may be excluded from school for more than 10 school days. A student may not be excluded from school for longer than 15 school days without a formal hearing unless mutually agreed upon by both parties. Any student so excluded shall be provided with alternative education, which may include home study.

(e) Students who are under 17 years of age are still subject to the compulsory school attendance law even though expelled and shall be provided an education.

(1) The initial responsibility for providing the required education rests with the student's parents or guardian, through placement in another school, tutorial or correspondence study, or another educational program approved by the district's superintendent.

(2) Within 30 days of action by the governing board, the parents or guardians shall submit to the school district written evidence that the required education is being provided as described in paragraph (1) or that they are unable to do so. If the parents or guardians are unable to provide the required education, the school entity shall, within 10 days of receipt of the notification, make provision for the student's education. A student with a disability shall be provided educational services as required by the Individuals With Disabilities Education Act (20 U.S.C.A. § § 1400-1482).

(3) If the approved educational program is not complied with, the school entity may take action in accordance with 42 Pa.C.S. Chapter 63 (relating to the Juvenile Act) to ensure that the child will receive a proper education. See § 12.1(b) (relating to free education and attendance).

22 Pa. Code § 12.8. Hearings.

(a) General. Education is a statutory right, and students shall be afforded due process if they are to be excluded from school. In a case involving a possible expulsion, the student is entitled to a formal hearing.

(b) Formal hearings. A formal hearing is required in all expulsion actions. This hearing may be held before the governing board or an authorized committee of the board, or a qualified hearing examiner appointed by the board. When a committee of the board or a

hearing examiner conducts the hearing, a majority vote of the entire governing board is required to expel a student. The following due process requirements shall be observed with regard to the formal hearing:

(1) Notification of the charges shall be sent to the student's parents or guardians by certified mail.

(2) At least 3 days' notice of the time and place of the hearing shall be given. A copy of the expulsion policy, notice that legal counsel may represent the student and hearing procedures shall be included with the hearing notice. A student may request the rescheduling of the hearing when the student demonstrates good cause for an extension.

(3) The hearing shall be held in private unless the student or parent requests a public hearing.

(4) The student may be represented by counsel, at the expense of the parents or guardians, and may have a parent or guardian attend the hearing.

(5) The student has the right to be presented with the names of witnesses against the student, and copies of the statements and affidavits of those witnesses.

(6) The student has the right to request that the witnesses appear in person and answer questions or be cross-examined.

(7) The student has the right to testify and present witnesses on his own behalf.

(8) A written or audio record shall be kept of the hearing. The student is entitled, at the student's expense, to a copy. A copy shall be provided at no cost to a student who is indigent.

(9) The proceeding shall be held within 15 school days of the notification of charges, unless mutually agreed to by both parties. A hearing may be delayed for any of the following reasons, in which case the hearing shall be held as soon as reasonably possible:

(i) Laboratory reports are needed from law enforcement agencies.

(ii) Evaluations or other court or administrative proceedings are pending due to a student invoking his rights under the Individuals With Disabilities Education Act (20 U.S.C.A. § 1400-1482).

(iii) In cases in juvenile or criminal court involving sexual assault or serious bodily injury, delay is necessary due to the condition or best interests of the victim.

(10) Notice of a right to appeal the results of the hearing shall be provided to the student with the expulsion decision.

(c) Informal hearings. The purpose of the informal hearing is to enable the student to meet with the appropriate school official to explain the circumstances surrounding the event for which the student is being suspended or to show why the student should not be suspended.

(1) The informal hearing is held to bring forth all relevant information regarding the event for which the student may be suspended and for students, their parents or guardians and school officials to discuss ways by which future offenses might be avoided.

(2) The following due process requirements shall be observed in regard to the informal hearing:

(i) Notification of the reasons for the suspension shall be given in writing to the parents or guardians and to the student.

(ii) Sufficient notice of the time and place of the informal hearing shall be given.

(iii) A student has the right to question any witnesses present at the hearing.

(iv) A student has the right to speak and produce witnesses on his own behalf.

(v) The school entity shall offer to hold the informal hearing within the first 5 days of the suspension.

22 Pa. Code § 14.133. Positive behavior support.

(a) Positive, rather than negative, measures must form the basis of behavior support programs to ensure that all students and eligible young children shall be free from demeaning treatment, the use of aversive techniques and the unreasonable use of restraints. Behavior support programs must include research based practices and techniques to develop and maintain skills that will enhance an individual student's or eligible young child's opportunity for learning and self-fulfillment. Behavior support programs and plans must be based on a functional assessment of behavior and utilize positive behavior techniques. When an intervention is needed to address problem behavior, the types of intervention chosen for a particular student or eligible young child shall be the least intrusive necessary. The use of restraints is considered a measure of last resort, only to be used after other less restrictive measures, including de-escalation techniques, in accord with subsection (c)(2).

(b) Notwithstanding the requirements incorporated by reference in 34 CFR 300.34, 300.324 and 300.530 (relating to related services; development, review, and revision of IEP; and authority of school personnel), with regard to a child's behavior, the following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Aversive techniques--Deliberate activities designed to establish a negative association with a specific behavior.

Behavior support--The development, change and maintenance of selected behaviors through the systematic application of behavior change techniques.

Positive behavior support plans--A plan for students with disabilities and eligible young children who require specific intervention to address behavior that interferes with learning. A positive behavior support plan shall be developed by the IEP team, be based on a functional behavior assessment, and become part of the individual eligible young child's or student's IEP. These plans must include methods that utilize positive reinforcement and other positive techniques to shape a student's or eligible young child's behavior, ranging from the use of positive verbal statements as a reward for good behavior to specific tangible rewards.

Restraints--

(i) The application of physical force, with or without the use of any device, for the purpose of restraining the free movement of a student's or eligible young child's body.

(ii) The term does not include briefly holding, without force, a student or eligible young child to calm or comfort him, guiding a student or eligible young child to an appropriate activity, or holding a student's or eligible young child's hand to safely escort her from one area to another.

(iii) The term does not include hand-over-hand assistance with feeding or task completion and techniques prescribed by a qualified medical professional for reasons of safety or for therapeutic or medical treatment, as agreed to by the student's or eligible young child's parents and specified in the IEP. Devices used for physical or occupational therapy, seatbelts in wheelchairs or on toilets used for balance and safety, safety harnesses in buses, and functional positioning devices are examples of mechanical restraints which are excluded from this definition, and governed by subsection (d).

(c) Restraints to control acute or episodic aggressive or self-injurious behavior may be used only when the student is acting in a manner as to be a clear and present danger to himself, to other students or to employees, and only when less restrictive measures and techniques have proven to be or are less effective.

(1) The use of restraints to control the aggressive behavior of an individual student or eligible young child shall cause the school entity to notify the parent of the use of restraint and shall cause a meeting of the IEP team within 10 school days of the inappropriate behavior causing the use of restraints, unless the parent, after written notice, agrees in writing to waive the meeting. At this meeting, the IEP team shall consider whether the student or eligible young child needs a functional behavioral assessment, reevaluation, a new or revised positive behavior support plan, or a change of placement to address the inappropriate behavior.

(2) The use of restraints may only be included in a student's or eligible young child's IEP when the following conditions apply:

(i) The restraint is utilized with specific component elements of positive behavior support.

(ii) The restraint is used in conjunction with the teaching of socially acceptable alternative skills to replace problem behavior.

(iii) Staff are authorized to use the procedure and have received the staff training required.

(iv) There is a plan in place for eliminating the use of restraint through the application of positive behavior support.

(3) The use of prone restraints is prohibited in educational programs. Prone restraints are those in which a student or eligible young child is held face down on the floor.

(4) The use of restraints may not be included in the IEP for the convenience of staff, as a substitute for an educational program, or employed as punishment.

(5) School entities shall maintain and report data on the use of restraints as prescribed by the Secretary. The report shall be reviewed during cyclical compliance monitoring conducted by the Department.

(d) Mechanical restraints, which are used to control involuntary movement or lack of muscular control of students when due to organic causes or conditions, may be employed only when specified by an IEP and as determined by a medical professional qualified to make the determination, and as agreed to by the student's parents. Mechanical restraints shall prevent a student from injuring himself or others or promote normative body positioning and physical functioning.

(e) The following aversive techniques of handling behavior are considered inappropriate and may not be used by agencies in educational programs:

(1) Corporal punishment.

(2) Punishment for a manifestation of a student's disability.

(3) Locked rooms, locked boxes or other structures or spaces from which the student cannot readily exit.

(4) Noxious substances.

(5) Deprivation of basic human rights, such as withholding meals, water or fresh air.

(6) Suspensions constituting a pattern under § 14.143(a) (relating to disciplinary placement).

(7) Treatment of a demeaning nature.

(8) Electric shock.

(f) School entities have the primary responsibility for ensuring that positive behavior support programs are in accordance with this chapter, including the training of personnel for the use of specific procedures, methods and techniques, and for having a written policy and procedures on the use of positive behavior support techniques and obtaining parental consent prior to the use of restraints or intrusive procedures as provided in subsection (c).

(g) In accordance with their plans, agencies may convene a review, including the use of human rights committees, to oversee the use of restrictive or intrusive procedures or restraints.

(h) Subsequent to a referral to law enforcement, for students with disabilities who have positive behavior support plans, an updated functional behavior assessment and positive behavior support plan shall be required.

APPENDIX B:
SELECTED SCHOOL DISTRICT DEFINITIONS OF WEAPONS

School District Definitions of Weapons Dauphin County					
School District	**Firearms**	**Cutting Tools**	**Chemicals**	**Replicas**	**Other**
Central Dauphin*	--	--	Pepper mace	Yes	Toy gun or water pistol
Derry Township	--	--	Poison gas	Yes	Objects, and instruments or devices which a person reasonably believes to be a weapon or firearm and causes a reasonable person observing it to experience fear or physical injury
Halifax Area	--	--	--	Yes**	Objects which have the appearance or characteristics of weapons, which are not necessarily operable
Harrisburg City	Pellet guns, BB guns	Knives: Bowie, dirk, lock-blade, hunting	--	Yes	Not reasonably related to education, including chains, brass knuckles, nightsticks, ax handles, razors, *etc*.
Millersburg Area	--	Straight razors	Noxious, irritating or poisonous gases; poisons, drugs	--	Any material or substance, animate or inanimate, which under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury. Metal knuckles. other items fashioned with the intent to use, sell, harm, threaten or harass students, staff Members, parents, and patrons
Steelton Highspire	BB gun, pellet gun	--	Mace or other spray substances	Yes**	Objects which have the appearance or characteristics of weapons as defined above, or objects which are intended and capable of producing bodily injury

School District Definitions of Weapons Dauphin County					
School District	**Firearms**	**Cutting Tools**	**Chemicals**	**Replicas**	**Other**
Susquenita	BB gun, pellet gun	--	Mace or other spray substances	Yes**	Objects which have the appearance or characteristics of weapons as defined above, or objects which are intended and capable of producing bodily injury
Williams Valley	--	Razor blades	Mace/ pepper mace	Yes	Other weapons/implements capable of inflicting serious bodily harm

* In addition to the items included above, Central Dauphin also defines a weapon as a taser or stun gun and wearing apparel with chains and spiked accessories.

** Not necessarily operable.

NOTE: Lower Dauphin, Middletown, Susquehanna Township and Upper Dauphin adopted the state definition.

APPENDIX C: CITATIONS FOR SCHOOL DISCIPLINE LAWS IN OTHER STATES

Alabama: Ala. Code § 16-1-24 et seq.
Alaska: Alaska Stat. §§ 11.61.210(a)(8); 11.81.900(b)(17) and (20); and 14.03.160
Arizona: Ariz. Rev. Stat. §§ 13-2911; 13-3102; 13-3111; 13-3411 and 15-844
Arkansas: Ark. Code §§ 5-1-102; 6-17-113; 6-18-502; and 6-18-512
California: Calif. Educ. Code §§ 48900-48900.4; 48915(a), (c) and (e); Calif. Penal Code § 245
Colorado: Colo. Rev. Stat. §§ 22-1-117; 22-12-104; 22-33-105 and 106
Connecticut: Conn. Gen. Stat. §§ 10-233 et seq.
Delaware: Del. Code 14 § 4112; Del. Regs. 14 §§ 603 and 612
Florida: Fla. Stat. §§ 1006.7(l) and (m); 1006.13; and 1006.135(2)(b)
Georgia: Ga. Code §§ 20-2-751 et seq. and 20-2-1184; Ga. Comp. R. & Regs. § 160-4-7-.10
Hawaii: Haw. Rev. Stat. §§ 302A-1134 and 302A-1134.6; Haw. Code R. §§ 8-19-6 and 8-19-19
Idaho: Idaho Code §§ 33-205 and 33-210; Idaho School Violence Manual (2006)
Illinois: 105 Ill. Comp. Stat. §§ 5/10-22.6(d); 5/10-27.1A; 5/10-27.1B; and 5/31-3
Indiana: Ind. Code §§ 20-33-8-16; 20-33-9-5-5; 20-33-9-5-6; 20-33-9-10; and 20-33-9-13
Iowa: Iowa Code §§ 280.17B; 280.21B; and 282.4
Kansas: Kan. Stat. §§ 72-89a02; 72-89b03(b)(1) and 72-89c02
Kentucky: Ky. Rev. Stat. §§ 158.153(2); 158.154; 158.155(4) and 158.156
Louisiana: La. Rev. Stat. §§ 14.95.2 F. and G.; 17:416
Maine: Me. Rev. Stat. 20-A § 1001
Maryland: Md. Educ. Code §7-305
Massachusetts: Mass. Gen. Laws § 71-37H et seq.
Michigan: Mich. Comp. Laws § 380-1310 et seq.
Mississippi: Miss. Code §37-11-18 et seq.
Missouri: Mo. Rev. Stat. §160.261
Nebraska: Neb. Rev. Stat. §§ 79-267 and 79-293
Nevada: Nev. Rev. Stat. §§ 388.135, 392.4634, and 392.466
New Hampshire: N.H. Rev. Stat. § 193-D:1 et seq.
New Jersey: N.J. Stat. § 18a:37-2.1 et seq. and N.J.A.C. (regulations) § 6A:16-5.5 et seq.
New Mexico: N.M. Stat. § 22-5-4.7
New York: N.Y. Law §3214
North Carolina: N.C. Gen. Stat. §§ 115C-288 and 115C-390.1
North Dakota: N.D. Cent. Code § 15.1-19-10
Ohio: Ohio Rev. Code §§ 3313.66 et seq. and 3319.45
Oregon: Or. Rev. Stat. §§ 166.370 and 339.250
Rhode Island: R.I. Gen. Laws §§ 11-47-60.2 and 16-21-18 et seq.
South Carolina: S.C. Code §§ 59-24-60 and 59-63-235
South Dakota: S.D. Codified Laws § 1303201 et seq.
Tennessee: Tenn. Code Ann. §§ 49-6-3401 et seq. and 49-6-4201 et seq.
Texas: Tex. Educ. Code §§ 37.007 and 37.015
Utah: Utah Code §§ 53A-11-401 et seq., 53A-11-904 and 53A-11-1301 et seq.
Vermont: Vt. Stat. tit. 13, § 4004; tit. 16, §§ 570a et seq., and 1166
Virginia: Va. Code §§ 22.1-277.07 and 22.1-279.3:1
Washington: Wash. Rev. Code §§ 9.41.280 and 28A.600.420
West Virginia: W.Va. Code §§ 18A-5-1a and 61-7-11a
Wisconsin: Wis. Stat. § 120.13
Wyoming: Wyo. Stat. § 21-4-305

PRIOR PRINTER'S NOS. 2342, 2370 PRINTER'S NO. 2456

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

No. 540 Session of 2015

INTRODUCED BY KAMPF, THOMAS, CALTAGIRONE, BRIGGS, CORBIN, COHEN, ZIMMERMAN, SCHLOSSBERG, D. COSTA, READSHAW, BULLOCK, D. PARKER, KIRKLAND, ROSS, DIAMOND, HEFFLEY, BRADFORD, PHILLIPS-HILL AND WATSON, OCTOBER 14, 2015

AS AMENDED, HOUSE OF REPRESENTATIVES, OCTOBER 26, 2015

A RESOLUTION

Directing the Joint State Government Commission to conduct a comprehensive study of school discipline policies, laws and regulations, to establish an advisory committee and to make a report of its findings and recommendations.

WHEREAS, 22 Pa. Code § 12.3 authorizes each board of school directors to make reasonable and necessary rules governing the conduct of students in school and requires each board of school directors to adopt a code of student conduct that includes policies governing student discipline; and

WHEREAS, Section 1302.1-A of the Public School Code of 1949 required the State Board of Education to promulgate regulations setting forth a model memorandum of understanding between school entities and local police departments and establishing protocols for notifying police when certain offenses occur on school property and for emergency and nonemergency response by the police, as well as procedures and protocols for the response to and handling of students with disabilities; and

WHEREAS, Section 1303-A of the Public School Code of 1949

requires the chief school administrator of each school entity, in consultation with an advisory committee, to enter into a memorandum of understanding with police departments having jurisdiction over school property which complies with the regulations promulgated by the State Board of Education under section 1302.1-A of the Public School Code of 1949; and

WHEREAS, Some school districts have adopted zero-tolerance policies which mandate specific disciplinary responses to certain student misconduct, regardless of the circumstances surrounding the misconduct or the severity of the incident; and

WHEREAS, It is important to ensure that the Commonwealth's school safety laws and regulations support a safe school environment while encouraging public schools to appropriately tailor disciplinary responses to the specific student misconduct or the severity of the incident; and

WHEREAS, It is important that the student discipline policies in effect in public schools throughout this Commonwealth, as well as related school safety laws and regulations, be thoroughly examined; therefore be it

RESOLVED, That the House of Representatives direct the Joint State Government Commission, in consultation with an advisory committee, to conduct a comprehensive study of school discipline policies, laws and regulations across this Commonwealth and nationwide; and be it further

RESOLVED, That the House of Representatives direct the Joint State Government Commission to establish an advisory committee consisting of a police chief, a juvenile public defender, a district attorney, a rural school superintendent, a suburban school superintendent, an urban school superintendent, a school board member, a CERTIFIED PUBLIC SCHOOL teacher, A PARENT OF A <--

STUDENT ENROLLED IN A PUBLIC SCHOOL, an individual representing the interests of juveniles and of students with disabilities, a representative of the Juvenile Court Judges' Commission, a representative of the Juvenile Justice and Delinquency Prevention Committee of the Pennsylvania Commission on Crime and Delinquency, a representative of the Pennsylvania Department of Education and a representative of the Pennsylvania State Board of Education; and be it further

RESOLVED, That the Joint State Government Commission and advisory committee hold public hearings as deemed necessary to conduct the comprehensive study required under this resolution; and be it further

RESOLVED, That the Joint State Government Commission and advisory committee, within ~~six~~ 12 months of the adoption of this <-- resolution, issue to the Education Committee of the House of Representatives a report which includes, at a minimum, the following:

(1) a general description of the types of school discipline policies in place in public schools throughout this Commonwealth with specific attention to zero-tolerance policies, and analysis of the prevalence of each type of policy and its effects on students, including students with disabilities and students who are under 12 years of age;

(2) a general description of the types of memoranda of understanding between school entities and police departments in place throughout this Commonwealth, including a general description of the types of protocols for immediate and discretionary notification of police departments set forth in those memoranda of understanding, and an analysis of those types of memoranda of understanding which provide for

immediate notification of police departments with respect to offenses in addition to those requiring immediate notification under applicable law; and

(3) an analysis of laws and regulations related to student discipline in this Commonwealth and other states, including discussion of whether any states have in place laws or regulations addressing zero-tolerance policies;

(4) a study of alternative school discipline approaches at the elementary and secondary education levels, including diversion programs and possible alternatives to suspension, expulsion and referral to law enforcement; and

(5) recommendations for new legislation, regulations and policies related to school discipline.