

# SoDP

## *School Offense Diversion Program*

Advocacy Brief 2 | Summer 2020



## Looking Ahead

Using a new lens to create a new vision, this brief imagines an innovative strategy for responding to adolescent behaviors before they are criminalized and, by extension, transforming the very systemic and structural injustices that ultimately undermine education equity.

Since 2004, students have been referred to the School Offense Diversion Program by Delaware's Department of Justice in response to what was then an increase of student arrests in school or on school property by law enforcing school resource officers. Simply put, SoDP provides case management with referred students with the expectation that their first experience with court will be their last, and that they will stay out of trouble, stay in school, and graduate.

If it were only that easy.

The inequities inherent in Delaware's school discipline policies and practices add many more layers to this work. Today, even with a reduced caseload, SoDP is reimagining its role as the energy around school discipline shifts and new statewide diversionary programs for youth are planned.



### About this Advocacy Brief

While our second SoDP brief has been months in the making, its completion during COVID-19 and protests to address police brutality are painful reminders of just how Delaware's school discipline policies and practices continue to discriminate and diminish young lives.

The brief includes quantitative data for the 2018-19 school year. While the snapshot of racial disparities yet again speaks for itself, there is always more to the story.

An imperfect but more equitable attempt to improve outcomes involves reaching our disciplined and criminalized school students sooner rather than later.

Hearing from them rather than about them shifts the unrelenting narrative grounded in white supremacy.

Delaware educates almost 141,000 students. As plans are made to reopen our 259 schools safely, it is our hope that these plans in fact transform institutional policies and practices, improve outcomes, and put opportunity within reach for every student.<sup>1</sup>

Our position has not changed since our 2016 brief.

[1] This information was provided virtually during DDOE's initial meeting of its *School Reopening Working Group* held on May 28, 2020. Delaware's return to school roadmap is being guided by and in partnership with Opportunity Labs (<https://www.opportunitylabs.co/>).

When middle and high school students are criminally charged by their School Resource Officer because of their school discipline experience, they will go to Family Court at least once and from there they are referred to SoDP. Our scheduled meetings with our students are held after school hours. During these office visits, we validate the context of their conduct. And then we go deep.

Together we build an agreement that spells out a plan of action within a timeframe and within a framework of goals that are specific, measurable, attainable, relevant, and rigorous, timely and trackable. Because our conversation continues over a series of office visits, and sometimes over an extended period of months, the idea of discipline as punishment shifts to discipline as practice. This practice is deliberate and strengthens the students' wellbeing from the inside out. We are intentional about understanding the extent of their experience and getting to their truth. In addition to academic achievement, personal accountability for causing harm is central to our conversations, even when our students' experience is on both sides – as a victim and as an offender.

When a student successfully completes SoDP, prosecution of the pending charge(s) for the school offense will not proceed and the charge(s) against the student are dismissed. Next, SoDP submits a request to Family Court for the student's immediate expungement. On the other hand, when a student does not successfully complete SoDP, a status hearing is scheduled with the Court and, if found delinquent, the student will be sentenced under the applicable statutes. No request for an immediate expungement will be submitted.

***“[SoDP] benefited me in many ways, but I didn’t expect for it to help me do better and stay focused in school.”*** – SoDP Student, 8<sup>th</sup> grade, 15 years old

## About the Authors



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[1] To read about the Minneapolis Public Schools' decision to end its use of SROs, to go: <https://slate.com/news-and-politics/2020/06/minneapolis-remove-police-from-schools-history.html>

# Legislative Initiatives: Then & Now 3

## School Discipline Task Force, 2010

Since its implementation, SoDP has been funded by the State of Delaware and governed by the Administrative Office of the Courts. In 2010, the School Discipline Task Force was formed to examine how legislative initiatives affected the school learning climate, education of students, school codes of conduct, and disciplinary procedures. It recommended that then-Governor Jack Markell instruct the Department of Education; the Department of Services for Children, Youth, and their Families; and Family Court to collaborate and implement the changes proposed in its report. Members of the task force included: the Chief Judge of Family Court, a deputy attorney general, an assistant public defender, school superintendents, principals, teachers, SROs, PTA members, members of the state House of Representatives, the Department of Education, the Delaware State Education Association, the ACLU, the Delaware Center for Justice, the Department of Services for Children, Youth and their Families, as well as academics and service providers. It did not include any students.<sup>1</sup>

## Senate Bill 85, 2018

In 2018, Senate Bill 85 was signed by Governor John Carney. The aim of this legislation was specific: to reduce the use of exclusionary disciplinary practices or disproportionate use of exclusionary disciplinary practices with racial subgroups or students with disabilities, or both. As required, the Department of Education's student support team released its Statewide Summary Report for the 2017-18 school year that included disaggregated suspension and expulsion data.<sup>2</sup> The report also identified schools that exceeded the threshold established by the legislation's criteria. These schools are expected to review their discipline policies, practices, and data and submit to DOE an improvement plan to reduce the use of exclusionary disciplinary practices. The plan must be developed with input from students, as well as parents, educators, administrators, and community stakeholders, to incorporate strategies to promote fairness and equity in school discipline.<sup>3</sup>

**School arrests** are but one aspect of school discipline.

**SoDP referrals** continue to drop; however, racial disparities have not changed.

The difference between the disciplined and the criminalized is captured in SB 85:

**schools must promote greater fairness and equity  
in the use of disciplinary practices.**

[1] For more information about *The School Discipline Task Force Final Report* refer to <https://www.njjn.org/uploads/digital-library/Delaware-School-Discipline-Task-Force-Final-Report-1.10.pdf>.

[2] To read more about the *Summary Report*, refer to <https://www.doe.k12.de.us/cms/lib/DE01922744/Centricity/Domain/470/2018%20School%20Discipline%20Improvement%20Program%20Report%20Final%2011.28.18.pdf>.

[3] For more information about *Senate Bill 85: An Act to Amend Title 14 of the Delaware Code Relating to the Lawful Authority of Teachers Over Pupils, 149<sup>th</sup> Delaware General Assembly, 2018* refer to <https://legis.delaware.gov/BillDetail/26457>.

## 2018-19 School Year

### Summary

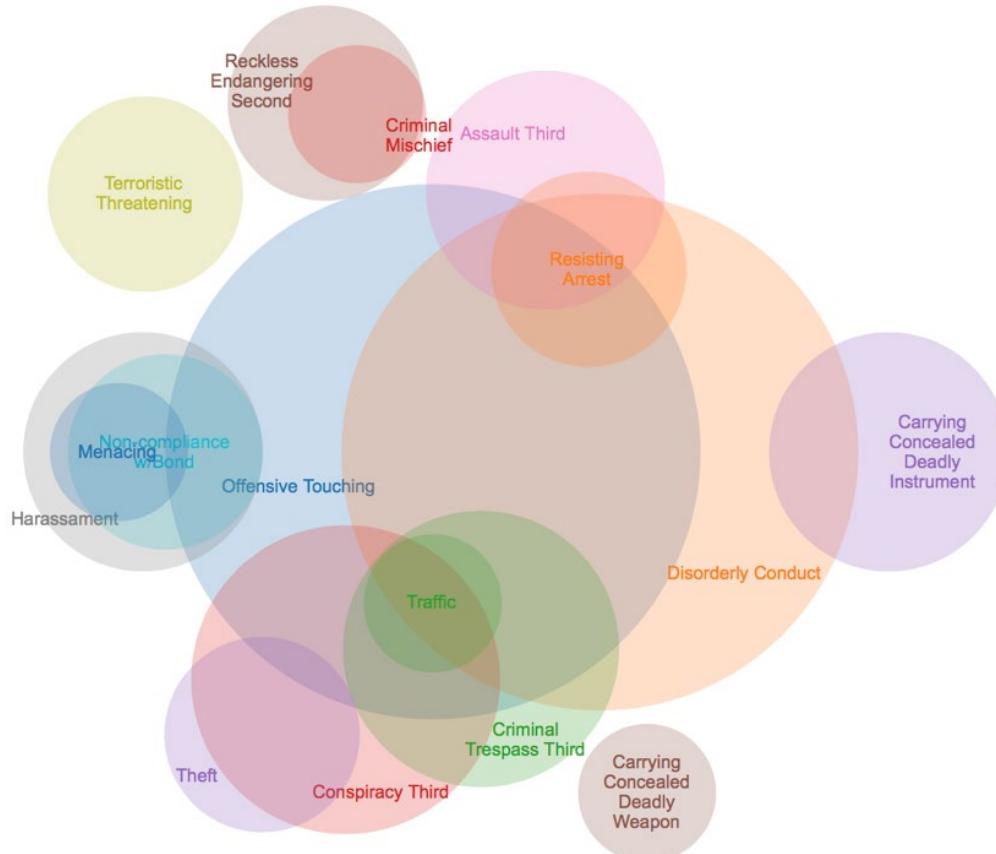
Of the 33 students arrested in school or on school property and referred to SoDP by the Department of Justice during the 2018-19 school year, 32 students participated in the program and one student was referred to an out-of-state program. Of those 32 participating students, 26 successfully completed the program, three students did not successfully complete the program and three were still open at the end of the school year.

- Compared to the 2014-15 school year data, reported in the 2016 Advocacy Brief, SoDP has seen a nearly 30 percent reduction in the number of referred students (See Figure 2).<sup>1</sup>

### About the Data

The following data provide a snapshot of the student population that SoDP works with. These data are based on referrals made between August 2018 and June 2019. The actual caseload during this period included two students referred during the previous school year who, although active during this time, are not reflected in the analysis.

Figure 1: Student Referrals by Charge



## Charges

The data collected throughout the 2018-19 school year show that arrested students referred to SoDP were most commonly charged with offensive touching and disorderly conduct, which are classified as misdemeanors in Delaware (see Figure 3). These two charges, subjective in nature, were also found to be the most common charges faced by SoDP students during the 2014-15 school year.

The Venn Diagram on the previous page uses the 2018-19 data to illustrate the charges among SoDP students (see Figure 1). Each circle is scaled relative to the number students who received that charge. Circles overlap when students received multiple charges. The larger the circle, the more students who received that charge.

## Race and Gender

Based on an analysis of self-reported data from all 33 students referred to SoDP throughout the 2018-19 school year, 85 percent identified as a race other than white. The largest group within that non-white category was black. An almost equal number of students self-identified as male and female, with slightly more female students (see Figure 4).

- ➔ In the 2014-15 cohort, there were also more female students, with the majority of students, regardless of gender, identifying as black. SoDP referrals come from New Castle County schools, where approximately 66 percent of youth are white, 24 percent are black, and 14 percent represent other races.<sup>2</sup>

## Grade

Over a quarter of the students referred to SoDP in the 2018-19 school year were in the eighth grade at the time of the incident for which they were charged. The grade-levels of the rest of this cohort were relatively evenly distributed, with 52 percent of the students in high school and 48 percent of the students in middle school at the time of the incident (see Figure 5).

- ➔ The distribution of students between high school and middle school has remained virtually the same since the 2014-15 school year cohort, with eighth grade accounting for the largest percentage of students in both cohorts. The most notable difference was that there was one student referred during the 2014-15 school year for an incident that occurred in elementary school. No students referred during the 2018-19 school year had been criminally charged as an elementary school student.

## School District

The highest number of referrals came from the Christina and Red Clay Consolidated School Districts, where each accounted for 33 percent of SoDP student referrals, respectively, for a combined total of two-thirds of all referrals (see Figure 6). This was a three percent decrease for the Christina School District and an 11 percent increase for the Red Clay School Consolidated District when compared to the 2014-15 school year. When combined, these two districts serve approximately 22 percent of the student population in New Castle County.<sup>3</sup>

***“I would like to see this program in schools where children, students, teachers, families have access to PRIOR to pressing charges as a FIRST resort rather than LAST resort.” – SoDP Parent***

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[1] Information sourced from the “School Offense Diversion Program: Advocacy Brief, Spring 2016,” The Delaware Center for Justice, (<http://www.dcjjustice.org/wp-content/uploads/2015/08/SoDP-Brief-Final-Set-Up.pdf>).

[2] Information sourced from “Annual Report and Recommendations to Governor John Carney and the Delaware State Legislature,” by The Delaware Juvenile Justice Advisory Group, 2019, (<https://cjc.delaware.gov/wp-content/uploads/sites/61/2019/06/Delaware-2018-JJAG-ReportvPRINTER.pdf>).

[3] Information sourced from “Delaware Public Education At A Glance,” 2018-19, Rodel, (<http://www.rodelde.org/ataglance/>) as well as the Christiana and Red Clay Consolidated School District websites (<https://www.christinak12.org/domain/51>, <https://www.redclayschools.com/profile>).

Figure 2: A Comparison of the 2014-15 and 2018-19 School Years

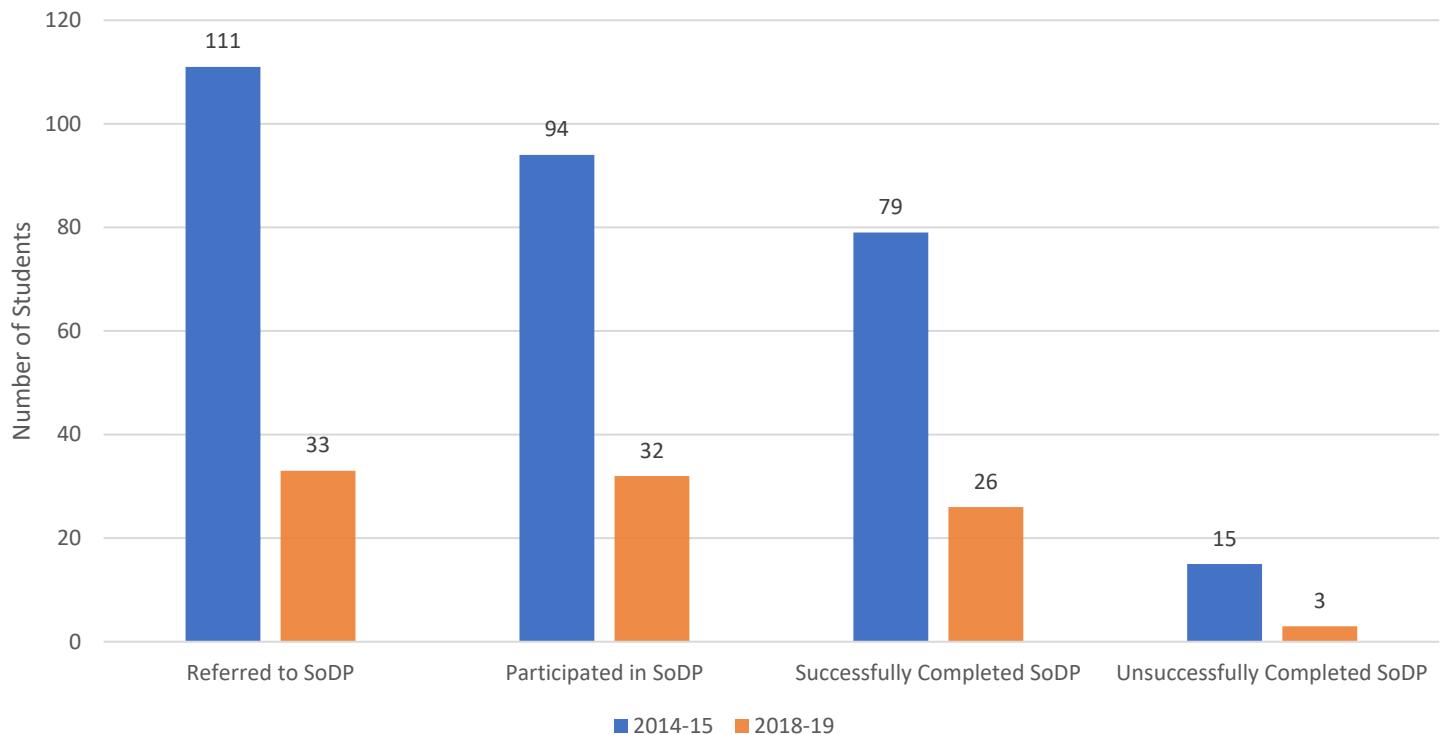
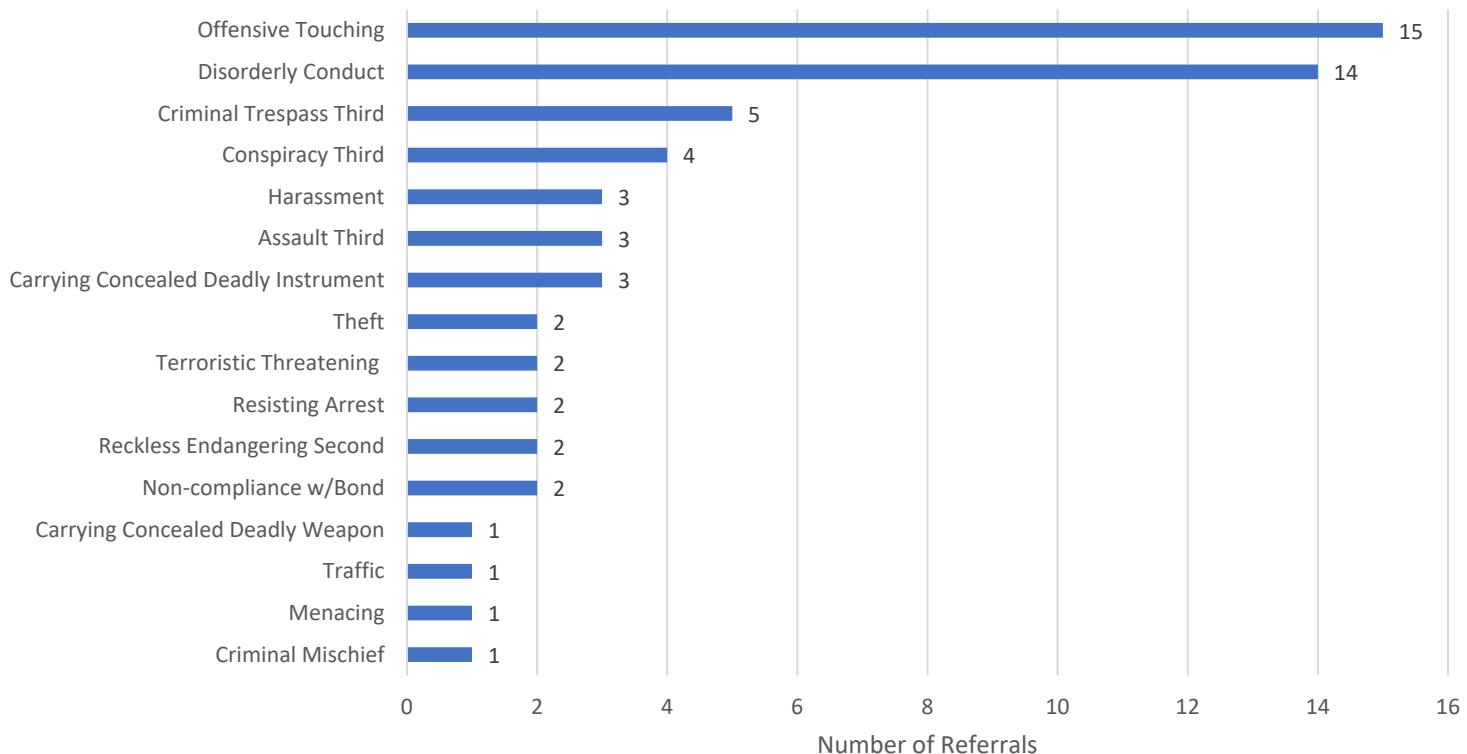
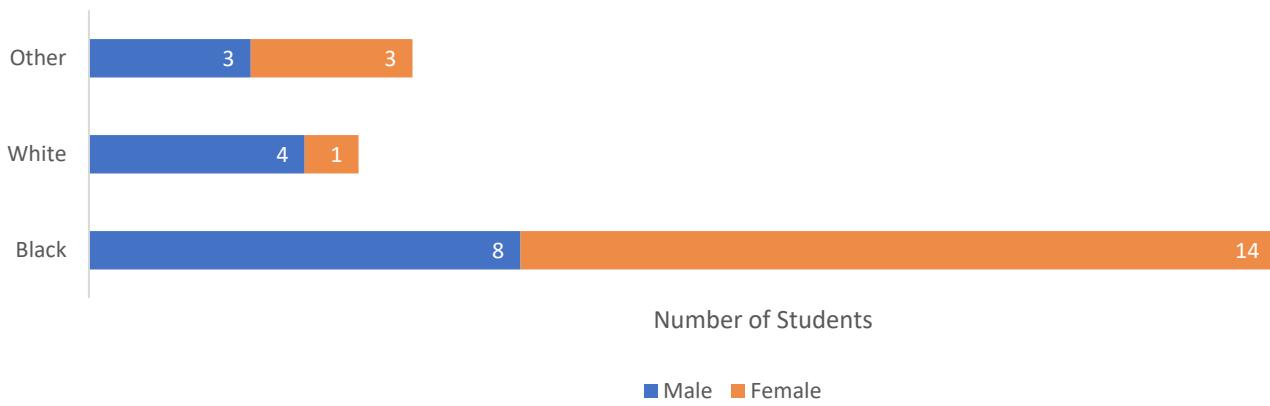


Figure 3: Number of Referrals by Charge\*

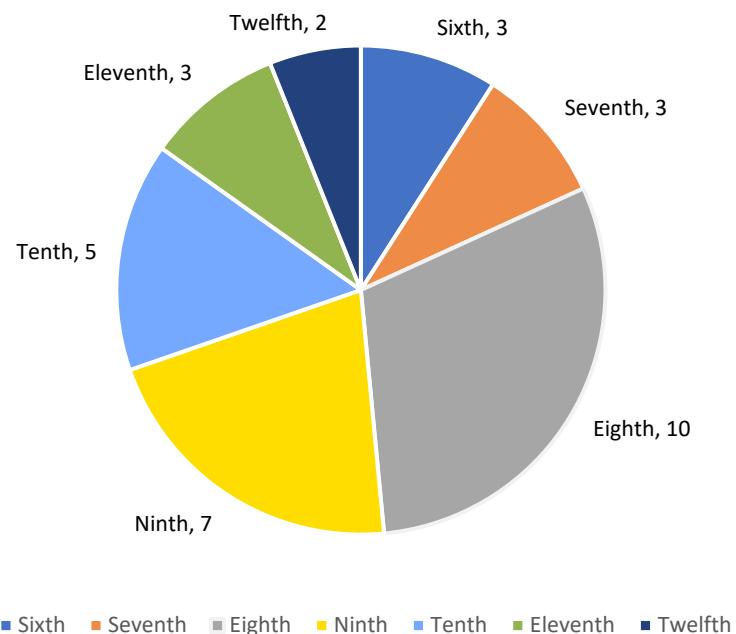


\*Note: Several students have multiple charges

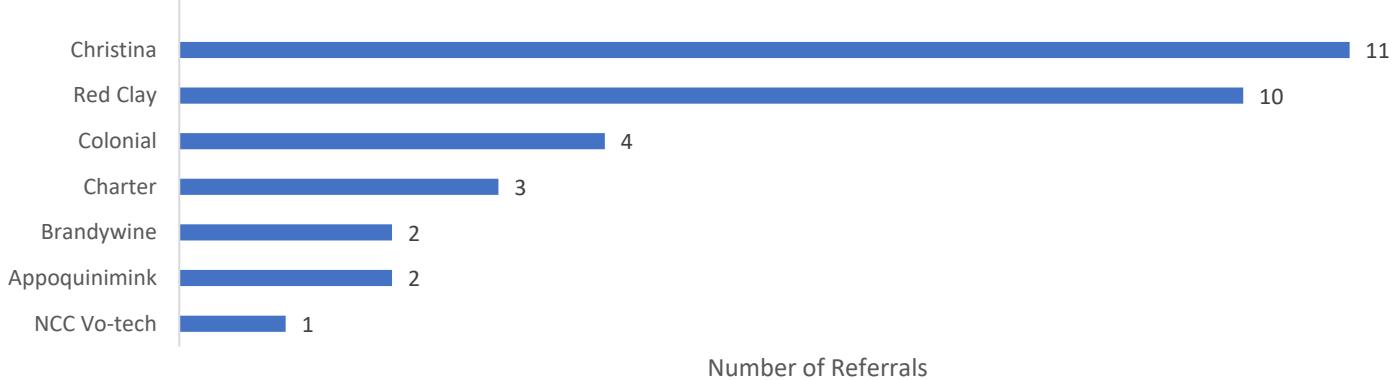
**Figure 4: Students' Race and Gender**



**Figure 5: Grade at Time of Incident**



**Figure 6: Number of Referrals by School District**



Since its beginning, SoDP has operated in a silo. We continue to sit on the sidelines with our students, after they've been charged with a crime by their school resource officer, after they've knowingly and voluntarily agreed to participate in SoDP, and with the understanding that if they successfully complete SoDP the criminal charges pending against them will be dismissed.<sup>1</sup> While successfully completing SoDP facilitates getting a student's criminal record expunged, their school disciplinary record stays with them throughout their academic career. As an advocate for the middle and high school student arrested in school or on school property, SoDP staff has become raw in its understanding of the structural and systemic injustices embedded in our school discipline policies and practices that lead to each referral. And while we look forward to the work ahead on the implementation of Senate Bill 85, to reduce the use of disproportionate exclusionary disciplinary practices in Delaware schools, we are cognizant of the paradigm that sustains these policies and practices.<sup>2</sup>

In a spirit of looking ahead, the following abstract conceptualizes phases of an innovative strategy as extrapolated from *Fostering Innovation in the Public Sector*, an OECD document published in 2017, along with SoDP practices which have been guided over the years by the organizational learning literature.<sup>3, 4</sup>

## **Identifying problems**

One problem among many is the impact of disproportionate exclusionary school discipline policies and practices. A barrier to strategic innovation is the lack of consistent conversational leadership among SoDP staff and high-level external stakeholders in the interest of our youth staying out of trouble, staying in school, and graduating. Critical to this broader conversation is an understanding of the historical context, beginning prior to the 1954 Supreme Court Case *Brown v. Board of Education*.<sup>5</sup>

## **Generating ideas**

We believe that opportunities for innovative change will occur because of intentionally convened, deliberately driven conversations. These conversations are necessary for understanding the problem and supporting a cultural shift in attitudes and behaviors. It has been our experience that, even when sitting in the discomfort, meaningful conversations lead to change.

- ➔ Included in this conversation should be those who are involved with school discipline and may involve the following people: students and parents, the manager of DOE's Office of School Climate and Discipline, district superintendents, school principals, assistant attorneys general from DOJ's Family Division Juvenile Delinquency & Truancy Unit, assistant public defenders from ODS's Public Defender's Office, the chief judge of Family Court, staff from the Administrative Office of the Courts, as well as sponsors of Senate Bill 85 and UD's Center for Drug & Health Studies.<sup>6</sup>

## **Developing proposals**

An innovative pilot program, different than the usual post-arrest diversion program such as SoDP, has been discussed. The idea for this proposal envisions a post-discipline, pre-arrest (and pre-citation) pilot program in collaboration with innovative and energized partners who are willing to lean into this work that includes performance measures. Measuring and evaluating implementation strategies and performance practices that address situational factors prior to criminalizing adolescent behavior will help us understand what works and why.

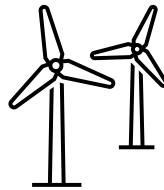
- ➔ Rather than a referral to SoDP being generated as the result of a school arrest by the law enforcing school resource officer, a school administrator would make the referral. In the surveys collected, students and parents have said that they believe a school arrest could have been avoided with an earlier SoDP experience.

## Evaluating projects

While we claim success with each successfully closed student file, the reality is that SoDP probably falls short of its goal. Other than students who participate in SoDP for a second time, we do not know if our students stay out of trouble, stay in school, and graduate. Monitoring, measuring, and evaluating any program has its challenges due to a lack of resources built into the program funding. Evaluating both outputs and outcomes from a small pilot program that is post-discipline, pre-arrest (and pre-citation) lends itself to understanding what is, and what is not, sustainable and, ultimately to greater scale.

## Diffusing lessons

It takes more than a single program to make the greatest impact.<sup>8</sup> We know there is always more work for us to do so that our kids stay out of trouble, stay in school, and graduate. SoDP continues to focus on the practice of discipline to restore and transform. An innovative strategy that responds to adolescent behaviors before they are criminalized is SoDP's commitment to education equity.



***"Having my child arrested put a major stain on her school and criminal record that was absolutely unnecessary."*** – SoDP Parent

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[1] School Offense Diversion Program (SoDP) Petition, Waiver and Agreement, <https://courts.delaware.gov/forms/list.aspx?ag=Family+Court&sec=Forms#undefined>.

[2] Senate Bill 85: An Act to Amend Title 14 of the Delaware Code Relating to the Lawful Authority of Teachers Over Pupils, 149<sup>th</sup> Delaware General Assembly, 2018. Retrieved from <https://legis.delaware.gov/BillDetail/26457>.

[3] Fostering Innovation in the Public Sector, Chapter 5: Organizations supporting innovation, <https://www.oecd.org/innovation/innovative-government/fostering-public-sector-innovation.htm>.

[4] Crossan, M. M., Lane, H. W., & White, R. E. (1999). An organizational learning framework: from intuition to institution. *The Academy of Management Review*, 24(3), 522–537, <https://delcat.on.worldcat.org/oclc/5549843472>.

[5] For more information on the impact of Brown v. Board of Education, refer to the History.com article Brown v. Board of Education, updated in April 2020, at <https://www.history.com/topics/black-history/brown-v-board-of-education-of-topeka>.

[6] Information about the Delaware School Survey can be found at <https://www.cdhs.udel.edu/seow/reports-and-products>.

[7] More information on the three building blocks of the learning organization is provided in an HBR article, *Is Yours a Learning Organization*, <https://hbr.org/2008/03/is-yours-a-learning-organization>.

[8] Collins, J. (2005). *Good to Great and the Social Sectors: Why business thinking is not the answer: a monograph to accompany Good to Great*.

Students are not seen as stakeholders. The School Discipline Task Force formed in 2010 did not include students and it is too early to know whether any school improvement plan has been developed with input from students, as specified in Senate Bill 85.

**School Discipline: Stories Behind the Numbers** is a 2019 short film documentary that captures school discipline as experienced by a diversity of stakeholders, including four SoDP students.<sup>1</sup> The film ends with a voiceover by Andra Day singing "Rise Up" as a quote by the late political theorist John Schaar lingers on the screen: "*The future is not someplace we are going, but one we are creating. The paths are not to be found but made. And the activity of making them changes both the maker and their destination.*"

At SoDP, we believe that student voices are fundamental to understanding the impact of school discipline policies and practices. We can no longer neglect the context of their conduct. As a matter of fact, we believe in bringing their experiences upstream – into a larger space where policy makers and decision makers hear from them rather than about them.



Dear Friends and Colleagues,

My role as a public policy intern with the School Offense Diversion Program at the Delaware Center for Justice involved researching, designing, and writing this brief in partnership with Cindy McDaniel. My research would not have been complete without many conversations, both formal and informal, that ultimately contributed to my broader understanding of this work. I will be forever grateful. Specifically, I would like to acknowledge the individuals, groups, and organizations with whom I have intersected along this journey.

- SoDP students, parents & interns
- Students & faculty from the University of Delaware's Biden School of Public Policy and Administration
- Students & faculty from the University of Delaware's College of Education and Human Development
- Middle & high school educators in New Castle County
- The Wilmington Community Advisory Council
- The Redding Consortium for Educational Equity
- Teri Lawler, Delaware Department of Education
- Patrick Ryan, The Warehouse
- Lauren Vella, Attorney General's Office, Delaware Department of Justice
- Katrina Morrison, Center for Research in Education and Social Policy, University of Delaware

& many others.

Sincerely,

A handwritten signature in black ink that reads "Nicole Kennedy".

[1] To view the short film documentary, *School Discipline: Stories Behind the Numbers*, visit <https://www.youtube.com/watch?v=lupebH0gMNk>.

**COVID-19** school closures have been hard on everyone, and especially hard on students who were already academically behind due to their school discipline experiences. As Delaware's roadmap for reopening schools is being determined, the impact of policies and practices that historically and persistently advance inequity should not be dismissed with prejudice, but found delinquent on the charge named in Senate Bill 85: to promote greater fairness and equity in the use of disciplinary practices – bipartisan legislation that became law when signed by Governor Carney in June 2018. In other words, until those schools that have exceeded thresholds based on data collected and communicated in DOE's 2018 Statewide Summary Report/School Discipline Improvement Program implement disciplinary practices that promote greater fairness and equity in the use of disciplinary practices, we continue to perpetuate this inequity.<sup>1</sup> Nevertheless, it is more important than ever that our students return to school without bringing back the worst effects of their experiences with school discipline.

None of this work – **serving our SoDP youth under a pretense of justice** – has been inconsequential for us. Learning the nuances of connecting, reconciling the depth those of connections, grasping the contours of their disciplinary experiences, and more, gives us pause. We sit between juxtaposed extremes. We understand adult concerns about rule-breaking adolescent behaviors that threaten school safety and jeopardize academic learning for all students. We also understand a disciplined student's desire to stay out of trouble, stay in school, and graduate. We consistently question whether our well-intentioned but still privileged white position perpetuates systems and structures of injustice, and whether we have the rigor necessary to enter a space with others who negotiate for incremental change – the white moderate that Dr. Martin Luther King Jr. wrote about in 1963 in his Letter from a Birmingham Jail.<sup>1</sup> Then again, when we pause and reflect on our experience, we become unapologetically tenacious about shifting the scope of SoDP, committed to strategic steps that dismantle systemic and structural injustices built into our school discipline policies. We cannot do this work and preserve a system entrenched in inequity. We want to find new ways of being and new ways of doing.<sup>2</sup> And we want to do this work with **all** those who care deeply for **all** our youth and the paths that they travel, and especially with the youth who will lead us in this work.



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[1] To read more about *DOE's 2018 Statewide Summary Report/School Discipline Improvement Program*, refer to <https://www.doe.k12.de.us/cms/lib/DE01922744/Centricity/Domain/470/2018%20School%20Discipline%20Improvement%20Program%20Report%20Final%2011.28.18.pdf>.

[2] To learn about the inner work of racial justice from law professor and mindfulness practitioner Rhonda V. Magee, read her 2019 book, *The Inner Work of Racial Justice: Healing Ourselves and Transforming our Communities through Mindfulness*.



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