Memorandum

To: Governor Dannel P. Malloy

From: The Connecticut Education Association

Re: Public Act 18-89

Date: May 25, 2018

Public Act 18-89 Overview

During the 2018 legislative session, the legislature passed Senate Bill 453 *An Act Concerning Classroom Safety and Disruptive Behavior,* now called Public Act 18-89, that

- Enhances classroom safety for all students and educators
- Emphasizes appropriate support as opposed to punitive discipline for students who physically injure others
- Reduces discriminatory discipline, and discourages the school-to-prison pipeline
- Complies with and does not preempt the Individuals with Disabilities Education Act (IDEA)
- Complies with Federal Educational Rights and Privacy Act (FERPA) that protects educational records

Collaborative process for Public Act 18-89

PA 18-89 was drafted and modified through a collaborative process that included input from the executive branch through suggestions from State Education Commissioner Dianna Wentzell and input from Connecticut Child Advocate Sarah Eagan; Susan Kelley, Director of Children's Policy at the National Alliance on Mental Illness (NAMI) Connecticut; Subira Gordon, Executive Director of the Commission on Equity and Opportunity; and numerous educators and state legislators.

Commissioner Wentzell raised constructive questions about a draft of the bill that mandated a school social worker for every 250 students—as a result this provision was removed. In her testimony to the Education Committee she was also concerned that reporting requirements could impact the department's budget—the bill was then crafted such that the reporting obligations are attendant to an existing report assembled by local districts, and no fiscal note resulted.

I. Public Act 18-89 reduces discriminatory discipline

PA 18-89 provides constructive alternatives to expulsion or suspension in cases where a student physically injures another student or school employee.

It is important to note that PA 18-89 specifically pertains only to cases of physical injury. It creates strategies to ensure "*daily classroom safety*," which is defined as "*a classroom environment in which students and school employees are not physically injured by other*

students, school employees or parents, or exposed to such physical injury to others." Connecticut General Statutes Section 1(a)(10).

PA 18-89 may be the first bill in Connecticut to address the serious issue of physical injury in a manner that goes beyond the usual penalties and punitive action contemplated in the state's existing suspension and expulsion statutes. It places a premium on ensuring safety in the classroom for all students and educators, and provides the resources and services necessary to help students in need.

PA 18-89 does not apply to infractions, minor or otherwise, of the sort noted below.

Nationwide, studies have shown that discipline is disproportionately administered to students of color, especially for minor infractions:

> From the Denver Post: "*Two decades ago, Congress passed legislation that required states to expel students caught with guns at school. Over the years, states and school districts adopted policies that doled out suspensions and expulsions for minor infractions. Such policies could lead to suspensions, expulsions and criminal records for students caught smoking, cutting class or tampering with school property*."

According to a report by the Department of Justice in 2014, in some districts students were arrested for wearing the wrong color socks and starting food fights. Elsewhere, automatic criminal charges were filed against students for truancy. Zero tolerance policies at some traditional public schools and many charter schools resulted in high rates of expulsion for minor offenses, particularly for students of color.

II. PA 18-89 reduces the school to prison pipeline

PA 18-89 does not take the punitive or criminal law approach found in other statutes in Connecticut, or in other states. When a student physically injures another person, the emphasis in PA 18-89 is directed toward determining how to best address the behavior with the appropriate intervention and support for the student and the teacher. This can include a number of strategies such as "trauma-informed instruction" and "therapeutic support for the teacher and student or students involved," both of which were added to C.G.S. 10-222g in Section 5 of the bill and referenced in Section 2 of the bill (subdivisions (2), (3)(D), and (8) of the section).

If a student is removed from a classroom after physically assaulting another person, the remedy in PA 18-89 is not punitive, but rather is to return the student to the classroom after ensuring "such student has received appropriate intervention and support and there are adequate protections in the classroom for the teacher and other students." Section 2(b). This occurs in one of three ways: through the consent of the teacher; through approval of the Crisis Intervention Team when the team has determined the student has received appropriate support; or by a committee designated by the principal. Section 2(b). This is a substantial change and departure from simply suspending or expelling a student and providing no emphasis on support or intervention upon the student's return. In addition, this provision does not and cannot preempt IDEA and other federal legislation, as discussed below.

The legislation is also proactive, and requires that schools take steps to ameliorate issues that lead to injury, and to strengthen their safe school climate plans with appropriate student supports.

III. PA 18-89 and IDEA

PA 18-89 not only complies with the Individuals with Disabilities Education Act (IDEA), but also ensures that resources are made available to children who need them.

1) PA 18-89 does not preempt federal special education laws (i.e. IDEA) and the procedures afforded children receiving special education services remain completely binding. Nothing in PA 18-89 would prevent any district from complying with IDEA.
2) PA 18-89 does not preempt Connecticut laws addressing special education (C.G.S. 10-76d); in fact, subsection (a) of Section 2 of PA 18-89 specifically requires local actions addressing students who cause physical harm to comply with the state's special education law which implements IDEA.
3) PA 18-89 does not preempt Connecticut laws enacted regarding the removal of pupils from class (C.G.S. 10-233b), suspensions (C.G.S. 10-233c), expulsions (C.G.S. 10-233d), or in-school suspensions (C.G.S. 10-233f) – all of which have not been found to violate IDEA.
4) PA 18-89 is far more supportive than similar statutes in other states that are not in violation of IDEA, and is more supportive and proactive than existing Connecticut statutes in #3, above. IDEA requires that school officials be proactive in taking action to reduce the need for disciplinary action, which is the emphasis of PA 18-89.

IDEA requires, among other things, that special education students receive a free and appropriate public education (FAPE) in the least restrictive environment (LRE).

IV. PA 18-89 does not preempt federal special education law (IDEA)

PA 18-89 does not preempt the IDEA; its procedures, which are designed to protect students receiving special education services, remain binding even if IDEA is not specifically referenced, as is the case in Connecticut's bullying and suspension statutes described above.

The provision in PA 18-89 requiring the consent of a teacher for a student to be returned to the classroom is neither inconsistent nor incompatible with IDEA. This is true for three reasons.

First, a teacher cannot, by law, violate the provisions of the IEP or IDEA, and PA 18-89 does not preempt federal law.

Second, the provision in PA 18-89 allows a student who has physically injured another person to return to the classroom, a) with the teacher's consent; b) by decision of the school's crisis intervention team; or c) by decision of a team designated by the school principal. In the case of a special education student, this team could be the student's planning and placement team (PPT) whose duty it is to ensure that the student's rights under the IDEA have not been violated. Nothing in PA 18-89 overrides a student's rights and protections under IDEA. Nothing in PA 18-89 requires the administrator to place the

student in another educational setting; such a decision is permissive ("may place"), and in the case of a special education student would, as a matter of law, be governed by rights and conditions under IDEA, none of which are incompatible with PA 18-89.

Third, notwithstanding the language in PA 18-89, IDEA regulations permit school personnel to temporarily remove a disruptive or violent student from a classroom. These regulations remain in full force under PA 18-89, which specifically requires such procedures to comply with the provisions of Connecticut's law implementing IDEA (C.G.S. 10-76d). Section 300.530 of Part B of IDEA, provides for the following:

1) The removal of a special education student who violates the code of student conduct for up to 10 days per incident. The specific language is:

   "*(1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under § 300.536).*

   (2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section."

2) Additionally, pending a determination that the behavior was not a manifestation of the child's disability, districts may implement a disciplinary change in placement similar to that applied to children who do not qualify for special education. The specific language states:

   "*Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined <u>not</u> [emphasis added] to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities …"*

   Moreover, students who inflict serious injury to another person while in school may be removed for up to 45 days. The specific language states:

   "*School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child— … Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA*."

The temporary removal of a student from a classroom for causing physical harm is already incorporated into IDEA regulations. PA 18-89 takes a more supportive approach than the IDEA language described above, and is not in conflict with the provisions in IDEA.

V. PA 18-89 does not preempt Connecticut laws addressing special education

PA 18-89 is not only subordinate to IDEA, it includes an additional provision that specifically references section 10-76d of the Connecticut General Statutes that is intended to ensure that the student's rights under the IDEA are protected.

The act requires such plans to include *"a process for ensuring that such support plan complies with the provisions in section 10-76d of the general statutes regarding students who are the subject of repeat referrals for violations of daily classroom safety*" (emphasis added). Even that reference, however, is not required since districts must comply with IDEA regardless of state statute language, and since, in this case, districts can comply with both PA 18-89 and IDEA.

In addition, PA 18-89 includes no provision (e.g. "notwithstanding…" language) attempting to preempt state or federal law.

VI. PA 18-89 does not preempt Connecticut laws enacted to address bullying, intervention strategies, removal of pupils from class, suspensions, or expulsions

PA 18-89 neither addresses nor changes existing laws regarding bullying (10-222d), intervention strategies (10-222g), the removal of pupils from class (C.G.S. 10-233b), suspensions (C.G.S. 10-233c), expulsions (C.G.S. 10-233d), or in-school suspensions (C.G.S. 10-233f).

C.G.S 10-222d requires school districts to implement safe school climate plans for addressing bullying. The statute requires plans to "*(6) include a prevention and intervention strategy, as defined by section 10-222g, for school employees to deal with bullying and teen dating violence*" and *"(12) direct the development of case-by-case interventions for addressing repeated incidents of bullying against a single individual or recurrently perpetrated bullying incidents by the same individual that may include both counseling and discipline*." The statute was originally enacted in 2002 and revised six times since, including three times in the last eight years. Yet despite applying to all students, including those receiving special education, this legislation was enacted without violating IDEA. PA 18-89 mirrors much of this statute.

C.G.S 10-222g, which was enacted in 2008 and revised in 2011 and 2014, identifies prevention and intervention strategies regarding bullying. Specifically, subdivision (2) includes "*appropriate consequences for those who engage in such acts [of bullying and teen dating violence].*" Despite applying to all students, including those receiving special education, this legislation was enacted without violating IDEA. PA 18-89 also revises this statute to make reference to special education procedures and to specifically add among interventions, "trauma-informed instruction."

C.G.S. 10-233b, which was originally enacted in 1975, provides for the removal of pupils from class "*when such pupil deliberately causes a serious disruption of the educational process within the classroom*." This law was modified in 1984 to limit removals from a classroom to six times per year, and the modification was enacted without violating IDEA.

C.G.S. 10-233c, which was also originally enacted in 1975, provides for the temporary removal of a pupil from school when a student's "*conduct on school grounds or at a school sponsored activity is violative of a publicized policy of such board or is seriously disruptive of the educational process or endangers persons or property*." Since its original passage, the school suspension law has been amended fifteen times. The most recent change was in 2015 (PA 15-96), when the legislature addressed violent behavior of children from preschool to grade 2. The legislature was able to make these changes without violating federal law.

C.G.S. 10-233d, also originally enacted in 1975, provides for the expulsion of students from school. The provisions of this law, which include permitting the expulsion of special education students whose misconduct was not caused by the child's disability, have been amended more than twenty times, most recently in 2017 (PA 17-237) without violating federal law.

C.G.S. 10-233f provides for the "*in-school suspension on any pupil whose conduct endangers persons or property or is seriously disruptive of the educational process, or is violative of a publicized policy of such board.*" The law has been amended four times since its inception without violating federal law.

Like PA 18-89, these four laws apply to all students, including special education students. In each case, the laws removing students from their classroom setting have not been deemed to violate federal special education law. Additionally, and similarly to PA 18-89, these laws neither preempt federal law nor exempt certain situations from IDEA. In all cases, federal law clearly remains binding.

Perhaps most importantly, the focus of PA 18-89 is supportive, as opposed to the punitive and disciplinary approach of the statutes described above. Only PA 18-89 connects the serious issue of physical injury with providing necessary and appropriate services and interventions for students in need, as opposed to simply suspending or expelling a student.

VII. The provision of PA 18-89 in question is similar to a Texas law enacted in 2005 that does not violate federal law

The provision in PA 18-89 providing teachers the option of consenting to the return to the classroom of a student who has caused physical harm is similar to a law passed 13 years ago in Texas (see language below). This Texas law, however, applies to a variety of student conduct—such as interfering with teaching and other disruptive behaviors—that is far broader than PA 18-89's sole application to conduct that causes physical harm. This is important because a broader scope of student conduct could result in increased discriminatory outcomes, as noted above. Nevertheless, the Texas law was enacted and has been sustained without violating federal law. Additionally, since its inception, Texas has not been cited or experienced federal dollars being withheld.

Texas Education Code Section 37.002; 2005 Acts: H.B. 603

> ***§ 37.002. Removal by teacher.*** *(a) A teacher may send a student to the principal's office to maintain effective discipline in the classroom. Texas Compilation of School*

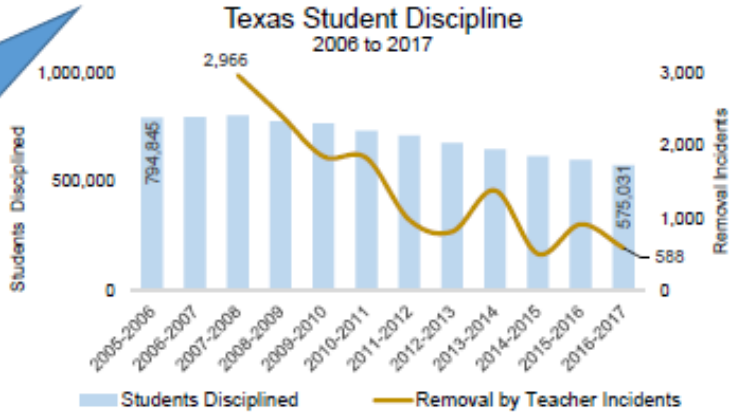
Discipline Laws and Regulations Page 11 (a) A teacher may send a student to the campus behavior coordinator's office to maintain effective discipline in the classroom. The campus behavior coordinator shall respond by employing appropriate discipline management techniques consistent with the student code of conduct adopted under Section 37.001 that can reasonably be expected to improve the student's behavior before returning the student to the classroom. If the student's behavior does not improve, the campus behavior coordinator shall employ alternative discipline management techniques, including any progressive interventions designated as the responsibility of the campus behavior coordinator in the student code of conduct. (b) A teacher may remove from class a student: (1) who has been documented by the teacher to repeatedly interfere with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn; or (2) whose behavior the teacher determines is so unruly, disruptive, or abusive that it seriously interferes with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn. (c) If a teacher removes a student from class under Subsection (b), the principal may place the student into another appropriate classroom, into in-school suspension, or into a disciplinary alternative education program as provided by Section 37.008. The principal may not return the student to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available. The terms of the removal may prohibit the student from attending or participating in school-sponsored or school-related activity. (d) A teacher shall remove from class and send to the principal for placement in a disciplinary alternative education program or for expulsion, as appropriate, a student who engages in conduct described under Section 37.006 or 37.007. The student may not be returned to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available. If the teacher removed the student from class because the student has engaged in the elements of any offense listed in Section 37.006(a)(2)(B) or Section 37.007(a)(2)(A) or (b)(2)(C) against the teacher, the student may not be returned to the teacher's class without the teacher's consent. The teacher may not be coerced to consent.

The Texas statute also references IDEA, which, as discussed previously, is not dispositive since states must follow IDEA regardless. The Texas law, however, is instructive in that it does contain similar language, and it is not in violation of IDEA. In addition, since passage of the law above, Texas has seen significant decreases in disciplinary action.

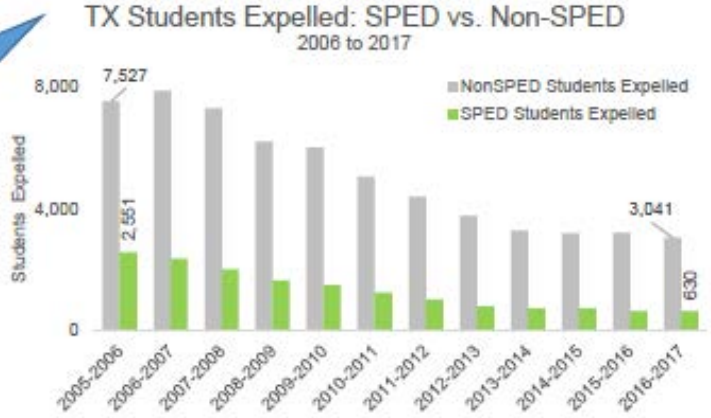
Disciplinary action in Texas declined significantly after passage of the law

Evidence of declining disciplinary action in Texas is shown in the six graphs on the next two pages. Since the inception of the Texas law, there have been double-digit declines in disciplinary actions involving special education students and minorities—as well as a declining dropout rate. Underscoring the significance of these declines, they have occurred while enrollment in Texas schools has increased.

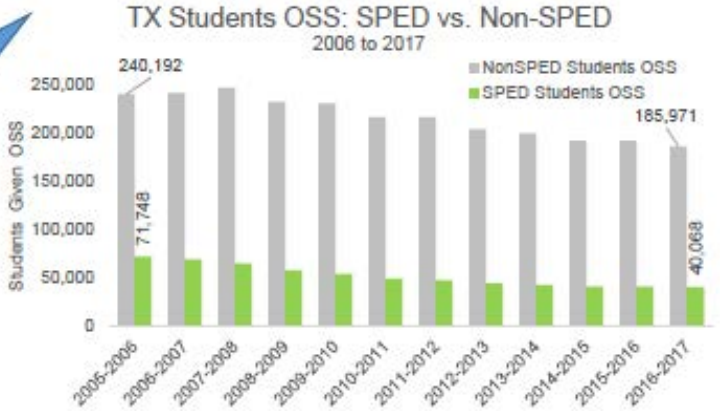
From 2006 to 2017, the number of students disciplined declined by more than 200,000 and the number of students removed by teachers declined by 80% (2,378).



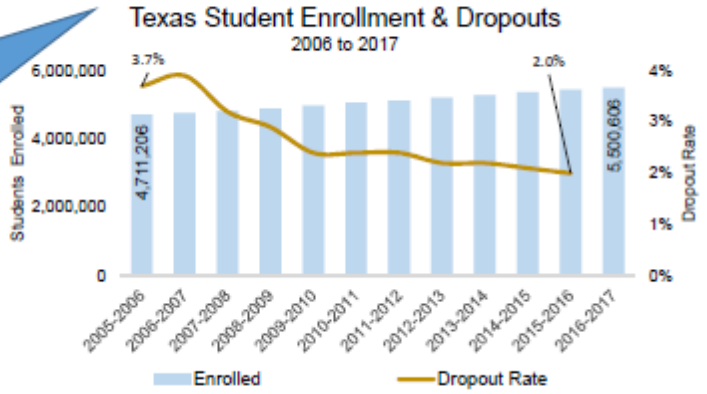
From 2006 to 2017, the number of SPED students expelled declined by 75% (1,921) and the number of non-SPED students expelled declined by 60% (4,486).



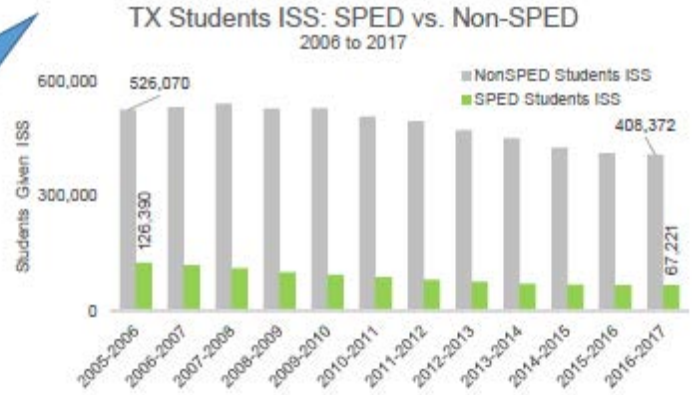
From 2006 to 2017, the number of SPED students given an OSS declined by 44% (31,680) and the number of non-SPED students given an OSS declined by 23% (54,221).



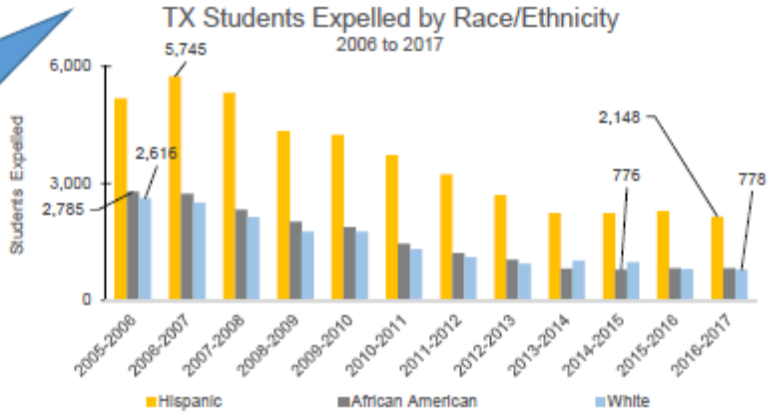
From 2006 to 2017, enrollment increased by nearly 800,000 while the dropout rated declined from 3.7% to 2.0%.



From 2006 to 2017, the number of SPED students given an ISS declined by 47% (59,169) and the number of non-SPED students given an ISS declined by 22% (117,698).



From 2006 to 2017, the number of expulsions declined by 59% (3,041) for Hispanic students, 71% (1,968) for African Americans, and 70% (1,838) for White students.



VIII. PA 18-89 does not violate the Federal Educational Rights and Privacy Act (FERPA) that protects educational records

PA 18-89 includes a provision that requires parents to be notified if their child witnesses physical harm being inflicted upon others by a student. This provision is intended to address the potential traumatic impact that violence in the classroom can have on young bystanders. To ensure privacy, the names of any student involved in the violence is prohibited from being disclosed. The operable language from PA 18-89 requires notification to parents "without disclosing the identity of the student who violated daily classroom safety."

Some have made the argument that this provision violates FERPA. Not only is this not true, such practices are legally permitted and currently occur in schools on a regular basis. It is not unusual for a principal to send a notice home to parents informing them of incidents involving students. Additionally, according to materials prepared for the Fordham University School of Law by Kathryn Rosenberg, disclosing observations of events to parents is permitted because what is observed is not considered an "educational record" under FERPA. Rosenberg includes the following scenario:[1]

> ***"WHAT INFORMATION IS PROTECTED UNDER FERPA?***
>
> ***Scenario*** *As you're walking back to your classroom from lunch, you notice a couple of students fighting in the hall. Your knowledge of the events comes only from this direct observation.* ***Does FERPA govern disclosure of what he or she saw?***
>
> ***ANSWER No,*** *FERPA does* ***not*** *prohibit a school official (here, the teacher) from disclosing information he or she witnessed. Direct observations aren't part of a student's education record.*
>
> - *A school official* ***may*** *disclose what he or she saw or overheard to appropriate authorities, including administrators, other school officials, parents, or law enforcement." [emphasis in the original]*

Clearly, parents should know when their child may have been exposed to a potentially traumatic event. This provision ensures that parents are made aware of such events and can address them with their children appropriately.

IX. Conclusion

For all of the reasons stated above, PA 18-89 reduces discriminatory discipline and emphasizes supports and assistance to students in need. It helps ensure a safe classroom environment for all students, and encourages a proactive approach to achieving a safe

[1] Rosenberg, Kathryn (2014) "THE TEACHER'S GUIDE TO UNDERSTANDING FERPA: *The Family Educational Rights and Privacy Act* Created for K-12 Classroom Staff" (pp. 17-18)
https://www.fordham.edu/download/downloads/id/1853/07b_-_teachers_guide_to_ferpa.pdf

school climate where students and educators are not injured. PA 18-89 emphasizes matching students in need with appropriate services and interventions, and seeks to keep students in the classroom as opposed to suspending or expelling students. Through a non-punitive approach, it helps to curtail the school-to-prison pipeline.

PA 18-89 does not violate state or federal special education laws; rather, it helps ensure that a special education student who has physically injured another person receives appropriate supports and interventions consistent with his or her IEP. PA 18-89 provides special education students with greater protections than currently exist.

Since language similar to Section 2 (b) of PA 18-89 was enacted in Texas, there have been double-digit declines in disciplinary action involving special education students and minorities—as well as a declining dropout rate, as indicated in the data above. And the language in PA 18-89 is even more supportive and proactive compared to the Texas statute.