The School Offense Diversion Program is a fulcrum of possibility for our youth who find themselves in the crosshairs of the intersectional policies and practices systemic to Delaware’s Department of Justice and Department of Education. The work of SoDP is work with youth – arrested as a result of their school discipline experience – that’s focused on their academic progress and personal conduct so that they stay in school, stay out of trouble, and graduate. Since 2004, when SoDP was implemented in New Castle County to provide relief to Family Court, the breadth and depth of our work has evolved into a more holistic collaborative that’s comprehensive in its approach yet specific to our students and the institutions that serve them. We pivot from context to conduct and back again.

It is our intention that SoDP-referred students learn to skillfully and mindfully resolve problems and sustain healthy relationships so that what may have been their first experience with the juvenile justice system is their last. While we meander along the superhighway of their internal and external lives, we pause to examine underlying issues that contribute to impulsive behaviors that led them, as young as 11 years old, into a system with a criminal record.

Does SoDP Make a Difference?

During the 2014 – 2015 school year, 111 students arrested in school were referred to SoDP by the Attorney General’s Office.

Ninety-four referred students participated in SoDP, and 79 students successfully completed the program.

Of the 79 students who successfully completed the program, 4 students reoffended.

Fifteen students did not successfully complete the program, and 17 students never showed up to participate in the program.

Of the 15 students who did not successfully complete the program, all 15 students reoffended within six months following their initial arrest.
Systemic Inputs: School Discipline

In 1993, the Delaware House of Representatives passed House Bill 85, which mandated reporting and uniform punishments for all in-school incidents, including but not limited to: assault, offensive touching, terroristic threatening, and possession of a weapon or controlled substance. This legislation established a one-size-fits-all disciplinary system, which led to negative impacts on the school climate, the education of the students, the demand on the juvenile justice system, and the wellbeing of our students and their families.

Delaware school districts formulated a discretionary course of action for various in-school infractions outlined in their Student Codes of Conduct. Although these disciplinary actions are discretionary, the uniformity of these punishments perpetuates the one-size-fits-all policy and continues to hyper-criminalize adolescent behavior. It soon became apparent that HB 85 led to an increase in in-school arrests, which subsequently created a costly and complex juvenile justice system.

In 2004, the School Offense Diversion Program (SoDP) was created to provide relief to the Court and implemented in collaboration with the Department of Justice. At that time, DCJ was one of two agencies that took referrals.

Along the way, Delaware legislators added Chapter 95 to Title 11 of the Delaware Code, which established victim-offender mediation (VOMP) in felony, misdemeanor, and juvenile delinquency cases without cost to the participants. Funding for these programs is provided by the Victim-Offender Mediation Committee, which is composed of the Attorney General, Public Defender, Chief Magistrate, Chair of the Criminal Justice Council, State Court Administrator, and the Chief Judge of Family Court.

In 2009, the Delaware House of Representatives passed House Bill 120, which amended the zero tolerance provision in the Delaware Code and gave discretion to school boards to modify the terms of expulsions when a school board determines that it is appropriate to do so.

In 2010, the School Discipline Task Force stated in its Executive Summary that after years of putting the legislation into practice, the negative impacts on the educational system became apparent. Students have been expelled from school and criminally charged for infractions that upon closer review did not merit such punishments. However, the law provided no ability for administrators or justice officials to address these situations on an individual basis. These unforeseen consequences took a toll on the school environment, education of the youth, and the demand placed on the juvenile justice system.

And now that Delaware is taking a hard look at racial and ethnic disparities in its criminal justice system, it’s time for us who practice school discipline to look at how our own implicit bias plays itself out.
Systemic Outcomes: From a Student

My thoughts on school discipline policies are that they seem to be unfair. I unfortunately had to experience it firsthand. Before this experience, I was an A/B student. I was not unruly or disruptive. In fact, this was the very first time that I had been in any type of trouble. I had a fight in school where a teacher was hit. I would never deliberately disrespect or hit someone, let alone a teacher. My history in the school system did not matter. I was being recommended for expulsion. I couldn’t believe it. I am only 12 years old and couldn’t even understand or fully grasp what I was facing.

After the fight, I was suspended for 5 days. I had no inclination that I was looking at expulsion. My mother had no idea either. She was told, your daughter will be suspended for 5 days and once she completes the suspension, you will attend a conference that allows her to return to school. My mother was told that the suspension may be extended, the worst case scenario. You can only imagine how we both felt when we got a letter in the mail that said I was being expelled and that we would have to go before the district. My mother acted. She was not going to allow this to happen. She was my advocate. I took full responsibility for what I had done, but simply thought this was much harsher than I could imagine. My mother thought the same. She could not stand by and allow this to happen. We went to the district board meeting. I pled my case. I felt like I was being tried for a much more serious crime. Not that this was not serious. But to me, the result of this didn’t add up to what was actually happening. My mother explained my history, that I was an honor roll student. A cheerleader. I sang in chorus and played clarinet in band. This incident did not define me. After the meeting we had no idea what was going to happen, but definitely not expulsion. My mother was told that she would be getting a call in a couple of days with the outcome. But before even getting the call from the district, she received a call from an alternative school asking to schedule a time to meet for my intake. My mother was totally blindsided and said, “No, my child will not be attending your school and that we are waiting on a call from the district.” The district never called. Instead my mother had to make several calls before getting the assistant superintendent on the line. He explained that he was not recommending expulsion, but that I could not go back to the school. He recommended that I go to an alternative school. My mother asked on what grounds, that an alternative school would do more harm than good, that the environment would not help me, but harm me. I did not deserve to go to an alternative school.

My mother fought for me to go to another school. There were only 2 months of school remaining. I didn’t understand why I couldn’t just finish out the year. Ultimately I was able to go to another school in a different school district. I thrived and earned straight As. We thought this was all behind us and then my mom receives a phone call from a detective 3 months later saying that I have to be arrested for the incident that happened at my last school. She thought it was a prank call. We soon realized how serious this was. I had to go to the police station, get photographed and fingerprinted. This was all too much for me.
In-school arrests are but one component of school discipline, and SoDP is simply one more touch point in the lives of our justice-involved youth who are simply trying to make it in this world. As an alternative to the juvenile court process and punitive disciplinary approaches, SoDP provides a space for mediation with students to talk through and understand the nature of the incident and to validate their experience. And because the referral comes at the end of a particular school discipline experience that led to a criminal charge, we begin our SoDP work discussing the incident, attempting to put it in perspective.

Then taking some courageous steps and keeping in mind that one size does not fit all, we create an SoDP Mediation Agreement that identifies a plan of action within a timeframe and within a framework of expectations for mindful growth, reflective self-awareness, and demonstrated self-discipline. Each student’s agreement includes SMART goals that are specific, measurable, attainable, relevant and rigorous, timely and trackable.

It is a respectful and organic and deliberate process that strives for academic achievement and personal growth. We shift the idea of discipline to a personal practice – best practices – that strengthens their wellbeing from the inside out. While youth are inherently impulsive and must be held accountable for their behavior, learning from their mistakes is as important as the mistakes they make. Our conversation continues over a series of visits, finding our ways out of a system that we help perpetuate. The outcome, when successful, is nothing less than a consequence of our relational work.

Our SoDP goal to reduce juvenile recidivism is unchanged; however, since 2011 our process has evolved. We’re paying greater attention to referred students with special needs. And we’re collecting and analyzing the individual and aggregate data necessary to measure the social impact of our work. But our SoDP-referred students are more than data points, and our work with them must be considered and positioned in a broader systemic, structural context that transcends even the school discipline experience.

Zen and the Art of SoDP
Dr. Aaron Kupchik, associate professor in the Department of Sociology and Criminal Justice at the University of Delaware and author of *Homeroom Security: School Discipline in an Age of Fear*, describes zero-tolerance policies as “blanketed laws” aimed towards keeping consistent criteria for in-school arrests following an outbreak of gun violence in schools during the early 1990s.

The data collected by SoDP throughout the 2014 – 2015 school year show that arrested students were most commonly charged with offensive touching, disorderly conduct, and assault third. These charges are inherently subjective by nature: one student who disrupts their classroom may be escorted to a guidance counselor, while another may be reported to the School Resource Officer.

<table>
<thead>
<tr>
<th>Charge Description</th>
<th>Number</th>
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<tbody>
<tr>
<td>Tier I Possession</td>
<td>1</td>
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<tr>
<td>Theft</td>
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<tr>
<td>Terroristic Threatening</td>
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<tr>
<td>Reckless Endangering</td>
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<tr>
<td>Receiving Stolen Property &lt;$1500</td>
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</tr>
<tr>
<td>Possession of Marijuana</td>
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<tr>
<td>Possession of Drug Paraphernalia, Possession of Marijuana</td>
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<tr>
<td>Possession of Deadly Instrument in Safe School Zone</td>
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<tr>
<td>Offense Conduct, Underage Consumption/Possession of Alcohol</td>
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<tr>
<td>Offensive Touching, Resisting Arrest</td>
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<tr>
<td>Harassment, Invasion of Property</td>
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<tr>
<td>Harassment</td>
<td>5</td>
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<tr>
<td>Disorderly Conduct, Resisting Arrest</td>
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<td>Disorderly Conduct, Offensive Touching</td>
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<tr>
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<td>Conspiracy III, Possession of Weapon in Safe School Zone</td>
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<td>Conspiracy III, Offensive Touching</td>
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<td>Carrying Concealed Deadly Weapon, Possession of Weapon in Safe School Zone</td>
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<tr>
<td>Carrying Concealed Deadly Weapon</td>
<td>3</td>
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<tr>
<td>Carrying Concealed Deadly Instrument, Possession of BB Gun in Safe School Zone</td>
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<tr>
<td>Carrying Concealed Deadly Instrument</td>
<td>3</td>
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<tr>
<td>Attempted Theft, Unauthorized Use</td>
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<tr>
<td>Assault III, Disorderly Conduct</td>
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<tr>
<td>Assault III</td>
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</tr>
</tbody>
</table>
A Year of Data | Our School Districts

36% of all SoDP students

22% of all SoDP students

17% of all SoDP students

10% of all SoDP students

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A Year of Data | Our School Districts

**COLONIAL SCHOOL DISTRICT**
- 7% of all SoDP students

**N.C.C. VO-TECH SCHOOL DISTRICT**
- 2% of all SoDP students

**CHARTER SCHOOLS**
- 3% of all SoDP students

**PRIVATE SCHOOLS**
- 2% of all SoDP students
A Year of Data | Charges by District

PRIVATE SCHOOLS

- Possession of Drug Paraphernalia, Possession of Marijuana: 2
- Carrying Concealed Deadly Weapon, Possession of Weapon in Safe School Zone: 1

CHRISTINA SCHOOL DISTRICT

- Theft: 1
- Terroristic Threatening: 1
- Reckless Endangering: 1
- Receiving Stolen Property <$1500: 1
- Possession of Marijuana: 1
- Offensive Touching: 5
- Harassment, Invasion of Property: 1
- Harassment: 1
- Disorderly Conduct, Offensive Touching: 3
- Disorderly Conduct: 4
- Criminal Trespassing III: 1
- Conspiracy III, Possession of Weapon in Safe School Zone: 1
- Conspiracy III, Disorderly Conduct, Offensive Touching: 1
- Conspiracy III: 1
- Carrying Concealed Deadly Weapon: 2
- Carrying Concealed Deadly Instrument, Possession of BB Gun in Safe School Zone: 1
- Assault III, Disorderly Conduct: 1
- Assault III: 1

REDCRAY CONSOLIDATED SCHOOL DISTRICT

- Offensive Touching, Resisting Arrest: 1
- Offensive Touching: 6
- Disorderly Conduct, Resisting Arrest: 2
- Disorderly Conduct, Offensive Touching: 2
- Disorderly Conduct: 5
- Conspiracy III, Offensive Touching: 1
- Carrying Concealed Deadly Weapon: 1
- Carrying Concealed Deadly Instrument: 1
- Attempted Theft, Unauthorized Use: 1
- Assault III, Disorderly Conduct: 1

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### A Year of Data | Charges by District

#### Brandywine School District

- **Tier I Possession**: 1
- **Possession of Drug Paraphernalia, Possession of Marijuana**: 1
- **Possession of Deadly Instrument in Safe School Zone**: 1
- **Offensive Touching**: 3
- **Disorderly Conduct, Resisting Arrest**: 1
- **Disorderly Conduct, Offensive Touching**: 1
- **Disorderly Conduct**: 2
- **Conspiracy III, Offensive Touching**: 1
- **Carrying Concealed Deadly Instrument**: 1
- **Assault III, Criminal Mischief, Offensive Touching**: 1
- **Assault III**: 1

#### Appoquinimink School District

- **Assault III, Disorderly Conduct**: 1
- **Harassment**: 1
- **Disorderly Conduct, Resisting Arrest**: 2
- **Disorderly Conduct, Offensive Touching, Resisting Arrest**: 1
- **Assault III, Disorderly Conduct**: 4

#### Colonial School District

- **Offensive Touching**: 1
- **Harassment**: 1
- **Disorderly Conduct**: 1
- **Conspiracy III, Disorderly Conduct, Offensive Touching**: 1
- **Carrying Concealed Deadly Weapon, Possession of Weapon in Safe School Zone**: 1
- **Assault III**: 1

#### N.C.C. Vo-Tech School District

- **Offensive Touching**: 1
- **Disorderly Conduct**: 1
The majority of SoDP-referred students were arrested in the 8th grade and 9.6% of all students were Black, female, 8th graders.

During the 2014-2015 school year 94 students participated in SoDP.

Of the 79 who successfully completed the program, 4 reoffended.

Of the 15 who unsuccessfully completed the program, 15 reoffended.
Restorative Justice: Our Work Together

Delaware Center for Justice, Inc.
School Offense Diversion Program
Mediation Agreement

Date: January 1, 2016
Referred Student Name: Luke Skywalker / Princess Leia
Court Case File No: 1523456789
Charges: Disorderly Conduct, Offensive Touching, Assault III

The above-named student agrees to the following conditions in order for the charges to be dismissed without prejudice in Family Court of New Castle County, Delaware.

In The Blue folder – I agree to read through the information provided in the Blue Folder and discuss what I found helpful when we meet again on Friday, January 15, 2016.

At the "Yes I Will" Wall – I agree to write at the wall "what I want to accomplish before I graduate high school" when we meet again on Friday, January 15, 2016.

Self-reflection about the incident – I agree to express what I was experiencing – not just about what was happening – before, during, and after the school incident that led to my charges. I will think about who was hurt and what harm was done. I will show through my particular form of expression what I'm learning about myself and about my relationships. I will write with both humility and empathy. I will aim for 2-3 pages double-spaced, typed, or 600 words if handwritten. This self-reflection is due when we meet again on Friday, January 15, 2016.

A letter from the future – I agree to write a letter to myself from the future, in the third person, with understanding and confidence. This letter must connect to life lessons learned from the school incident. In other words, I will talk to the student I was when I was charged with this offense. I will aim for 2-3 pages double-spaced, typed, or 600 words if handwritten. This letter is due when we meet again on Friday, January 15, 2016.

School Discipline: Context vs Conduct – I agree to write an essay about my school discipline experience and how it has impacted me. As my own advocate and fully aware of the context surrounding my conduct, I will suggest through my writing more effective and equitable ways to address school discipline. I will aim for 2-3 pages double-spaced, typed, or 600 words if handwritten. This essay is due when we meet again on Friday, January 15, 2016.

IM 40 Developmental Assets – I agree to read the assets and complete the attached worksheets. I will discuss this when we meet again on Friday, January 15, 2016.

Mapping – I agree to map about a goal to be determined when we meet again on Friday, January 15, 2016.

Reading Assignment – I agree to read The Alchemist and, in my own words, write a paragraph and discuss what part of the story left an impression on me. I also agree to provide an example of empathetic behavior from the story. This is due when we meet again on Friday, January 29, 2016.

Gratitude List – During quiet time, I agree to make a list of 7 – people, places, experiences – for which I am grateful and, in the spirit of greater self-awareness, elaborate on 3. I will bring this list and share it when we meet again on Friday, January 15, 2016.

Pay it Forward – I agree to volunteer a minimum of 15 hours where I can "learn & serve" and practice paying it forward. I agree to begin my search within the next 2-3 days for a site that interests me, and I agree to complete my hours on or before Friday, January 29, 2016. I also agree to complete my attendance sheet and provide this to SoDP in person or by mail when I complete my hours.

Counseling – I agree to start/continue with therapy working on helpful expressions of anger and exploring other emotions and issues that are harmfully impacting me (us) and others around me (us) but essential to my (our) growth as an individual (and a family).

School Attendance – I agree to attend school every day and perform as expected in accordance with the spirit and letter of my school's Code of Conduct, and I agree to find the academic and behavioral structure I need through tutoring assistance or a mentoring program or from my guidance counselor or school counselor, when necessary.

Chat & Chew – I agree to attend Chat & Chew on Tuesday, March 22, 2016.

Student Success Plan – I agree to track my progress on my SSP.

Focusing My Power – I agree to practice the ABCs of Niroga's TLS – mindful action, mindful breathing, and mindful centering – on a daily basis.

At home – I agree to practice patience with my siblings.

No contact – I agree to have no contact with Count Dooku out of school and no unlawful contact in school.

Next scheduled meeting dates and times – I agree to meet again on Friday, January 15, 2016 at 4 pm, and on Friday, January 29, 2016 at 4 pm, and stay in touch by phone or email if necessary between now and then.

I understand that if I do not satisfactorily complete the above conditions agreed upon that my case may be returned to Delaware's Department of Justice for a case review. I freely and voluntarily agree to complete any future recommendations made by DCJ/SoDP staff. I will notify DCJ/SoDP staff of any change in address or phone number, and will stay in contact with the program coordinator until receiving written notice that I have fulfilled the requirements of my SoDP Mediation Agreement.
Final Thoughts

As we do this work, which takes a lot of time, it helps to remember – always remember – Virginia Satir’s quote from a chapter in the book, *Motivational Interviewing with Adolescents and Young Adults*—

> Adolescents are not monsters. They are just people trying to learn how to make it among the adults in the world, who are probably not so sure themselves.

And as adults, we should wonder when – if ever – we’ll change the policies and end the practices that criminalize adolescent behavior so that our kids stay in school, stay out of trouble, and graduate. The conundrum is a maze of intersecting and overlapping policies and practices, and prejudices as well, imbedded in our SoDP students’ lives and their school discipline experiences. We sit on the sidelines rather than challenge the popular paradigm that forecasts unrelenting disparities in juvenile justice vis-à-vis the school discipline experience. In the thin space, where we work with every SoDP-referred youth, it is essential that we also measure our performance with meaningful data, rather than meaningless metrics, and share – with you – our data-driven outcomes.

Reaching our kids sooner rather than later – before they are arrested, so that they leave high school with a diploma and without a criminal record – is our charge. We must also dismantle a system that perpetuates a practice that discriminates and diminishes lives. Somewhere in this work is a better sequence that allows for examining context as well as conduct. While each situation is unique, we want our students and our schools – those most impacted by the school discipline experience – to benefit as the result of our work.

If DCJ is the leading non-profit organization committed to transforming the quality of justice in Delaware through policy and practice – if that’s what we believe – then it’s incumbent on us to expand SoDP. We must lead the difficult conversations with Delaware’s policy makers to address the institutional impact of our school discipline policies and practices. This will ensure that none of us is preserving the system that criminalizes teenage behavior.

As a court-approved diversion program that provides relief to the Court, we cannot help but worry that SODP perpetuates the systemic injustice of the school discipline experience by not addressing it – and it’s wrong. The work of DCJ is meant to be a catalyst for change. Otherwise, SoDP is as much a diversion for a broken system as it is for broken lives. As partners in conversation – ranging from referred SoDP students, to DCJ leadership, to members of the VOMP committee, to elected officials, and funders – we can shift the trajectory of lives, young and old, impacted by school discipline, so that these experiences actually transform institutional policies and practices – and lives.
A Message from the SoDP Coordinator
Cindy McDaniel

It has been a privilege to study and serve with University of Delaware interns whose work has brought this Brief into being. And there are many others who helped us—people who care deeply about the path our youth travel—including deputy attorneys general from the Department of Justice, assistant public defenders from the Office of the Public Defender, and school administrators.

While not losing sight of our goal—to make each referred student’s first encounter with the juvenile justice system their last—our actual impact, as measured by our data, reveals a complicated picture that points to many variables in play that both help and hinder reaching our goal. We continue to learn and adapt and strive to measure what actually matters.

It is our hope that this data-supported knowledge, along with students’ stories and interviews with external stakeholders, will add insight to the broader discussion and shift school discipline policies and practices so that those who are most harmed by discretionary decision-making are able to gain more control over their lives.

This Brief has been researched, designed, and written by:
UD intern, Alexandra Kimball, and SoDP program coordinator, Cindy McDaniel
Contributing UD interns are:
Cordelia Jones, Tahlia Maron, Jamie Pavlou, Samantha Brown, Georgina Class-Peters, Jessica Cooper, Lula Weldekidan, Madison Shipley, Kelsey DeBoda, and Elizabeth Powell
Edited by: Cindy McDaniel

Inspiration for our Work + Interviews for our Brief