

**DEPARTMENT OF EDUCATION**  
**OFFICE OF THE SECRETARY**  
**600 School Climate and Discipline**

**614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion**

**1.0 Purpose**

Pursuant to 14 **Del.C.** §122(b) (26), this regulation provides uniform definitions for student conduct which may result in alternative placement or expulsion. This regulation shall apply to all school districts and charter schools. Nothing contained here shall be interpreted to require the alternative placement or expulsion of a student, nor shall this regulation be interpreted to restrict the ability of school districts and charter schools to determine which student conduct shall result in expulsion or an alternative placement.

**2.0 Definitions**

Since some definitions of Section 2.0 may not be age appropriate, this section shall not be required to be published in a district or charter school's Student Code of Conduct. The district/charter school shall publish an internet link to this entire regulation in the Student Code of Conduct and provide a paper copy of the regulation upon request of a member of the public. In this regulation, the following terms shall have the meanings indicated below:

**"Alcohol"** shall have the same definition as provided in 4 **Del.C.** §101(1).

**"Alcohol Liquor"** shall have the same definition as provided in 4 **Del.C.** §101(2).

**"Charter School"** means a charter school board established pursuant to 14 **Del.C.** Ch. 5.

**"Commission by a student"** means that a student has engaged in behavior equivalent to that which is prohibited by law regardless of whether the student has been criminally convicted of the same.

**"Crime"** shall have the same definition as provided in 14 **Del.C.** §4112.

**"Dangerous Instrument"** shall have the same definition as provided in 11 **Del.C.** §222(4).

**"Deadly Weapon"** shall have the same definition as provided in 11 **Del.C.** §222(5).

**"Distribute", "Distributing" or "Distribution"** means the transfer or attempted transfer of Alcohol, a Drug, a Look Alike Substance, a Drug Like Substance, or Drug Paraphernalia to any other person with or without the exchange of money or other valuable consideration.

**"District"** means a reorganized school district or vocational technical school district established pursuant to 14 **Del.C.** Ch. 10.

**"Drug"** means any "controlled substance" or "counterfeit controlled substance" as defined in 16 **Del.C.** §4701.

**"Drug Like Substance"** means any non-controlled and non-prescription substance capable of producing a change in behavior or altering a state of mind or feeling, including, for example, some over the counter cough medicines, certain types of glue, caffeine pills and diet pills. The definition of Drug Like Substance does not include tobacco or tobacco products which are governed by 14 **DE Admin. Code** 877 Tobacco Policy.

**"Drug Paraphernalia"** shall have the same definition as provided in 16 **Del.C.** §4701.

**"Expulsion"** means the exclusion from the regular school setting for a period determined by the local District board or Charter School board.

**"Firearm"** means handgun, rifle, shotgun, or other type of firearm as that term is defined in the federal Gun Free Schools Zone Act at 18 U.S.C.A. §921.

**"Look Alike Substance"** means any non-controlled substance which is packaged so as to appear to be, or about which a student makes an express or implied representation that the substance is, a Drug or a non-controlled substance capable of producing a change in behavior or altering a state of mind or feeling.

**"Nonprescription Medication"** means any over the counter medication of which some may be a Drug Like Substance.

**"Possess", "Possessing", or "Possession"** means that a student has on the student's person, in the student's belongings, or under the student's reasonable control prohibited items or substances.

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## TITLE 14 EDUCATION

### DELAWARE ADMINISTRATIVE CODE

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**"Prescription Drugs"** means any substance obtained directly from or pursuant to a valid prescription or order of a practitioner, as defined in 16 **Del.C.** §4701, while acting in the course of his or her professional practice, and which is specifically intended for the student in whose possession it is found.

**"School Environment"** means within or on school property, and at school sponsored or supervised activities, including, for example, on school buses, at functions held on school grounds, at school sponsored extracurricular activities held on and off school grounds, and on field trips.

**"Sexual Act"** means (1) contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight; (2) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or (3) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to arouse or gratify the sexual desire of any person.

**"Sexual Intercourse"** shall have the same definition as provided in 11 **Del.C.** §761.

**"Sexual Offense"** means any offense defined by 11 **Del.C.** §§763 through 780B and §§1108 through 1112B, and 1352 through 1353.

**"Student Code of Conduct"** means the District/Charter School approved document which specifies the rights and responsibilities of students, defines conduct that disrupts/threatens a positive/safe school environment, standardizes procedures for consequences, disciplinary action, and defines due process and grievance procedures.

**"Theft"** means those acts described in 11 **Del.C.** §§ 841 through 847 inclusive.

**"Use"** means that a student is reasonably known to have voluntarily ingested, smoked or otherwise assimilated Alcohol, a Drug or a Drug Like Substance, or is reasonably found to be under the influence of such a substance.

**23 DE Reg. 751 (03/01/20)**

### 3.0 Uniform Definitions for Student Conduct

The following definitions shall be used whenever a school district or charter school uses such conduct as a basis for alternative placement or expulsion of a student:

**"Arson"** means a person recklessly or intentionally damages a building by intentionally starting a fire or causing an explosion.

**"Assault III"** means: (1) A person intentionally or recklessly causes physical injury to another person; or (2) With criminal negligence the person causes physical injury to another person by means of a Deadly Weapon or a Dangerous Instrument.

**"Attorney General's Report (Juvenile Arrest Warrant and Complaint)"** means the Department of Justice's report of out-of-school criminal conduct, regardless of jurisdiction, which shows disregard for the health, safety and welfare of others, including, but not limited to acts of violence, weapons offenses, and drug offenses.

**"Breaking and Entering"** means unauthorized entry of any locked area of the school environment during or after school; including, but not limited to, rooms, classrooms, auditorium, gym, shops, offices, lockers, cabinets and vehicles.

**"Bullying"** means any intentional written, electronic, verbal or physical act or actions against another student, school volunteer or school employee that a reasonable person under the circumstances should know will have the effect of: (1) Placing a student, school volunteer or school employee in reasonable fear of substantial harm to his or her emotional or physical well-being or substantial damage to his or her property; or (2) Creating a hostile, threatening, humiliating or abusive educational environment due to the pervasiveness or persistence of actions or due to a power differential between the bully and the target; or (3) Interfering with a student having a safe school environment that is necessary to facilitate educational performance, opportunities or benefits; or (4) Perpetuating bullying by inciting, soliciting or coercing an individual or group to demean, dehumanize, embarrass or cause emotional, psychological or physical harm to another student, school volunteer or school employee.

**"Criminal Deadly Weapons/Dangerous Instrument Offense, Commission of"** means the Commission by a student of an offense prohibited by 11 **Del.C.** §§1442 through 1460 inclusive.

**"Criminal Drug Offense, Commission of"** means the Commission by a student of the unlawful Possession, Distribution, or use of Alcohol, a Drug, a Drug-Like Substance, and/or Drug Paraphernalia.

**"Criminal Mischief (Vandalism)"** means a student, in the School Environment, intentionally or recklessly: (1) Damages tangible property of another person or entity; or (2) Tamper with tangible property of another person so as to endanger person or property.

**"Criminal Sexual Offense, Commission of"** means the Commission by a student of an offense prohibited by 11 Del.C. §§763 through 780B and §§1108, 1112B and §1352 through §1353.

**"Criminal Violent Felony Offense, Commission of"** means the Commission by a student of any violent felony as specified in 11 Del.C. §4201(c).

**"Cyberbullying"** means the use of uninvited and unwelcome electronic communication directed at an identifiable student or group of students, through means other than face-to-face interaction, which (1) interferes with a student's physical well-being; or (2) is threatening or intimidating; or (3) is so severe, persistent, or pervasive that it is reasonably likely to limit a student's ability to participate in or benefit from the educational programs of the school district or charter school. Communication shall be considered to be directed at an identifiable student or group of students if it is sent directly to that student or group, or posted in a medium that the speaker knows is likely to be available to a broad audience within the school community.

**"Dangerous Instrument Possession/Concealment/Sale"** means the unauthorized possession, concealment, or sale by a student in the School Environment of any instrument, article or substance which is readily capable of causing serious physical injury or death.

**"Deadly Weapon Possession/Concealment/Sale"** means the possession, concealment, or sale of a Deadly Weapon in the School Environment.

**"Defiance of School Authority"** means: (1) A verbal or non-verbal refusal to immediately comply with a reasonable request from school personnel, or refusal to identify oneself at the request of school personnel, and/or refusal to comply with disciplinary action; or (2) A verbal or non-verbal display of disrespect and/or uncivil behavior toward school personnel which either causes a substantial disruption or material interference with school activities.

**"Disorderly Conduct"** means conduct in the School Environment which causes public inconvenience, annoyance or alarm or creates a risk thereof by: engaging in fighting or violent tumultuous or threatening behavior or making an unreasonable noise or an offensively coarse utterance or gesture or display or addressing, abusive language to any person present.

**"Distribution of Drugs and/or Alcohol and/or Drug Paraphernalia"** means the sale, transfer, or distribution in school, on school property, or on school field trip of drugs or alcohol.

**"Extortion"** means to obtain or attempt to obtain money, goods, services, or information from another by force or the threat of force.

**"Felony Theft (\$1500 or more)"** means: (a) When a person takes, exercises control over or obtains property of another person intending to deprive that person of it or appropriate it; or (b) When a person, in any capacity, legally receives, takes, exercises control over or obtains property of another which is the subject of Theft, and fraudulently converts the property to the person's own use. The Theft is considered a felony when the value of the property received, retained, or disposed of is \$1500 or more or the victim is 62 years of age or older, or an "adult who is impaired" as defined in § 3902(2) of Title 31, or a "person with a disability" as defined in § 3901(a)(2) of Title 12.

**"Fighting"** means any aggressive physical altercation between two or more individuals.

**"Gambling"** means participation in games of chance for money or other things of value.

**"Gun Free Schools Violation"** means the prohibited bringing to school, or possession while in school of a firearm by a student.

**"Harassment"** means any actions or statements made with the intent to harass, annoy, or alarm another person which: A) insults, taunts, or challenges the other person or; B) is a cause of alarming or distressing conduct which serves no legitimate purpose and is done in a manner which the actor knows is likely to provoke a violent or disorderly response or cause a reasonable person to suffer fear, alarm, or distress.

**"Inhalant Abuse"** means chemical vapors that are inhaled for their mind-altering effects.

**"Medications: Inappropriate Use or Possession"** means Possessing or using Nonprescription Medication or Prescription Drugs of any type in the School Environment in violation of 14 DE Admin. Code 612.

**"Misuse of Technology"** means:

The use of school technology equipment in:

Soliciting, using, receiving or sending pornographic or obscene material; or

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## TITLE 14 EDUCATION

### DELAWARE ADMINISTRATIVE CODE

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Accessing unauthorized email; or

The unauthorized downloading and/or installing of files; or

Intentionally damaging technology equipment in the School Environment; or

A situation in which a student deliberately:

Tampers with, damages, alters, accesses, crashes, or corrupts the computer/communications system in the School Environment resulting in the loss or corruption of information or the ability of the system to operate; or

In any way disrupts or degrades the school or District's technology infrastructure.

**"Offensive Touching"** means intentionally touching another person either with a member of his or her body or with any instrument, knowing that the person is thereby likely to cause offense or alarm to such other person; or Intentionally striking another person with saliva, urine, feces or any other bodily fluid, knowing that the person is thereby likely to cause offense or alarm to such other person.

**"Pornography"** means the possession, sharing, or production of any known obscene material in the School Environment.

**"Rape or Attempted Rape"** means sexual intercourse and attempted Sexual Intercourse without consent of the victim in both cases.

**"Reckless Burning"** means when a person intentionally or recklessly starts a fire or causes an explosion and recklessly places a building or property in danger of destruction or damage or places another person in danger of physical injury.

**"Repeated Violations of Student Code of Conduct"** means five or more violations of the school's Code of Conduct within a school year, excluding chronic infractions for tardiness or unexcused absences to school/class.

**"Sexual Assault"** means any unwanted sexual behavior committed by a perpetrator who is a stranger to the victim or by a perpetrator who is known by the victim or related to the victim by blood, marriage or civil union. Behaviors that fall under this definition include but are not limited to: sexual harassment as defined in §763 of Title 11; sexual contact as defined in §761 of Title 11; Sexual Intercourse as defined in §761 of Title 11; sexual penetration as defined in §761 of Title 11; and child sexual abuse as defined in §901 of Title 10.

**"Sexual Misconduct"** means a consensual sexual act or acts between individuals within the School Environment.

**"Stealing"** means taking, exercising control over or obtaining property of another person intending to deprive that person of it or appropriate it.

**"Steroids Possession and/or Use"** means the unlawful use or possession of steroids.

**"Tampering with Public Records"** means a person knowingly without valid authorization removes, mutilates, destroys, conceals, makes a false entry in or falsely alters any original record or other written material filed with, deposited in or otherwise constituting a record of a public office or public servant.

**"Teen Dating Violence"** means assaultive, threatening or controlling behavior, including stalking as defined in 11 Del.C. §1312, that one person uses against another person in order to gain or maintain power or control in a current or past relationship. The behavior can occur in both heterosexual and same sex relationships, and in serious or casual relationships.

**"Terroristic Threatening"** means when: (1) A person threatens to commit any Crime likely to result in death or in serious injury to person or property; or (2) A person commits an act with intent of causing an individual to believe that the individual has been exposed to a substance that will cause the individual death or serious injury.

**"Terroristic Threatening - Security Threat"** means when a person makes a false statement or statements: (1) Knowing that the statement or statements are likely to cause evacuation in the School Environment; (2) Knowing that the statement or statements are likely to cause serious inconvenience in the School Environment; or (3) In reckless disregard of the risk of causing terror or serious inconvenience in the School Environment.

**"Unlawful Sexual Contact III"** means when a student has sexual contact with another person or causes the victim to have sexual contact with the student or a third person and the student knows that the contact is either offensive to the victim or occurs without the victim's consent.

**"Use and/or Possession of a Drug and/or Alcohol and/or Drug Paraphernalia"** means that in the School Environment a student unlawfully possesses, uses or is under the influence of Alcohol, a Drug, Drug

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**TITLE 14 EDUCATION**  
**DELAWARE ADMINISTRATIVE CODE**

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**5**

Paraphernalia, or any substance or paraphernalia consistent with the definitions of these substances or paraphernalia.

**“Violation of Behavior Contract”** means the failure of a student to comply with the provisions of any behavior contract between the student, the student’s legal guardian, and the school.

**17 DE Reg. 835 (02/01/14)**

**23 DE Reg. 751 (03/01/20)**