

DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))

FINAL

REGULATORY IMPLEMENTING ORDER

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

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend Title 14 of the Administrative Code by adding a new regulation 14 **DE Admin. Code** 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion. The regulation is required by House Bill 42 of the 146th General Assembly and intended for “Establishing, for purposes of student discipline, uniform definitions for student conduct which may result in alternative placement or expulsion.”

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on **October 5, 2013**, in the form hereto attached as *Exhibit “A”*. Comments were received from Governor’s Advisory Council for Exceptional Citizens, State Council for Persons with Disabilities, and the American Civil Liberties Union of Delaware. The Department considered all comments and made changes as determined appropriate. A letter to each of the entities related to their comments will be forthcoming.

II. Findings of Facts

The Secretary finds that it is appropriate to amend Title 14 of the Administrative Code by adding a new regulation 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion as required by House Bill 42 of the 146th General Assembly.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend Title 14 of the Administrative Code by adding a new regulation 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion attached hereto as *Exhibit “B”* is hereby added to Title 14 of the Administrative Code. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion hereby added shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion hereby shall be in the form attached hereto as *Exhibit “B”*, and said regulation shall be cited as 14 **DE Admin. Code** 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on **January 16, 2014**. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 16th day of January 2014.

Department of Education
Mark T. Murphy, Secretary of Education

Approved this 16th day of January 2014

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).

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

"Charter School" means a charter school board established pursuant to Chapter 5 of Title 14 of the **Delaware Code**.

"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.

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

"Deadly Weapon" shall have the same meaning 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 Chapter 10 of Title 14 of the **Delaware Code**.

"Drug" means any "controlled substance" or "counterfeit controlled substance" as defined in 16 Del.C. §4701 (6) and (7).

"Drug Like Substance" means any noncontrolled and nonprescription 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 meaning as provided in 16 Del.C. §4701 (17).

"Expulsion" means, for purposes of this regulation, 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 noncontrolled 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 noncontrolled substance capable of producing a change in behavior or altering a state of mind or feeling.

"Nonprescription Medication" means any over the counter medication; some of these medications 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.

"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(31), 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.

"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.

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

"Sexual Intercourse" shall have the same meaning as provided in 11 Del.C. §761(g).

"Sexual Offense" means any offense defined by 11 Del.C. §§763-780 and §§1108-1112A, 1352(2) and 1353~~(2)~~.

"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 846 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.

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" shall mean ~~[any act utilizing fire, smoke, or explosives which cause alarm or danger to life; including but not limited to willful or malicious burning of school property, its contents, or the property of others~~ a person recklessly or intentionally damages a building by intentionally starting a fire or causing an explosion].

"Assault III" shall mean: (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)" shall mean 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" shall mean 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" shall mean 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 Drug Offense, Commission of" shall mean 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 Deadly Weapons/Dangerous Instrument Offense, Commission of" shall mean the Commission by a student of an offense prohibited by 11 Del.C. §§1442 through 1458 inclusive.

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

"Criminal Sexual Offense, Commission of" shall mean the Commission by a student of an offense prohibited by 11 Del.C. §§763 through 780, inclusive, or §§1108 through 1112A, inclusive, or §1352(2) or §1353~~(2)~~.

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

"Cyberbullying" shall mean 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(s) Possession/Concealment/Sale" shall mean the unauthorized Possession/concealment/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(s) Possession/Concealment/Sale" shall mean the Possession, concealment, or sale of a Deadly Weapon **[in the School Environment]**.

"Defiance of School Authority" shall mean: (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" shall mean 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.

~~["Disruption of the Educational Process" shall mean behavior, which causes a substantial disruption or material interference with school activities.]~~

"Distribution of Drugs and/or Alcohol and/or Drug Paraphernalia" shall mean the sale, transfer, or Distribution in school, on school property, or on school field trip of Drugs or Alcohol.

"Extortion" shall mean 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)" shall mean: (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" shall mean any aggressive physical altercation between two or more individuals.

"Gambling" shall mean participation in games of chance for money or other things of value.

"Gun Free School's Violation" shall mean the prohibited bringing to school, or Possession while in school of a Firearm by a student.

"Harassment" shall mean any actions or statements ~~**[that intimidate, offend, or defame the dignity or self-esteem of individuals or groups. Harassment may include, but is not limited to verbal harassment or abuse, repeated remarks or jokes with demeaning implications or other offensive behavior. Harassment also includes intimidating, offensive or defaming behavior or materials directed at an individual because of that individual's race, national origin, disability, sexual orientation or religion**~~ 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" shall mean chemical vapors that are inhaled for their mind-altering effects.

"Medications: Inappropriate Use or Possession" shall mean Possessing or using Nonprescription Medication or Prescription Drugs of any type in the School Environment in violation of **[a charter school or school District's Drug and Alcohol policy 14 DE Admin. Code 612]**.

"Misuse of Technology" shall mean:

The use of school technology equipment in:

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

Accessing unauthorized email; or

The unauthorized downloading and/or installing of files; or

Intentionally damaging technology equipment **[with]** in the School Environment; or

A situation in which a student deliberately:

Tampers with, damages, alters, accesses, crashes, or corrupts the computer/communications system [with] 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" shall mean 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" shall mean the Possession, sharing, or production of any known obscene material [with] in the School Environment.

"Rape or Attempted Rape" shall respectively mean sexual intercourse and attempted Sexual Intercourse without consent of the victim in both cases.

"Reckless Burning" shall mean 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" shall mean ~~[-(1) 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; or (2) Violation by a student of any behavior contract between the student, his/her legal guardian, and the school].~~

"Sexual Assault" shall mean 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(f) of Title 11; Sexual Intercourse as defined in §761(g) of Title 11; sexual penetration as defined in §761(i) of Title 11; and child sexual abuse as defined in §901 of Title 10.

"Sexual Misconduct" shall mean a consensual sexual act(s) between two 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" shall mean the unlawful Use or Possession of steroids.

"Tampering with Public Records" shall mean 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" shall mean 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" shall mean 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" shall mean when a person makes a false statement or statements: (1) Knowing that the statement or statements are likely to cause evacuation ~~[of a building, place of assembly, or facility of public transportation 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" shall mean 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 ~~[drugs a Drug]~~ and/or Alcohol and/or Drug Paraphernalia" shall mean ~~[, that in the School Environment,] a student unlawfully Possesses, Uses or is under the influence of[, in the School Environment,] Alcohol, [Drugs or any prohibited substance a Drug, Drug Paraphernalia, or any substance or paraphernalia consistent with the definitions of these substances or paraphernalia].~~

["Violation of Behavior Contract" shall mean the failure of a student to comply with the provisions of any behavior contract between the student, his/her legal guardian, and the school.]

This regulation shall become effective for School Codes of Conduct in the 2014-15 school year.

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