

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(26) (14 **Del.C.** §122(b)(26))  
14 **DE Admin. Code** 614

### PROPOSED

### PUBLIC NOTICE

#### Educational Impact Analysis Pursuant to 14 Del.C. §122(d)

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

##### A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

##### B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §122(b)(26), the Delaware Department of Education developed amendments to 14 **DE Admin. Code** 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion. This regulation is being amended pursuant to 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years. The proposed amendments include adding suspensions to the title of the regulation and Section 1.0, updating the general definitions related to student conduct in Section 2.0, changing Section 3.0 to add definitions for alleged criminal conduct in Attorney General's reports, and adding Section 4.0., which updates the definitions used by school districts and charter schools in Student Codes of Conduct.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before June 2, 2025. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

##### C. IMPACT CRITERIA

1. Will the regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.
2. Will the regulation help ensure that all students receive an equitable education? The amended regulation is not designed to help ensure all students receive an equitable education.
3. Will the regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will help ensure all students' health and safety are adequately protected by providing definitions for student conduct which may result in suspension, alternative placement or expulsion.
4. Will the regulation help to ensure that all students' legal rights are respected? The amended regulation helps to ensure that all students' legal rights are respected by providing definitions for student conduct which may result in suspension, alternative placement or expulsion.
5. Will the regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements or mandates on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The regulation does not change the decision making authority and accountability for addressing the subject to be regulated. By statute, the Department promulgates regulations governing the uniform definitions for student conduct which may result in alternative placement or expulsion.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The new regulation is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no cost to the state and to the local school boards of complying with this amended regulation.

## **614 Uniform Definitions for Student Conduct Which May Result in Suspension, Alternative Placement 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 suspension, alternative placement placement, or expulsion. This regulation shall apply to all school districts and charter schools. Nothing contained here shall be interpreted to require the suspension, alternative placement 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 suspension, alternative placement, or expulsion.

### **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: The following words and terms, when used in this regulation, shall have the following meaning:~~

~~"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).~~

~~"Alternative placement" means the removal of a student from the student's school on a temporary basis and assignment to an alternative program for a duration not to exceed the total number of student days in a school year from the date of approval by the district or charter school level coordinator.~~

~~"Charter School 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 instrument" shall have the same definition as provided in 11 **Del.C.** §222(4) §222.~~

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

~~"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 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 district board or Charter School 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.~~

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

~~"Long-term suspension" means disciplinary action approved by the superintendent upon recommendation of the principal or pending a decision by the district or charter school level coordinator regarding an alternative placement, the board of education's decision regarding an expulsion hearing, or other formalized disciplinary action hearing for the student, resulting in the student being removed from the regular school program for 11 consecutive school days or more and not to exceed the total number of school days in a school year.~~

**"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.

**"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 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, and at functions held at the school in the evening.

**"School property"** means any building, structure, athletic field, sports stadium, or real property that is owned, operated, leased, or rented by any public school district or charter school including any kindergarten, elementary, secondary, vocational-technical school, or charter school, or any motor vehicle owned, operated, leased, rented, or subcontracted by any public school or charter school.

**"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.

**"Short-term suspension"** means disciplinary action approved by the principal or school discipline team resulting in the student being removed from the student's regular school program for at least 1/2 school day and not more than 10 consecutive school days.

**"Student Code of Conduct code of conduct"** means the District/Charter School district or charter school approved document which specifies the rights and responsibilities of students, defines conduct that disrupts/ threatens a positive/safe disrupts, threatens, or disrupts and threatens a positive and safe school environment, standardizes procedures for consequences, consequences and 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 Attorney General's Reports**

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: Attorney General's reports are reports received by school districts and charter schools when a student has engaged in alleged criminal conduct, regardless of jurisdiction, which demonstrates the propensity to show disregard for the health, safety and welfare of others, including serious acts of violence, weapons offenses, and drug offenses. The following words and terms shall be used to understand the student's alleged criminal conduct in Attorney General's reports.

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

**"Assault"** means any offense defined by 11 Del.C. §§611 through 613.

**"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 commission by a student of an offense prohibited by 11 Del.C. §§1442 through 1460 ~~1463~~ inclusive.

**"Criminal Drug Offense, Commission of"** means the Commission commission by a student of the unlawful Possession, Distribution, or use of Alcohol, a Drug, a Drug-Like Substance, and/or Drug Paraphernalia any controlled substances prohibited by Title 16.

**"Criminal Mischief (Vandalism)"** means 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"** means the Commission commission by a student of an offense prohibited by 11 Del.C. §§763 through 780B and §§1108, 1112B and §1352 through §1353 ~~780, 783 through 783A, 787, 1100A, 1108 through 1112B, 1335, 1352 through 1353, and 1361.~~

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

**"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~~

~~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 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 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.~~

~~"Sexual offense" means any offense defined by 11 Del.C. §§763 through 780, 783 through 783A, 787, 1100A, 1108 through 1112B, 1335, 1352 through 1353, and 1361.~~

~~"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.

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

**"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 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)

#### **4.0 Uniform Definitions for Student Codes of Conduct**

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

**"Academic dishonesty"** means fraudulent deception in preparing or presenting course work or class assignments as a student's own work when it is not. This includes: (1) copying another student's work, (2) unauthorized use of notes or sharing answers during a test, (3) presenting another person's work as one's own, (4) presenting quotations, words, or ideas without proper references or credit (plagiarism), (5) unauthorized use of AI for completion of student assignments, and (6) collusion, working together to provide or receive answers on an independent assignment or assessment.

**"Assault causing physical injury"** means students who intentionally engage in an act that causes physical injury or serious physical injury to another person. This includes bruises, lacerations, puncture and stab wounds, dislocations, sprains, or bone fracture. This offense is not used for students under the age of 12, unless the student causes a serious physical injury, which are injuries that create the risk of death or cause disfigurement, impairment of health, or loss or impairment of the function of any bodily organ or limb.

**"Attorney General's report"** means a report received by the Delaware Department of Justice regarding students in regular school programs who engage in alleged out-of-school criminal conduct, regardless of jurisdiction, which demonstrates the propensity to show disregard for the health, safety, and welfare of others, including, serious acts of violence, weapons offenses, and drug offenses.

**"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 a student's, school volunteer's, or school employee's emotional or physical well-being or substantial damage to a student's, school volunteer's, or school employee's 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.

**"Careless and reckless behavior"** means unintentional behavior that threatens to or causes injury or property damage or intentional behavior that causes or may cause unintentional injury or property damage.

**"Consensual sexual misconduct"** means consensual sexual acts between students within the school environment. This may require a report to the Delaware Department of Services for Children, Youth and Their Families Division of Family Services.

**"Defiance of school authority"** means a verbal or non-verbal refusal to comply with a reasonable request from school personnel, or refusal to identify oneself at the request of school personnel, or refusal to comply with disciplinary action that causes either a substantial disruption or material interference with school activities. This does not include a student who walks away to deescalate or manage the student's emotions.

**"Destruction of property"** means students who damage or deface school property or the personal property of another person. This includes tampering with security, medical, or fire protective equipment.

**"Disruptive behavior"** means students who intentionally disrupt the school environment by not following expectations or interrupt learning or school activities despite non-verbal and verbal redirection. This can include excessive talking that limits others' ability to learn and behaviors by the student or with other students that are distracting to other persons.

**"Distribution of alcohol or drugs"** means students who are found to be selling or distributing alcohol, drugs, or other substances in the school environment. This includes inhalants, marijuana (cannabis, edible, liquid, etc.), drug like substances, look alike substances, nonprescription medication, and prescription medications.

**"Dress code violation"** means failure to comply with the school-level dress code. Dressing in a manner that is unsafe or disrupts the learning environment. This includes clothing that promotes drugs, alcohol, or profanity.

**"Exposure"** means students who expose the student's genitals, breasts, or buttocks to another person.

**"Falsely signing and impersonating"** means falsely or fraudulently signing or altering a document or electronic record such as hall pass, early dismissal note, progress report, absence excuse, etc. Forgery shall also include impersonating another student or falsely identifying oneself or others inaccurately via electronic, verbal, or written means.

**"Fighting"** means students who willingly engage in a one-on-one physical altercation. This is a physical altercation in which none of the participants are identified as victims.

**"Harassment"** means students who engage in unwelcome verbal, written, electronic, graphic, or physical conduct relating to another person's actual or perceived sex, gender, age, race, color, national origin, sexual orientation, gender identity expression, pregnancy or related conditions, religion, disability, English language proficiency, socioeconomic status, or physical appearance. The behavior must be considered severe, persistent, or pervasive to be considered harassment. The behavior does not have to include intent to harm, be directed at a specific target, or involve repeated incidents.

**"Hate speech and conduct"** means verbal or electronic communication or actions directed toward a member or members of a protected class of individuals for the explicit purpose of creating alarm, fear, or causing emotional distress.

**"Inappropriate language and gestures"** means cursing, swearing, or using written or spoken language, gestures, electronic images, photos, or actions, directed towards another person, that are considered sexually explicit, offensive, obscene, or vulgar.

**"Inappropriate touch"** means students who intentionally engage in physical aggression towards a school employee, volunteer, or another student either with the student's own body or with an object and it does not result in physical injury. This includes pushing, pinching, punching, kicking, slapping, grabbing, scratching, poking with an object, throwing an object at, or spitting on a school employee or volunteer. The behavior does not have to include intent to harm. This offense should be used for students under the age of 12 who caused a physical injury to a school employee, volunteer, or another student that is not classified as serious.

**"Instigation"** means students incite aggressive or physical conflict between 2 or more students that resulted in a confrontation without directly participating in the confrontation.

**"Leaving school grounds without permission"** means leaving the school building or the school grounds during school hours without required staff permission.

**"Loitering"** means student's unauthorized presence in any school area for an extended period of time or student's failure to leave the school grounds at the time designated.

**"Misuse of technology"** means any use of school technology for unauthorized purposes such as, copying software, inappropriate internet or email usage, unauthorized use of school issued electronic devices, tampering with databases, passwords or configurations, or deletion of files. This also includes the use of school technology equipment in: soliciting, using, or posting on social media; receiving or sending inappropriate images or materials; accessing unauthorized email; the unauthorized downloading or installing of files; or intentionally damaging technology equipment in the school environment.

**"Mutual group fight"** means students who willingly engage in a physical altercation with multiple willing participants. This is a physical altercation in which none of the participants are identified as victims.

**"Other school crime"** means any significant incident resulting in disciplinary action not classified previously but required to be reported under the School Crimes Reporting Law (14 Del.C. §4112). This may include arson, manslaughter, or violent felonies as defined by 11 Del.C. §4201.

**"Physical restraint - no code violation"** means a student was physically restrained by an employee or contractor of a public school district or charter school, private program, or alternative program, but there was no violation of the student code of conduct by the student.

**"Possession or production of pornography"** means students who possess, share, or produce any known pornographic or obscene material in the school environment. This would include a student who distributes photos or videos of another student who did not consent to getting the student's photos taken or shared, or cannot consent to the photos due to the student's age (under age 12).

**"Possession or use of alcohol or drugs"** means students who use or are under the influence of alcohol, drugs, or other substances, or who are found to be in possession of alcohol, drugs, other substances, or drug paraphernalia in the school environment. This includes inhalants, marijuana (cannabis, edible, liquid, etc.), drug like substances, and look alike substances.

**"Possession or use of dangerous instrument"** means students who possess or use any object, device, or instrument in the school environment classified as a dangerous instrument under 11 Del.C. §222. This includes pellet guns, air guns, tasers, mace, or other dangerous instruments.

**"Possession or use of deadly weapons"** means students who possess or use any object, device, or instrument in the school environment classified as a deadly weapon under 11 Del.C. § 222. This includes a knife of any sort, switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, or razor. This does not include toys, or ordinary objects including pocket knives with blades less than 3 inches. Firearms and bombs are captured under separate offenses.

**"Possession or use of explosive devices"** means students who are found to be in possession or use incendiary devices such as fireworks, firecrackers, pipe bombs, or other explosives in the school environment.

**"Possession or use of firearms"** means students who possess or use any firearm in the school environment. This includes handguns, rifles, shotguns, starter guns, or other firearms identified in 11 Del.C. §222, whether loaded or not. BB guns are included per 11 Del.C. §1457 and §1457A. This does not include toys, pellet, or air guns; these should be captured under possession or use of dangerous instruments.

**"Possession or use of nonprescription or prescription medications"** means students who use or are under the influence of nonprescription or prescription medications, or who are found to be in possession of nonprescription or prescription medications in the school environment without proper documentation.

**"Possession or use of tobacco or electronic smoking devices"** means students who use or possess any tobacco product or any electronic smoking device in the school environment. This includes products containing tobacco, electronic cigarettes, and any vape device.

**"Rape"** means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without consent, including when a person is unable to give consent. All persons, regardless of sex, sexual orientation, or gender identity, can be victims of rape.

**"Robbery"** means students who take or attempt to take anything of value that is owned by another person or organization, under confrontational circumstances by force or threat of force or violence, or by putting the victim in fear. A key difference between robbery and theft is that robbery involves a threat or assault.

**"Safety violation"** means students who engage in any behavior that is not appropriate for school and has the potential to put the students or others in danger.

**"Sexual assault"** means any sexual act directed against another person without consent, including when a person is unable to give consent. It includes threatened rape, fondling, indecent liberties, or child molestation. Rape is not included. All persons, regardless of sex, sexual orientation, or gender identity, can be victims of sexual assault. Classification of these incidents should take into consideration the age and developmentally appropriate behavior of the offender.

**"Skipping and leaving class"** means absence from school or class without authorization or permission or leaving the assigned classroom without permission.

**"Tardiness to school and class"** means unexcused lateness to school or class without authorization or permission.

**"Theft (\$1500 or more)"** means students who take school property or the personal property of another person.

**"Theft (less than \$1500)"** means students who take, obtain, or intentionally have possession of school property or the personal property of another person.

**"Threat of physical attack with weapon"** means students who threaten to engage in an act that causes harm and introduces fear in another person, and the threat is made while displaying, brandishing, or discharging a



weapon but with no actual physical contact of any person. A threat may or may not be made in person. A threat of physical attack using words that refer to a weapon would be considered a threat without a weapon.

"**Threat of physical attack without weapon**" means students who threaten to engage in an act that causes harm and introduces fear in another school community member. Threats can be made verbally, in writing, or with gestures and may refer to a weapon that is not present. A threat may or may not be made in person.

"**Threatening mass violence**" means students who threaten to engage in an act that causes serious physical harm or creates a substantial risk of serious physical harm in the school environment. This includes bomb threats and other threats that are likely to cause an evacuation of a building.

"**Unauthorized use of an electronic device**" means students who engage in non-educational activities in the school environment, including capturing, distributing, displaying, sharing, or posting of inappropriate images, videos, movies, or music from personal devices. Engaging in social media, texting, playing games, or streaming that disrupts the learning environment.

"**Unsafe item**" means any item, device, or substance that may be deemed disruptive or is used for a purpose in which it was not intended.

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

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

**28 DE Reg. 783 (05/01/25) (Prop.)**