

UPDATED VERSION



Book	Policy Manual
Section	200 Pupils
Title	PROPOSED CHANGES TO Discipline of Student Convicted/Adjudicated of Sexual Assault
Code	218.3 - Proposed NEW Policy WITH UPDATES by Stock and Leader
Status	First Reading
Last Reviewed	February 22, 2021

Purpose

The Board recognizes the importance of a safe school environment for students who are victims of sexual assault. This policy addresses disciplinary requirements for a student convicted or adjudicated delinquent of sexual assault upon another district student. [\[1\]](#)

Definitions

Adjudication/Adjudicated Delinquent – means, for purposes of this policy only, the formal verdict by a Juvenile Court Judge indicating that the juvenile, herein the student, is in need of treatment, supervision, and/or rehabilitation, for sexual assault. [\[20\]](#)

Conviction – means, for purposes of this policy only, the finding of guilt by a judge or a jury or the entry of a plea of guilty or nolo contendere for sexual assault, regardless of whether a judgment of sentence has been imposed. [\[1\]](#)

Nolo Contendere – a Latin phrase which means, for purposes of this policy only, that the defendant, herein the student, does not wish to contend the charges against him or her. When a student enters a plea of nolo contendere, he or she technically does not admit guilt. However, for purposes of this policy, a plea of nolo contendere is equivalent to a plea of guilty, and therefore falls in line with the definition of conviction, above. [\[19\]](#)

School setting – means, for purposes of this policy only, in the school, on school grounds, in school vehicles, at a designated bus stop or at any activity sponsored, supervised, or sanctioned by the school. [\[1\]](#)

School-sponsored activity – means, for purposes of this policy only, any assemblies, field trips, class trips, graduation ceremonies, athletics, extracurricular activities, clubs, groups, teams, or any activities sponsored, held, or approved by the district. [\[1\]](#)

Sexual assault – means, for purposes of this policy only, any of the following offenses: [\[1\]](#)

1. **Rape.** [\[2\]](#)
2. **Statutory sexual assault.** [\[3\]](#)
3. **Involuntary deviate sexual intercourse.** [\[4\]](#)
4. **Sexual assault.** [\[5\]](#)

5. **Aggravated indecent assault.**[6]

6. **Indecent assault.**[7]

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Authority

The Board shall comply with the disciplinary requirements established by state law regarding students who have been convicted or adjudicated delinquent of sexual assault upon another student enrolled in this district, regardless of whether the sexual assault took place inside or outside of the school setting. The Board may not be prohibited from taking action for student convictions or adjudications for sexual assaults that occur outside a school setting, under certain circumstances, as described herein. [1][8][9][20]

Delegation of Responsibility

A student who is convicted or adjudicated delinquent of sexual assault upon another student enrolled in this district shall be required to notify the Superintendent or designee of the conviction or adjudication no later than seventy-two (72) hours after the conviction or adjudication. A notice of this requirement shall be placed in the Student Handbook. All parents/guardians of students in the middle and high schools shall sign a verification, indicating they understand this obligation.[1]

Upon report of a conviction or adjudication of sexual assault upon a district student, the Superintendent or designee shall notify the Title IX Coordinator and ensure this policy is implemented in compliance with state and federal laws.

Guidelines

Transfer Students:

Prior to admission to the district, the parent/guardian, or other person having control or charge of a student shall, upon registration, provide a sworn statement or affirmation stating whether the student was previously or is presently expelled from any public or private school of this Commonwealth or any other state for an act or offense involving a sexual assault conviction or adjudication. The registration shall include the name of the district from which the student was expelled with the dates of expulsion and shall be maintained as part of the student's disciplinary record. Any willful false statement shall be subject to criminal prosecution.[1][22][23]

When the district receives a student who transfers from a public or private school, during or after an expulsion period for an act or offense involving a sexual assault conviction or adjudication, the district may assign that student to an alternative assignment or may provide alternative education services.[1][18]

Responding to the Conviction/Adjudication

Nothing in this policy shall be construed as limiting the authority or duty of the district to make an alternative assignment or provide alternative educational services during or after the period of expulsion.

Conviction or Adjudication of Sexual Assault by a District Student upon Another District Student that Took Place IN THE SCHOOL SETTING

Title IX Implications:

Upon report of a conviction or adjudication of sexual assault by a district student upon another district student that occurred in the school setting, the Superintendent or designee shall notify the Title IX Coordinator to determine whether the incident has been addressed in accordance with applicable Board policy, regulations, and federal law. Until the Title IX Coordinator concludes otherwise, all actions under this policy shall be suspended until a Title IX determination has been made.

Upon notification to the Title IX Coordinator and the subsequent receipt of a Title IX complaint in response to the adjudication or conviction, the Title IX Coordinator shall

determine if the district's anticipated actions against the convicted/adjudicated student, as outlined below, qualify as an emergency removal under Title IX. If the Title IX Coordinator determines that the district's anticipated actions will qualify as an emergency removal, the Title IX Coordinator shall conduct an individualized safety and risk analysis before any of the Required Actions are taken.

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- If the Title IX Coordinator determines that the convicted/adjudicated student does not pose an immediate threat to the physical health or safety of any student or other individual arising from the report of conviction or adjudication of sexual harassment/sexual assault, the Title IX Coordinator shall inform the Superintendent or designee to pause any action under this policy until a full title IX investigation has been completed and a determination has been made, in order to comply with state and federal laws and regulations.[10][11][21]
- If the Title IX Coordinator determines that the convicted/adjudicated student does pose an immediate threat to the physical health or safety of any student or other individual arising from the report of conviction/adjudication of sexual harassment/sexual assault, the Title IX Coordinator shall coordinate with the Superintendent or designee to implement the anticipated actions.

Required Actions:

Once a Title IX determination has been made, and in response to the report of a conviction or adjudication of sexual assault by a district student upon another district student that took place in the school setting, the Superintendent or designee shall take one (1) of the following actions, and in compliance with the administrative regulations, in regards to the convicted/adjudicated student:[1][10]

1. Recommend that the Board expel the student, in accordance with law and Board policy. Should the Board decide not to expel the student, the Superintendent shall take one of the following two actions below. [1][9]
2. Transfer the student to an alternative education program.
3. Reassign the student to another school or educational program within the district.

While the facts of the conviction or adjudication stand, for purposes of school discipline the district is required to hold an informal hearing. Prior to the taking any of the three, above-listed actions, the district shall:

1. Notify the parent/guardian of the convicted/adjudicated student of the three, above-listed actions and the district's obligation to take one of those actions; and
2. Hold an informal hearing with the student and the convicted/adjudicated student's parents/guardians to ensure they have the opportunity to present the Superintendent or designee with the action they propose should be taken, of the three, above-listed actions, and why. [9][24]

Prohibited Actions:

If the convicted/adjudicated student has already been expelled, transferred, or reassigned for the same sexual assault, or if the victim does not attend the same school, the district shall not take any of the three, above-listed actions.[1]

Additional Actions:

Even if the district is prohibited from taking one of the above actions as outlined under the "Prohibited Actions" section, and in addition to taking one of the Required Actions, the district shall ensure that the convicted/adjudicated student is prohibited from taking part in the following activities at the same time as the victim:[1][10]

1. Being educated in the same school building.

2. Being transported on the same school vehicle.
3. Participating in the same school-sponsored activity.

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Students with a Disability:

In the case of a student either identified as a student with a disability under the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act (Section 504), or thought to be a student with a disability under IDEA or Section 504, including a student for whom an evaluation is pending, prior to implementing any disciplinary removal or considering a change of placement for the student, the Director of Pupil Services shall coordinate with the student's Individualized Education Program (IEP) team or Section 504/Chapter 15 Service Agreement team to take all steps required to comply with state and federal laws and regulations, and Board policies. [\[1\]](#)[\[12\]](#)[\[13\]](#)[\[14\]](#)[\[15\]](#)[\[16\]](#)[\[17\]](#)

Such measures for state and federal compliance may include, but are not limited to, the provision of a free appropriate public education, and conducting a manifestation determination, functional behavioral assessment (FBA), and/or other assessment or evaluation, in accordance with applicable state and federal laws and regulations and Board policy. FBAs must be conducted, or the student's behavior improvement plan reviewed, when a student's behavior interferes with the student's learning or the learning of others and an evaluation/assessment is necessary to provide appropriate educational programming, and when a student's behavior violates the Code of Student Conduct and is determined to be a manifestation of a student's disability. [\[15\]](#)[\[16\]](#)[\[17\]](#)

Return of Student to School:

The district may return the student who is expelled, transferred, or reassigned, to the student's originally assigned school if one (1) of the following circumstances occur: [\[1\]](#)

1. The victim is no longer enrolled in the district.
2. The conviction or adjudication has been reversed and is not pending appeal.

Conviction or Adjudication of Sexual Assault by a District Student upon Another District Student that Took Place OUTSIDE THE SCHOOL SETTING

Title IX Implications:

Upon report of a conviction or adjudication of sexual assault by a district student upon another district student that occurred outside the school setting, the Superintendent or designee shall notify the Title IX Coordinator to determine whether the incident has been addressed in accordance with applicable Board policy, regulations, and federal law. The Title IX Coordinator shall determine whether a Title IX Complaint should be filed and if supportive measures are needed. Until the Title IX Coordinator concludes otherwise, all actions under this policy shall be suspended until a Title IX determination has been made.

Upon notification to the Title IX Coordinator, if the district has determined to take any of the Discretionary Action listed below, and a Title IX complaint has been filed in response to the adjudication or conviction, the Title IX Coordinator shall determine if the district's anticipated actions against the convicted/adjudicated student, as outlined below, qualify as an emergency removal under Title IX. If the Title IX Coordinator determines that the district's anticipated actions will qualify as an emergency removal, the Title IX Coordinator shall conduct an individualized safety and risk analysis before any of the Discretionary Action(s) are taken.

- If the Title IX Coordinator determines that the convicted/adjudicated student does not pose an immediate threat to the physical health or safety of any student or other individual arising from the report of conviction or adjudication of sexual harassment/sexual assault, the Title IX Coordinator shall inform the Superintendent or designee to pause any action under this policy until a full Title IX investigation has been completed and a determination has been made, in order to comply with state and

federal laws and regulations.[10][11][21]

- If the Title IX Coordinator determines that the convicted/adjudicated student does pose an immediate threat to the physical health or safety of any student or other individual arising from the report of conviction/adjudication of sexual harassment/sexual assault, the Title IX Coordinator shall coordinate with the Superintendent or designee to implement the anticipated actions.

Discretionary Actions:

Once a Title IX determination has been made, and in response to the report of a conviction or adjudication of sexual assault by a district student upon another district student that took place outside the school setting, the district may not be prohibited from acting, as described below in numbers 1, 2, and 3, as well as in the Additional Actions section, if the assault has the effect of:

- Substantially interfering with the victim's education;
- Creating a threatening or hostile educational environment; or
- Substantially disrupting the orderly operation of the school.

The Superintendent or designee may, if the assault has the effect of any of the above, take one (1) of the following actions, in regards to the convicted/adjudicated student:[1][10]

1. Recommend that the Board expel the student, in accordance with law and Board policy. [1][9]
2. Transfer the student to an alternative education program.
3. Reassign the student to another school or educational program within the district.

While the facts of the conviction or adjudication stand, for purposes of school discipline the district is required to hold an informal hearing. Prior to the taking any of the three, above-listed actions, the district shall:

1. Notify the parent/guardian of the convicted/adjudicated student of the three, above-listed actions and the district's discretion in taking one of those actions; and
2. Hold an informal hearing with the student and the convicted/adjudicated student's parents/guardians to ensure they have the opportunity to present the Superintendent or designee with the action they propose should be taken, and why. [9][24]

Prohibited Actions:

If the convicted/adjudicated student has already been expelled, transferred, or reassigned for the same sexual assault, or if the victim does not attend the same school, the district shall not take any of the above actions.[1]

Additional Actions:

Should the district choose to engage in one of the discretionary actions listed above, or if the district is prohibited from taking one of the above actions as outlined under the "Prohibited Actions" section, the district shall ensure that the convicted/adjudicated student is prohibited from taking part in the following activities at the same time as the victim:[1][10]

1. Being educated in the same school building.
2. Being transported on the same school vehicle.
3. Participating in the same school-sponsored activity.

Students with a Disability:

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In the case of a student either identified as a student with a disability under the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act (Section 504), or thought to be a student with a disability under IDEA or Section 504 including a student for whom an evaluation is pending, prior to implementing any disciplinary removal or considering a change of placement for the student, the Director of Pupil Services shall coordinate with the student's Individualized Education Program (IEP) team or Section 504/Chapter 15 Service Agreement team to take all steps required to comply with state and federal laws and regulations, and Board policies.[\[1\]](#)[\[12\]](#)[\[13\]](#)[\[14\]](#)[\[15\]](#)[\[16\]](#)[\[17\]](#)

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Legal

1. 24 P.S. 1318.1
2. 18 Pa. C.S.A. 3121
3. 18 Pa. C.S.A. 3122.1
4. 18 Pa. C.S.A. 3123
5. 18 Pa. C.S.A. 3124.1
6. 18 Pa. C.S.A. 3125
7. 18 Pa. C.S.A. 3126
8. Pol. 218
9. Pol. 233
10. Pol. 103
11. Pol. 252
12. 20 U.S.C. 1400 et seq
13. 34 CFR Part 300
14. Pol. 103.1
15. Pol. 113.1
16. Pol. 113.2
17. Pol. 113.3
18. Pol. 200