



STATE OF DELAWARE

MODEL POLICY FOR RESPONDING TO ADULT SEXUAL MISCONDUCT IN DELAWARE SCHOOLS

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Prepared by:

Child Protection Accountability Commission

Model Policy for Responding to Adult Student Misconduct in Schools

PURPOSE

Delaware and federal law proscribe a variety of requirements on school responses to incidents involving students or occurring in schools. The requirements center around educational programming, model policies for adoption by school districts and charter schools, and accountability. This document is a model policy for the school response to acts of adult sexual misconduct between students and school employees, contractors, coaches, and volunteers. Model policies for responding to student misconduct in schools, bullying, suicide awareness and prevention and consent education is provided separately.

This model policy provides guidance to Delaware schools and law enforcement agencies when responding to adult sexual misconduct.¹ The purpose of this model policy is to provide a blueprint for creating a comprehensive and effective response to Adult Sexual Misconduct in Schools.

A separate model policy, developed by the Department of Education, addresses the below components and is incorporated as an appendix:

- A provision establishing appropriate and inappropriate interactions between adult employees, contractors, coaches, and volunteers and students.
- A provision prohibiting adult sexual misconduct in schools which shall apply to employees, contractors, coaches, and volunteers.
- A provision prohibiting any sexual relationship between a student, even if the student is an adult, and a school district or charter school employee while the student is a current student.
- A provision emphasizing the mandatory reporting requirements of § 903 of Title 16.
- A provision delineating preferred and prohibited methods of electronic communications between school employees, contractors, coaches, and volunteers and students.
- A provision that substantiated incidents of adult sexual misconduct will be reported in future reference checks for employment or volunteer work.
- A provision requiring the development of hiring practices to screen for adult sexual misconduct in school employees, contractors, coaches, and volunteers.

AGENCIES RESPONSIBLE FOR IMPLEMENTATION

Department of Education is required to prepare an annual report, which shall include a summary of reported incidences of teen dating violence and sexual assault. The Department shall submit the report to the Domestic Violence Coordinating Council by October 15 of each year.²

School Districts and Charter Schools are required to adopt a policy for responding to teen dating violence and sexual assault and submit a copy to the Department of Education. Each school district and charter school shall ensure that its policy appears in the student and staff handbook. If no handbook is available, or if it is not practical

¹ See 14 *Del. C.* § 4401: School districts and charter schools are required to establish a policy on adult sexual misconduct.

² See 14 *Del. C.* § 4166

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to reprint new handbooks, each school district and charter school shall ensure that a copy of the policy is distributed annually to all students, parents, faculty, and staff.³

Child Protection Accountability Commission is responsible for identifying and maintaining educational programming to be used by each school district and charter school for informing school district and charter school employees, students, and parents about personal body safety and child abuse and about how to detect and report child abuse. This includes the training on adult sexual misconduct required under 14 *Del. C.* § 4163(b)(4) for school administrators, school nurses, and school counselors.

Division of Family Services is responsible for identifying and maintaining educational programming to be used by each school district and charter school for informing school district and charter school employees, students, and parents about personal body safety and child abuse and about how to detect and report child abuse. This includes the training on adult sexual misconduct required under 14 *Del. C.* § 4163(b)(4) for school administrators, school nurses, and school counselors.

DEFINITIONS

1. **Adult Sexual Misconduct** is any activity, physical, sexual, or otherwise, directed to a student with the objective of developing a romantic or sexual relationship.⁴
2. **Alleged Perpetrator** is the school employee, contractor, coach, or volunteer who is suspected of committing an act of misconduct against a student.
3. **Child Sexual Abuse** is any sexual act which is non-consensual or prohibited due to the ages of the child and perpetrator.
4. **Inappropriate Sexual Conduct** includes making any sexual contact with a student such as: genital contact, groping, fondling, kissing, touching, showing a child one's genitalia or pornography, and participating in child exploitation conducted in online settings.⁵
5. **Inappropriate Verbal Conduct** includes making sexual comments and questions, jokes, taunting, and teasing; whether in person, by phone, or using electronic means.⁶
6. **Inappropriate Physical Conduct** includes making physical contact with a student such as kissing, hair stroking, tickling, and frontal hugging.⁷
7. **Minimal Facts Questions** are questions that help reporters to obtain the information needed to make a clear and concise report of child abuse and neglect to the Division of Family Services, and it focuses reporters on the essential information – what, when, where and who?
8. **Parent** includes natural parent, adoptive parent, or any person, agency, or institution that has custody or guardianship over a student.⁸

³ See 14 *Del. C.* § 4166

⁴ See 14 *Del. C.* § 4161(1)

⁵ Adapted from the U.S. Department of Education's A Training Guide for Administrators and Educators on Addressing Adult Sexual Misconduct in the School Setting: <https://rems.ed.gov/docs/ASMTrainingGuide.pdf>

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⁸ See 14 *Del. C.* § 4112(a)(4)

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9. **School Employee** shall include all persons employed by a school district or charter school; subcontractors such as bus drivers or security guards; substitute employees; and persons hired by or subcontracted by other state agencies to work on school property.⁹ This includes school-based wellness center staff and volunteers and community agency staff.
10. **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.¹⁰
11. **School Crimes** means a school employee has reasonable suspicion that a student has been the victim of a violent felony, Assault III or Unlawful Sexual Contact III and the offense was committed by another student as outlined in Title 14 *Del. C.* §4112.
12. **School Property** shall include any building, structure, athletic field, sports stadium that is owned, operated, leased or rented by any school district or charter school; any motor vehicle owned, operated, leased, rented or subcontracted by school district or charter school,¹¹ or remote learning platform.
13. **School Volunteer** means a person 18 years of age or older who, without compensation, renders service to a school district or charter school. School volunteer includes parents who assist in school activities or chaperone school functions.¹²
14. **Title IX of the Education Amendments of 1972** is federal legislation that prohibits discrimination on the basis of sex in educational programs and activities. Complaints or inquiries concerning sexual harassment or discrimination on the basis of sex should be directed to the School District or Charter School's Title IX Coordinator.
15. **Victim** is a current student allegedly harmed by school employee, contractor, coach, or volunteer.

CONFIDENTIALITY

1. School Counselors, School Nurses, Mental Health & Medical Professionals

These professions are bound by their professional licensure and code of ethics and as such they are required to maintain confidentiality. HIPAA (the Health Insurance Portability and Accountability Act of 1996) provides for confidentiality. However, certain information can be released under certain circumstances such as: law enforcement investigations, mandatory reporting (such as adult sexual misconduct) and in the course of certain judicial or administrative proceedings.¹³ Additionally, students may give informed consent to release their information. Mental health and medical professionals are required to maintain confidentiality of all information acquired from clients in a professional capacity except in the following situations:

- a student communicates an explicit and imminent threat to kill or seriously injure a clearly identified victim or victims (including themselves), or
- any reasonable suspicion of child abuse or neglect, or
- a student presents with the following: a stab wound; non-accidental poisoning; a bullet/gunshot wound; powder burn or other injury caused by the discharge of a firearm.

⁹ See 14 *Del. C.* § 4112(a)(7)

¹⁰ See 14 DE Reg. 614

¹¹ See 14 *Del. C.* § 4112(a)(9)

¹² See 14 *Del. C.* § 4112(a)(10)

¹³ See 45 C.F.R. § 164.512

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2. Other School Employees, Including Teachers & Administrators

These professions are not bound by confidentiality. Once a school employee knows or reasonably should know of possible adult sexual misconduct, the school employee must take immediate and appropriate action to keep the victim safe and report the incident.¹⁴ While these professionals are not bound by confidentiality, it is important that the reports are kept confidential and limited to certain individuals within the school to maintain the privacy of students. The procedures below will address in what specific circumstances reports to the Division of Family Services (DFS) and/or law enforcement are mandated.

RESPONSE TO ADULT SEXUAL MISCONDUCT

1. IDENTIFICATION OF ADULT SEXUAL MISCONDUCT

A school employee or volunteer may develop reasonable suspicion that a student has been the victim of adult sexual misconduct by a school employee, contractor, coach, or volunteer when:

- the incident is witnessed;
- a student makes a disclosure, even if it is minimal in detail; or,
- indicators of possible adult sexual misconduct are known, such as the inappropriate interactions noted in Section 2.d. under the Procedures for Staff Interactions with Students.

School employees or volunteers shall not interview the victim or alleged perpetrator when adult sexual misconduct is suspected; only Minimal Facts Questions should be asked.

2. IMMEDIATE RESPONSE BY SCHOOL EMPLOYEES & VOLUNTEERS

- **Separate Victim & Alleged Perpetrator** - Separate the victim and alleged perpetrator, keeping the victim in a location that allows for safety and confidentiality.
- **Assess Need for Medical or Mental Health Intervention** - Assess for injuries and need for medical or mental health intervention. Contact 911 and the school Nurse for medical assistance and connect the victim with mental or emotional health resources.

3. REQUIRED IMMEDIATE NOTIFICATIONS

The following 4 notifications are required:

- **DFS Report Line** – The school employee or volunteer shall make an **immediate** report to the Division of Family Services (DFS) for any **adult sexual misconduct between a student and school employee, contractor, coach, or volunteer regardless of where the offense occurred**. Call 1-800-292-9582.
- **Law Enforcement** – An **immediate** 911 report to law enforcement shall also be made by the School Principal or a Designee for any **adult sexual misconduct between a student and school employee,**

¹⁴ See 14 Del. C. § 4112

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contractor, coach, or volunteer. Notification to a School Resource Officer, if one is assigned to the school, fulfills the obligation to report to law enforcement. This report shall be made **regardless of where the offense occurred.**

- **DOE, School District Central Office & Title IX Coordinator** – The school employee or volunteer, or the school administrator shall notify the Delaware Department of Education (DDOE), School District Central Office and the Title IX Coordinator for the school. **Document time, date and method of notification to law enforcement and DOE in Comment Section of E-School Incident report.** The school shall not initiate its Title IX investigation until law enforcement concludes the evidence gathering process of the criminal investigation. Schools should work closely with legal counsel to determine when to initiate the Title IX investigation.
- **Superintendent, Charter Head of School or Designee at LEA Central Office** - The school employee or volunteer, or the school administrator shall notify the Superintendent, Charter Head of School, or designee at the local education agency central office of the circumstances and provide the contact information for the DFS investigator and law enforcement officer.

4. NEXT STEPS BY SCHOOL EMPLOYEES & VOLUNTEERS

- **Protect Physical Evidence** - Protect any physical evidence, whether related to the victim, suspect, or scene, which could be lost or destroyed prior to law enforcement arrival. Absent an urgent medical issue, the victim should **not** be examined for physical evidence or injury and should not bathe nor wash their hands. Any evidence, such as weapons or electronic devices, should be placed in a sealed envelope and secured in the school safe until delivered to law enforcement.
- **Do Not Conduct Interviews** – School employees shall NOT interview the victim, witnesses or alleged perpetrator or inform the alleged perpetrator of the pending criminal investigation.
- **Do Not Notify the Alleged Victim’s or Perpetrator’s Parents** - DFS and law enforcement will be responsible for notifying parents.
- **Do Not Investigate** - School employees shall NOT attempt to establish the credibility of a suspected incident of adult sexual misconduct and shall not request written statements from anyone.
- **Develop Safety Plan** - Develop and implement a safety plan with the victim as indicated in the Teen’s Guide to Safety Planning to increase, enhance and monitor the victim’s safety. Include IEP and 504 Teams as needed to ensure students with disabilities needs are addressed appropriately.
- **Discuss Protection from Abuse Order** - If applicable, inform the victim and caregivers of the right to file for a PFA, providing contact numbers and websites for resources to assist with filing for the PFA Order.
- **Inform Victim of Title IX Rights** - Inform the victim of the right to file a complaint, when applicable, directly with the Title IX Coordinator. Refer victim to Title IX Coordinator as appropriate.

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- **Maintain Complaints** – Maintain adult sexual misconduct complaints in a file separate from the victim’s academic records. This practice is recommended to prevent inadvertent disclosure of confidential information.

5. IMMEDIATE RESPONSE BY DISTRICT OFFICE DESIGNEE(S)

- **Ask the Minimal Facts Questions** - Gather minimal information from the victim regarding the incident, using **Minimal Facts Questions**. School employees should be seeking information only to determine **what** is alleged to have happened, **when** it happened, **who** is the alleged perpetrator, and **where** it happened. No written statement should be sought from the victim or alleged perpetrator at any point. Document initial findings in Required DDOE Incident Report submitted via E-School Reporting Platform.
- **Document Victim’s Statement** - Document the details of the victim’s disclosure being sure to include the victim’s exact words. Do not require victim or alleged perpetrator to write a statement.
- **Identify Potential Witnesses** - Identify for law enforcement any potential witnesses, who may have been present or involved. Law enforcement will conduct interview of witness(es). Do not require any witnesses to write a statement.
- **Protect Physical Evidence** - Protect any physical evidence, whether related to the victim, suspect, or scene, which could be lost or destroyed prior to law enforcement arrival. Absent an urgent medical issue, the victim should not be examined for physical evidence or injury, and should not bathe nor wash their hands. Any evidence, such as weapons or electronic devices, should be placed in a sealed envelope and secured in the school safe until delivered to law enforcement.
- **Consider Administrative Leave** – Determine whether the alleged perpetrator should be placed on paid or unpaid administrative leave or subject to disciplinary action or dismissal. Prior to placing the alleged perpetrator on administrative leave, coordinate with law enforcement and DFS (if involved) to determine what, if any, impact such actions would have on the criminal and civil investigations and attempt to mitigate those impacts. Consider termination of access to any hardware or software, including but not limited to email, student information systems, learning management platforms and listserv distributions.
- **Request Information on Employment History** – Request information about the alleged perpetrator’s current or past employment history at other schools and child venues. If the Superintendent or Charter Head of School has knowledge that the alleged perpetrator is currently employed by another school district/school or other child venue, they will share this information with the investigating law enforcement agency, and DFS if involved, immediately or as soon as practicably possible.

6. FOLLOW UP ACTIONS BY DISTRICT OFFICE DESIGNEE(S)

- **Administer Discipline** - After law enforcement concludes or declines its involvement, administer disciplinary action to the alleged perpetrator for incidents of adult sexual misconduct per the district’s policies.

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- **Promote School Recovery** – After law enforcement concludes or declines its involvement, implement measures to address school recovery after an incident of adult sexual misconduct.
- **Maintain Complaints** - Maintain adult sexual misconduct complaints in the alleged perpetrator's personnel file. Substantiated incidents of adult sexual misconduct will be reported in future reference checks for employment or volunteer work.

7. RESPONSE BY LAW ENFORCEMENT OR SCHOOL RESOURCE OFFICERS

The **Memorandum of Understanding for the Multidisciplinary Response to Child Abuse and Neglect** is the guiding document for the multidisciplinary response to child abuse and neglect, which includes the response to adult sexual misconduct. The procedures below are meant to serve as additional guidance for these incidents in the school environment.

- **Respond to School** - If the investigating officer will not be the School Resource Officer present at the school, the officer shall respond to school on date incident is reported.
- **Assess Need for Medical or Mental Health Intervention** – Ensure the victim is in a location where the victim feels safe, and confidentiality is protected. Assess the victim's immediate safety and medical needs.
- **Cross-Report to DFS** - Ensure report to DFS has been made. If not, report any and all allegations to the DFS Report Line. Communicate and collaborate with the investigating DFS worker, **conducting a multidisciplinary team (MDT) investigation** for the adult sexual misconduct requiring a DFS response.
- **Contact the Victim's Parents** - Contact the victim's parents to inform them that there are allegations of adult sexual misconduct.
- **Utilize the Children's Advocacy Center** - Victims ages 3 through 12, and all suspected child victims of trafficking, **shall** be interviewed at the Children's Advocacy Center (CAC). All other victims **may** be interviewed at the CAC.
- **Interview Victim** – If the victim is not being interviewed at the CAC, law enforcement will interview the victim in a confidential setting and shall be audio-recorded. Law enforcement will invite DFS to observe the interview.
- **Obtain Statements from Witnesses** - Obtain statements from witness(es), when possible, including statements from persons observing the incident and persons providing corroborative details.
- **Identify Other Potential Victims** – Consider the potential that other students may have been exposed to or victimized by the alleged perpetrator.
- **Collect Physical Evidence** - Collect and document physical evidence, including any already collected by the school. For physical evidence needing to be collected from the victim, such as DNA or saliva evidence, the collection should occur at a local hospital by a forensic nurse examiner (FNE)

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or sexual assault nurse examiner (SANE). Law enforcement and DFS will determine the most appropriate setting to photograph the victim's injuries and the most appropriate person to take the photographs.

- **Discuss Protection from Abuse Order** - If applicable, inform the victim and caregivers of the right to file for a PFA, providing contact numbers and websites for resources to assist with filing for the PFA Order.
- **Refer Victim to Services** - Refer victim and caregivers to resources, ensuring police-based victim services are notified of this allegation.
- **Communicate Outcome to School** - Communicate investigation progress and outcome to the School Principal or a Designee.

RESOURCES FOR ADULT SEXUAL MISCONDUCT

Delaware Resources:

- Rape Crisis Providers:
 - Kent & Sussex Counties – [Contact Lifeline](#): 302-761-9100
 - New Castle County – [YWCA Sexual Assault Response Center](#) – (800) 773-8570
- Delaware Domestic Violence, Sexual Violence and Stalking Policy: <https://dvcc.delaware.gov/background-purpose/dynamics-domestic-abuse/state-delaware-domestic-violence-policy/>
- Delaware Victims Services: <https://www.delawarevictimservices.org>
- Domestic Violence Coordinating Council: [Victim Resource Guide](#)
- Mandatory Reporting of Child Abuse and Neglect Resource Guide: <https://courts.delaware.gov/forms/download.aspx?id=136188>
- Statutory Reporting Requirements for School Employees: <https://courts.delaware.gov/forms/download.aspx?id=136168>

National Resources:

- Rape, Abuse & Incest National Network: www.RAINN.org
- National Sexual Assault Hotline: 1-800-656-4673
- Love is Respect's A Teen's Guide to Safety Planning: <https://www.loveisrespect.org/pdf/Teen-Safety-Plan.pdf>

Training:

- Community Outreach from the Delaware Domestic Violence Coordinating Council: <https://dvcc.delaware.gov/training/>

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- Law Enforcement Officers Education Reimbursement Program: <https://cjc.delaware.gov/le-reimbursement-program/>
- Office of the Child Advocate: <https://courts.delaware.gov/childadvocate/training.aspx>
- Online Training Center at the Delaware Coalition Against Domestic Violence: <https://dcadv.org/what-we-do/training-and-certification/online-training-center.html>

APPENDIX

Department of Education/School Climate Office, Model Policy for Appropriate Adult Conduct with Students