

# SMYRNA SCHOOL DISTRICT

## *POLICY*

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<b>Section:</b>	<b>4000 Personnel</b>	<b>Office Responsible:</b>	<b>Human Resources</b>
<b>Policy:</b>	<b>4236 Student Sexual, Physical and Emotional Misconduct</b>		
<b>Related Policies:</b>	<b>4235 Title IX</b>		

### I. Purpose

This policy provides guidance when responding to misconduct between students in the school environment. The purpose of this model policy is to provide a blueprint for creating a comprehensive and effective response to misconduct between students in accordance with the School Teen Dating Violence and Sexual Assault Act, and as such, the following components are included:

- Procedures for identifying sexual, physical and emotional misconduct between students;
- Procedures regarding the immediate response by school employees and volunteers;
- Procedures regarding notifications that are required by school employees and volunteers;
- Procedures regarding the next steps and follow up actions with victims and alleged perpetrators that must be taken by school employees and volunteers; and,
- Procedures regarding the response by law enforcement and school resource officers.

### II. Authority

#### **AGENCIES RESPONSIBLE FOR IMPLEMENTATION**

**Domestic Violence Coordinating Council** is responsible for identifying and maintaining a teen dating violence and sexual assault training program for school administrators, school nurses, and school counselors serving one or more of the grades in grades 7 through 12. The DVCC has the authority to review and advise on the implementation of school district policies and charter school policies related to teen dating violence and sexual assault.

**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.

**School Districts or 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 to reprint new handbooks, each school district and charter school shall ensure that a copy

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of the policy is distributed annually to all students, parents, faculty, and staff.

**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.

**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.

14 *Del. C.* § 4166

### III. Definitions

**Alleged Perpetrator:** is the student who is suspected of committing an act of misconduct against another student.

**Child Sexual Abuse:** is any sexual act which is non-consensual or prohibited due to the ages of the child and perpetrator.

**Parent:** includes natural parent, adoptive parent, or any person, agency, or institution that has custody or guardianship over a student.

**Physical Misconduct:** involves any intentional contact that causes physical harm to another student. Physical Misconduct includes, but is not limited to, teen dating violence, school crimes, other crimes and Title IX complaints.

**Emotional Misconduct:** involves a pattern of deliberate, non-contact behavior that has the potential to cause emotional or psychological harm to a student. Emotional Misconduct includes, but is not limited to, teen dating violence, other crimes and Title IX complaints.

**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?

**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. This includes school-based wellness center staff and volunteers and community agency staff.

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**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.

**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

**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;<sup>8</sup> or remote learning platform.

**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.

**Sexual Misconduct:** is conduct of a sexual nature that is committed without consent or by intimidation, coercion, threat or force, or the student is unable to consent due to the student's age. Sexual Misconduct includes, but is not limited to, child sexual abuse, teen dating violence, school crimes, other crimes, and Title IX complaints. Please also see attached Determining Age of Consent for Sexual Contact.

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

**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.

**Victim:** is a student allegedly harmed by another student.

**School Counselors, School Nurses, Mental Health & Medical Professionals:** These professions are bound by their professional licensure and code of ethics and 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 child sexual abuse) and in the course of certain judicial or administrative proceedings.

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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 (including information regarding teen dating violence) 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.

### **Other School Employees, Including Teachers & Administrators:**

These professions are not bound by confidentiality. Once a school employee knows or reasonably should know of possible sexual, physical or emotional misconduct between students that may have occurred on school property, the school employee must take immediate and appropriate action to explore the incident and keep the victim safe. 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.

#### **IV. Policy Statement** **Sexual Assault and Abuse Between Students**

**A. Identification of Sexual Misconduct:** A school employee or volunteer may develop reasonable suspicion that sexual misconduct between students has occurred when:

- The incident is witnessed;
- A student makes a disclosure, even if it is minimal in detail; or,
- Indicators of possible sexual misconduct are known (such as a change in behavior or physical sign).

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

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### **B. 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.

**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 at any point. Document initial findings in Required DDOE Incident Report submitted via E-School Reporting Platform.

### **C. Required Immediate Notifications**

The following 3 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 **sexual misconduct between students**, regardless of the victim's age and the relationship between the students. This report shall be made **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 **sexual misconduct** between students, regardless of the victim's age and the relationship between the students. 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.

**The Title IX Coordinator for the Smyrna School District is the Assistant Superintendent.**

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### D. Next Steps By School Employees & Volunteers

**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.

**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 nor bathe or 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.

**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 Conduct Interviews:** School employees shall NOT interview the alleged perpetrator or inform the alleged perpetrator of the pending criminal investigation.

**Do Not Notify the Alleged 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 sexual misconduct.

**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. Please see attached A Teen's Guide to Safety Planning.

**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. Please see attached Protection from Abuse Instruction Packet.

**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.

### E. Follow Up Actions by School Employees & Volunteers

**Administer Discipline:** After law enforcement concludes or declines its involvement, administer disciplinary consequences to the alleged perpetrator for the physical or emotional misconduct per the school's code of conduct.

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**Warn Against Retaliation:** Inform the alleged perpetrator that retaliation or threats of retaliation in any form designed to intimidate the victim, or those who are witnesses, or those investigating an incident shall not be tolerated.

**Maintain Complaints:** Maintain sexual misconduct complaints in a file separate from academic records. This practice is recommended to prevent inadvertent disclosure of confidential information.

### **F. 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 sexual misconduct between students. 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 the school on the date the 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 allegation to the DFS Report Line. Communicate and collaborate with the investigating DFS worker, **conducting a multidisciplinary team (MDT) investigation** for the misconduct requiring a DFS response.

**Contact the Victim's Parents:** Contact the victim's parents to inform them that sexual misconduct has occurred.

**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.

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**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) 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.

### PHYSICAL & EMOTIONAL MISCONDUCT BETWEEN STUDENTS

#### A. Identification of Physical or Emotional Misconduct

A school employee or volunteer may develop reasonable suspicion that physical or emotional misconduct between students has occurred when:

- the incident is witnessed;
- a student makes a disclosure, even if it is minimal in detail; or,
- indicators of possible physical or emotional misconduct are known (such as bruising or changes in behavior).

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

#### B. 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.

**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



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perpetrator, and **where** it happened. No written statement should be sought from the victim at any point. Document initial findings in Required DDOE Incident Report submitted via E-School Reporting Platform.

### **C. Required Immediate Notifications**

The following 4 notifications are required:

**School Principal** – A school employee or volunteer shall make an immediate notification to the School Principal or a Designee for any physical or emotional misconduct involving school crimes between students.

**Law Enforcement** – An **immediate** 911 report to law enforcement shall also be made by the School Principal or a Designee for any physical or emotional misconduct between students that qualifies as a school crime or that may be any other crime, regardless of the victim’s age and the relationship between the students. An exception to this reporting does exist for offenders less than 12 years old for misdemeanor crimes.<sup>14</sup> 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 **for incidents that occurred on school property or at a school function but may be made for incidents occurring outside the school environment.**

**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 for **any physical or emotional misconduct involving school crimes or Title IX violations.**

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.

**Victim’s Parents** – The School Principal or a Designee shall make reasonable efforts to notify the victim’s parents. Written notification of the incident to the victim’s parents shall be sent within 3 business days for any physical or emotional misconduct involving school crimes.

### **D. Next Steps by School Employees & Volunteers**

**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.

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**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 nor bathe or 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.

**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 Conduct Interviews** – School employees shall NOT interview the alleged perpetrator or inform the alleged perpetrator of the pending criminal investigation.

**Do Not Notify the Alleged Perpetrator’s Parents** - Law enforcement will be responsible for notifying parents.

**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. Please see attached Protection from Abuse Instruction Packet.

**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.

### **E. Follow Up Actions by School Employees & Volunteers**

**Administer Discipline** - After law enforcement concludes or declines its involvement, administer disciplinary consequences to the alleged perpetrator for the physical or emotional misconduct per the school’s code of conduct.

**Warn Against Retaliation** - Inform the alleged perpetrator that retaliation or threats of retaliation in any form designed to intimidate the victim, or those who are witnesses, or those investigating an incident shall not be tolerated.

**Maintain Complaints** - Maintain physical or emotional misconduct complaints in a file separate from academic records. This practice is recommended to prevent inadvertent disclosure of confidential information.

### **F. Response by Law Enforcement or School Resource Officers**

**Respond to School** - If the investigating officer will not be the School Resource Officer present at the school, the officer shall respond to the school on the date the 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

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and medical needs.

**Contact the Victim's Parents** - Contact the victim's parents to inform them that physical or emotional misconduct has occurred.

**Interview the Victim** - Victims of any age may be interviewed at the Children's Advocacy Center (CAC). 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.

**Obtain Statements from Witnesses** - Obtain statements from witness(es), when possible, including statements from persons observing the incident and persons providing corroborative details.

**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. Law enforcement 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.

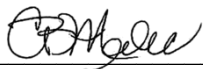
**Communicate Outcome to School** - Communicate investigation progress and outcome to the School Principal or a Designee.

### **Determining Age of Consent for Sexual Contact**

Consensual sexual contact between two students does not generally require a mandatory report to DFS and law enforcement, even when that sexual contact results in a pregnancy. However, there are certain situations where sexual contact does require a mandatory report. These situations are dependent on the age of the minor, as outlined below.

Any suspected, sexual misconduct against a student by another student must be reported.

### **Board Approval Acknowledged by:**



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Christine Malec, President  
Smyrna School District Board of Education

### **Policy Actions**

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Adopted: 8/28/24

Revised: