

CHAPTER 404
FORMERLY
HOUSE BILL NO. 243
AS AMENDED BY
HOUSE AMENDMENT NOS. 1 & 2

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO REPORTING SCHOOL CRIMES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §4112(a), Title 14 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(a) Definitions. -- The following words, terms and phrases, when used in this section, shall have the meaning ascribed to them except where the context clearly indicates a different meaning:

(1) "Crime" includes a felony, misdemeanor or violation defined in the Delaware Code, as well as behavior by a person under 18 years of age which would be considered a felony, misdemeanor or violation if it had been committed by an adult.

(2) "Non-instructional designee" means a school employee whose primary job duty does not include teaching students.

~~(3) "Notification" means direct contact by telephone, in person, or by certified mail, unless otherwise designated.~~

(3) "Notification" means direct contact by telephone, facsimile, electronic mail, Department of Education electronic filings, in person, or by certified mail, unless otherwise designated.

(4) "Parent" includes natural parent, adoptive parent, or any person, agency, or institution that has temporary or permanent custody or guardianship over a student.

(5) "Parent conference" includes a meeting by telephone or in person, unless otherwise designated.

(6) "Principal" means the building principal, or the equivalent of the building principal, of any public school or charter school, or the building principal's designee.

(7) "School employee" includes all persons by a school district, attendance zone 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.

(8) "School function" includes any field trip or any officially sponsored public or charter school event.

(9) "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, but not limited to, any kindergarten, elementary, secondary, or vocational-technical school or charter school, or any motor vehicle owned, operated, leased, rented or subcontracted by any public school or charter school.

(10) "School volunteer" means a person 18 years of age or older who, without compensation, renders service to a public or charter school. "School volunteer" includes parents who assist in school activities or chaperone school functions.

(11) "Superintendent" means the superintendent of any public school district or charter school, or the equivalent of a superintendent, or the superintendent's designee.

(12) "Suspension" means either an external or an internal removal of a student from the general school population.

(13) "Violent felony" means a crime designated in § 4201(c) of Title 11.

(14) "Written report" includes printed paper filings and electronic filings that can be printed.

Section 2. Amend §4112(b), Title 14 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

~~(b) Criminal violation; mandatory reports.—~~

~~(1) Whenever a school employee has reliable information that would lead a reasonable person to believe that:~~

~~a. A student or a school volunteer has been the victim of:~~

~~1. A violent felony,
2. An Assault III, or
3. An Unlawful Sexual Contact III, as prohibited by Title 11, which occurred on school property or at a school function;~~

~~b. A school employee has been the victim of:~~

~~1. A violent felony,
2. An Assault III,
3. An Unlawful Sexual Contact III,
4. An Offensive Touching, or
5. A Terroristic Threatening, as prohibited by Title 11, which occurred on school property or at a school function; or~~

~~c. A student has been the victim of:~~

~~1. A violent felony;
2. An assault in the third degree; or
3. Any sexual offense, as defined in § 761(g) of Title 11,
as prohibited by Title 11, when the school employee has reliable information that would lead a reasonable person to believe that the crime has been committed by another school employee, regardless of whether the offense occurred on school property or at a school function,~~

~~The school employee who has reliable information that would lead a reasonable person to believe that a crime has been committed shall immediately report the incident to the principal, who shall immediately make reasonable efforts to notify the parents of any juvenile victim and shall immediately report the incident to the appropriate police agency. The report shall be made by telephone or in person immediately and shall be followed by a written report within 3 business days.~~

~~If the police agency determines that probable cause exists to believe that a crime has been committed, or if the principal later learns that a suspect has been arrested for the offense, then the principal must file a written report of the incident with the superintendent. Thereafter, the superintendent shall, within 5 days, file a written report of the incident with the Department of Education.~~

~~Under no circumstances shall any person who has supervisory authority over the principal or any school board member exercise any control of, hinder or delay the lodging of any oral or written report required to be made pursuant to this subsection or the forwarding of such report to the Department of Education or the police. A principal (or acting principal if the principal is absent) may not delegate to or rely upon any other person except an assistant principal to make the immediate report to the police. A person with supervisory authority over the principal or any school board member who has knowledge of an incident which is required to be reported under this section, and who has information that would lead a reasonable person to believe that it has not been reported to the police, has an affirmative duty to report the incident to the police immediately. This includes, but is not limited to, incidents in which a school employee is a possible suspect and when an administrative review is ongoing.~~

~~Nothing in this section shall preclude school officials from reporting probable crimes that occur on school property or at a school function which are not required to be reported under this section. Nothing in this section shall abrogate the reporting requirements for child abuse or sexual abuse set forth in § 906 et seq. of Title 16.~~

~~(2) Offenders under the age of 12.—When a misdemeanor offense listed in this subsection has allegedly been committed by a child under the age of 12, the principal is not required to notify the appropriate police agency or to follow the provisions of subsection (d) of this section, but must file a written report of the incident with the superintendent, who shall file the written report with the Department of Education within 5 working days of receiving the report from the principal. The mandatory court filing requirements set forth in paragraph (b)(4) of this section do not apply when a misdemeanor offense has been committed by a child under the age of 12. When the alleged offense is a violent felony, the appropriate police agency must be notified of the incident even when the suspect is under the age of 12.~~

~~(3) Sexual harassment.—Whenever a school employee has reliable information that would lead a reasonable person to believe that a student has been the victim of sexual harassment, as defined in Title 11, which occurred on school property or at a school function, the harassment must be reported to the principal, who, immediately after conducting a thorough investigation to determine if good reason exists to believe that harassment has occurred, must notify the victim's parent of that determination if the parent is not alleged to be the offender. The principal is not required to notify the appropriate police agency or to follow the provisions of subsection (d) of this section, but must file a written report with the Department of Education.~~

~~(4) Mandatory filing of misdemeanor charge with a court when victim is a school employee.—In any instance where probable cause exists to believe that a school employee has been the victim of a misdemeanor set forth in paragraph (b)(1)b. of this section and the offender has been identified, the superintendent, the superintendent's non instructional designee, or a building level administrator must, within 3 working days of receiving a police report, file the appropriate misdemeanor criminal charge or charges with a court of proper jurisdiction unless:~~

~~a. The police agency or the Attorney General's office recommends against filing a criminal charge or charges;~~

~~b. A criminal charge or charges have already been filed;~~

~~c. The police have agreed to file a criminal charge or charges; or~~

~~d. The offender is under the age of 12.~~

~~After making inquiries into the source of the complainant's information and the grounds of the complainant's belief, the court of proper jurisdiction shall have the authority to issue a warrant based on information and belief when the complaint has been signed by a superintendent or by a superintendent's non instructional designee or by a building level administrator pursuant to this section.~~

(b) Criminal violation; mandatory reports. --

(1) Whenever a school employee has reliable information that would lead a reasonable person to believe that:

a. A student, school volunteer, or a school employee, has been the victim of:

1. A violent felony,

2. An Assault III, or

3. An Unlawful Sexual Contact III, which occurred on school property or at a school function;

or

b. A student has been the victim of:

1. A violent felony

2. An Assault III, or

3. Any sexual offense, as defined in § 761 (h) of Title 11, and the offense was committed by

another school employee regardless of whether the offense occurred on school property or at a school function; then the school employee who has reliable information that would lead a reasonable person to believe that a crime has been committed shall immediately report the incident to the principal.

(2) The principal must immediately make reasonable efforts to notify the parents of any juvenile victim and must send written notification of the incident to the parents within 3 business days. This paragraph does not apply if the parent is alleged to be the offender.

(3) The principal shall immediately report the incident to the appropriate police agency. The report shall be made by telephone or in person immediately and shall be followed by a written report of the school's investigation within 3 business days.

(4) If the police agency determines that probable cause exists to believe that a crime has been committed, or if the principal later learns that a suspect has been arrested for the offense, then the principal must file a written report of the incident to the Department of Education within five days.

(5) Nothing in this section shall preclude a school employee who has reliable information that would lead a reasonable person to believe a crime has been committed from reporting the incident to the principal within a

reasonable amount of time. In such instances where a report is made, the school officials shall follow the procedure set forth in paragraphs (2) through (6) of this subsection. Nothing in this section shall abrogate the reporting requirements for child abuse or sexual abuse set forth in § 903 et seq. of Title 16.

(6) Offenders under the age of 12. -- When a misdemeanor offense listed in this subsection has allegedly been committed by a child under the age of 12, the principal is not required to notify the appropriate police agency but must file a written report of the incident with the Department of Education within 5 working days. When the alleged offense is a violent felony, the appropriate police agency must be notified by the principal of the incident even when the suspect is under the age of 12.

(7) Sexual harassment.--Whenever a school employee has reliable information that would lead a reasonable person to believe that a student has been the victim of sexual harassment, as defined in Title 11, which occurred on school property or at a school function, the harassment must be reported to the principal, who, immediately after conducting a preliminary investigation to determine if good reason exists to believe that harassment has occurred, must notify the victim's parent of that determination, if the parent is not alleged to be the offender. The principal is not required to notify the appropriate police agency, but must file a written report with the Department of Education.

(8) Under no circumstances shall any person who has supervisory authority over the principal or any school board member exercise any control of, hinder or delay the lodging of any oral or written report required to be made pursuant to this subsection or the forwarding of such report to the Department of Education or the police. A principal (or acting principal if the principal is absent) may not delegate to or rely upon any other person except an assistant principal to make the immediate report to the police. A person with supervisory authority over the principal or any school board member who has knowledge of an incident which is required to be reported under this section, and who has information that would lead a reasonable person to believe that it has not been reported to the police, has an affirmative duty to report the incident to the police immediately. This includes, but is not limited to, incidents in which a school employee is a possible suspect and when an administrative review is ongoing.

Section 3. Amend §4112(c), Title 14 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(c) Student possession of weapons and unlawful drugs; ~~mandatory complaints.~~ -- Whenever a school employee has reliable information that would lead a reasonable person to believe that a person on school property or at a school function has on his or her person, concealed in that person's possessions, or placed elsewhere on school property:

(1) Any controlled substance prohibited by Title 16, or

(2) Any deadly weapon, destructive weapon, dangerous instrument or incendiary or explosive device as prohibited by Title 11, the school employee shall immediately report the incident to the principal, who shall conduct a thorough investigation. If the investigation verifies that good reason exists to believe that a crime has been committed, the principal shall immediately notify the appropriate police agency of the incident. If the police agency determines that probable cause exists to believe that a crime has been committed, then the principal shall file a written report of the incident with ~~the superintendent. Thereafter, the superintendent shall file a written report of the incident with~~ the Department of Education within 5 working days.

Section 4. Amend §4112(d), Title 14 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

~~(d) Suspensions.~~

~~(1) Whenever a police agency has determined that probable cause exists to believe that a student has committed a crime which must be reported to the police pursuant to this section, the student shall:~~

~~a. Be referred immediately to the internal or external alternative services of the district or school for intervention of an appropriate nature and duration prior to being returned to the general student body, and~~

~~b. Be given an immediate internal or external suspension by the district or school until a parent conference is held to review the student's educational placement.~~

~~(2) A student who is placed in an alternative program pursuant to this subsection, and who is determined by a superintendent to be in immediate need of a program to prevent seriously violent or habitual criminal behavior, shall be separated in the alternative program from students for whom such a determination has not been made. The superintendent's determination shall include a statement of the recommended degree of separation, keeping in mind the available resources.~~

~~(3) Before a student suspended under this subsection may be returned to the general student body, a parent of the suspended student is required to attend a parent conference with the superintendent to discuss the offense and to review the student's educational placement. A telephone conference shall be sufficient only if the superintendent so determines and so notifies the parent. If the parent does not attend the parent conference, a subpoena compelling the parent's attendance may be issued pursuant to § 4122 of this title.~~

~~(4) When a student who has been given an external suspension or who has been sent to an alternative program pursuant to this subsection returns to the general student body at a school where the victim is required to be present, the principal of the school must attempt to notify the adult victim or, if the victim is a juvenile, a parent of the juvenile victim.~~

~~(5) Nothing in this subsection shall preclude a school district from imposing a suspension or expulsion beyond the date of a parent conference where otherwise appropriate. Any change of placement of students with qualifying disabilities must comply with applicable federal laws.~~

(d) School officials who report a crime committed by a child with a disability, as defined by section 3101(2) of this title, shall comply with 20 U.S.C.A. §1415(k)(6)(B) by ensuring that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the crime is reported. An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

Section 5. Amend §4112(e), Title 14 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(e) Penalties. -- Any school employee who fails to report an incident as required by subsection (b) or subsection (c) of this section shall be guilty of a violation and shall be fined not more than \$250 for a 1st offense and not more than \$500 for a subsequent offense. Any person with supervisory authority over the principal or any school board member who exercises any control of, hinders or delays the lodging of any report required to be made pursuant to this subsection or the forwarding of such report to the Department of Education or the police shall be guilty of a class B misdemeanor. ~~Justices of the Peace Courts shall have jurisdiction over violations of this section.~~

Section 6. Amend § 4112, Title 14 to add the following new subsections:

(h) A copy of any report required by this section to go to a principal shall be immediately submitted to the superintendent by the principal.

(i) If any report required by this section alleges any wrongdoing involving the principal, the report shall be given to the superintendent and the duties required of the principal by this section shall be the duties of the superintendent.

Approved August 16, 2012