



FACT SHEET

Act 110: Rights of Students Convicted or Adjudicated of Sexual Assault

May 2021

This FAQ explains a law known as [Act 110](#), which concerns students who are convicted or adjudicated delinquent of sexual assault. The law became effective on January 3, 2021, and does not apply to convictions or adjudications occurring prior to that effective date.

If you are a survivor of sexual assault, help is available. Support for sexual assault survivors is available through the [Pennsylvania Coalition Against Rape](#). You may also contact the [Office of Victims' Services](#) of the Pennsylvania Commission on Crime and Delinquency (PCCD), which can help cover the cost of therapy and counseling for survivors of sexual abuse. The claim process, enacted as part of [Act 87 of 2019](#), provides up to \$10,000 in counseling services for a direct victim of sexual abuse who was under 18 at the time of the crime, and up to \$5,000 in counseling services for a direct victim who was 18 or older at the time of the crime. To be considered for an award under this claim process, a direct victim/claimant must submit a completed [Sexual Assault Counseling Claim](#) form to PCCD's VCAP unit. The form can be found online at PCCD's [website](#), by calling 1-800-233-2339 or by emailing ra-davesupport.@pa.gov.

Why was Act 110 adopted?

This state law, codified at 24 P.S. § 13-1318.1, was enacted to protect student survivors/victims of sexual assault. The law requires a student convicted or adjudicated delinquent of sexual assault against a student in the same school entity to be transferred to another school, placed in alternative education for disruptive youth, or expelled from the same school entity under certain circumstances.

Does Act 110 apply to students in all schools?

No. The law does not apply to private or parochial schools. The law applies only to public school entities, which are defined as school districts, independent schools, area career and technical schools, intermediate units, charter schools, regional charter schools, and cyber charter schools.

What does Act 110 require?

Schools must ensure that the convicted or adjudicated student is not educated in the same school building, transported on the same school vehicle, or permitted to participate in the same school-sponsored activities at the same time as the victim.

Are schools required to expel a student convicted or adjudicated delinquent of sexually assaulting another student in the same public school entity?

No, expulsion is NOT required under the statute. If a student is convicted or adjudicated delinquent of sexually assaulting another student in the same school entity, schools have three options: (i) reassign the student to another school or educational program within the public school entity; (ii) transfer the student to an alternative education program or school outside the school entity; or (iii) expel the convicted or adjudicated student. If the victim attends school in a different school building in the same school entity, the school must still ensure that students are not transported together and do not participate in the same school-sponsored activities.

Importantly, schools may also comply with the law by arranging for students to be educated in an alternative school district via a contractual agreement or memorandum of understanding that ensures that all students continue to receive a quality public education.

Does the student subject to Act 110 have any due process rights?

Yes. Before you can be expelled, every student is entitled to a due process hearing, which provides an opportunity for the student to challenge the proposed exclusion from school. See ELC's [fact sheet on expulsion](#). In addition, you also have the right to a hearing before you can be transferred to an AEDY¹ program. See ELC's [fact sheet on AEDY](#).

Does a student who is expelled under this law have any legal rights following expulsion?

Yes. Any student who is expelled and is of compulsory school age (ages 6-18) is entitled to receive an education, and their school entity is responsible for providing that education. If the student's parents or guardians are unable to provide the required education, a parent may request that the school entity provide the education, and the school entity must do so within 10 days of the parent's request. In addition, a student with a disability who is expelled must receive all educational services as required by the Individuals with Disabilities Education Act.²

What if the sexual assault occurred outside the school setting?

In cases where the survivor/victim was enrolled in the same public school entity and the assault occurred outside the school setting, Act 110 states that schools may still separate the victim and student who was convicted or adjudicated delinquent for a sexual assault. However, additional evidence must be provided and reviewed to establish that the assault has the effect of (i) substantially interfering with the victim's education, (ii) creating a threatening or hostile educational environment, or (iii) substantially disrupting the orderly operation of the school.

Notably, ELC believes that schools do not have authority to punish students for conduct occurring outside of school. If schools do have such authority, students should be given a due process hearing during which the school must make the factual findings described in the

¹ Pennsylvania's Alternative Education for Disruptive Youth (AEDY) refers to a separate educational program where students are placed by school districts or charter schools for disciplinary reasons. A 2019 settlement agreement with the U.S. Department of Justice sets certain program requirements before students with disabilities or English learners can be placed in an AEDY. These requirements are described in ELC's fact sheets, including an [AEDY overview](#); [AEDY for Students with Disabilities](#); and [AEDY for English Learners](#).

² 20 U.S.C.A. § § 1400–1482; 24 P. S. § 26-2603-B, and 22 Pa. Code § 12.6.

paragraph above. See ELC’s fact sheets regarding [expulsion hearings](#) and [transfers to alternative education](#) for a description of due process rights at such a hearing.

What does the current caselaw say about punishing students for behavior and conduct that happen outside of school?

In addition to protections afforded by constitutional law to protect free speech, the authority of schools to discipline students is also limited by state statute.³ State law limits school officials’ power to discipline students to conduct where students are “under the district’s supervision at the time of the incident,” including in school, on the way to school, and during school-sponsored activities.⁴

What does it mean to be “convicted or adjudicated delinquent of sexual assault”?

It is important to know that while adjudication and conviction require different standards, Act 110 treats them the same. The term “convicted” means that a judge or jury found the student guilty of sexual assault or the student pled guilty or nolo contendere to charges of sexual assault. “Adjudicated delinquent” means that a student is found guilty during a juvenile court proceeding. “Sexual assault” refers to one of the following offenses: rape (18 Pa. C.S. § 3121); statutory sexual assault (§ 3122.1); involuntary deviate sexual assault (§ 3123); sexual assault (§ 3124.1); aggravated indecent assault (§ 3125); or indecent assault (§ 3126).

Act 110 does not apply at the time a student is charged or while they are under a consent decree – only once they are adjudicated or convicted.

Can convicted or adjudicated students return to their prior schools?

Yes. Students may return to their originally assigned schools if the victim is no longer enrolled in the school or the student’s conviction or delinquency adjudication is reversed, and no appeal is pending. Schools should adopt procedures to ensure that students are notified when these conditions are met.

Are students required to notify their schools of their convictions?

Act 110 requires students to notify their schools of a conviction or adjudication involving another student in the same school entity no later than 72 hours after the conviction or adjudication takes place. Schools must make this requirement clear in their Student Handbook or Code of Conduct.

Does Act 110 affect a student’s enrollment in a new or different school/public school entity?

Yes. Act 110 provides that when a student is registered in school, the parent or guardian must provide a sworn statement indicating whether the student has ever been expelled on the basis of Act 110. Failure to disclose a prior expulsion may result in a fine or criminal penalty. Act 110 does not require disclosure when a student is reassigned or transferred but not expelled.

³ See 24 P.S. § 5-510; § 13-1317.

⁴ See *Hoke ex rel. Reidenbach v. Elizabethtown Area Sch. Dist.*, 833 A.2d 304, 313 (Pa. Commw. Ct. 2003) (citing § 5-510; § 13-1317).

How does Act 110 affect students with disabilities?

Act 110 cannot undermine a student's rights and protections under federal and state disability laws. Schools must comply with the Individuals with Disabilities Education Act and Pennsylvania disability laws.⁵ In addition, schools cannot discriminate against students based on their disabilities.⁶ Schools still must make provisions for individualized determinations for all students with disabilities, provide individualized education programs, and ensure that no student is placed in an alternative education program that cannot meet their educational needs.

What are the obligations and authority of a school to which a student is transferred during or after a period of expulsion for a sexual assault conviction or adjudication of delinquency?

The school to which a convicted or adjudicated student is transferred may assign that student to an AEDY program or provide alternative education services instead of the regular education program. However, such assignments must comply with state law and AEDY requirements that prohibit students with disabilities and English learners from being placed in an alternative program that cannot meet their educational needs. See our [fact sheet on AEDY](#).

What are the obligations of a school to revise its policies and procedures to comply with Act 110?

Local educational agencies should consider revising their policies to address the following issues in compliance with Act 110:

1. **Clarify due process protections for students facing removal for conduct occurring out of school** to specify that students convicted or adjudicated for sexual assaults occurring outside a school setting may only be subject to removal if the assault: (1) was against another student enrolled in the same public school entity; and (2) has the effect of: (i) substantially interfering with the victim's education; (ii) creating a threatening or hostile educational environment; or (iii) substantially disrupting the orderly operation of the school. Caselaw also requires that a district show that the out-of-school conduct has a disruptive impact on the school.
2. **Notify students of their obligation to inform schools of any conviction or adjudication.** Districts must adopt a policy and procedure governing how students will notify schools within 72 hours if the student is convicted or adjudicated delinquent for sexual assault involving another student and how schools will ascertain the identity of the victim.⁷
3. **Adopt a policy governing a student's eligibility to return.** Districts must develop policies and procedures regarding how a school will know when a student is eligible to

⁵ 20 U.S. Code § 1400, *et. seq.* 22 Pa Code Chapter 14.

⁶ Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 394, 29 U.S.C. § 701 *et seq.*; Americans With Disabilities Amendment Act, 42 U.S.C. ch. 126 § 12101 *et seq.*

⁷ Act 110 states that a student convicted of sexual assault upon another student enrolled in the same public school entity "shall notify the public school entity of the conviction no later than 72 hours after the conviction." However, the provision does not reference how the school will learn the identity of the victim when a district is prohibited from proactively accessing information regarding a juvenile conviction from probation or the courts.

return to school based on the fact that a victim no longer attends the school, or an adjudication or conviction is reversed, and no appeal is pending.⁸

- 4. Clarify that students transferred to a receiving school district are subject to the same rights as other students.** A district's policies should acknowledge that while a student who is convicted or adjudicated of sexual assault may be transferred to another public school or nonpublic school during the period of removal and may be placed in an alternative program, the student is otherwise entitled to the same rights, protections, and access to learning as other students.

The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general idea of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact us for a referral or contact an attorney of your choice. Visit www.elc-pa.org/contact or call 215-238-6970 (Philadelphia) or 412-258-2120 (Pittsburgh).

⁸ Act 110 states that "a student expelled, transferred or reassigned under this section may return to the student's originally assigned school if: (1) the victim ceases to be enrolled in the school entity from which the convicted or adjudicated delinquent student was expelled, transferred or reassigned; or (2) the conviction or delinquency adjudication on which the expulsion, transfer or reassignment was based is reversed and no appeal is pending.