

FAQs: Exclusionary School Discipline Laws Impacting K-12 Student Survivors



**VICTIM
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ALABAMA

INTRODUCTION

When a student is sexually assaulted at school, they and/or their parents/guardians/caregivers may want and expect the school to suspend or expel the student who harmed them. The reality is that in many jurisdictions, school discipline laws limit or prohibit suspension and expulsion in many circumstances. Attorneys and legal advocates who serve these survivors need to prepare them for this possibility.

This FAQ provides legal advocates and civil attorneys with a starting point for researching jurisdiction-specific school discipline laws that impact K-12 students (elementary, middle, and high school) who have been sexually assaulted by another student. We include legal citations so that you can read more about the laws and make sure they are current.

This FAQ is intended as a summary of relevant laws and may not include every relevant law. It is not legal advice. Legal advocates and civil attorneys who need 1:1 consultation or support can reach out to VRLC at TA@victimrights.org.

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QUESTIONS AND ANSWERS

Q.1. Is a school permitted or required to suspend or expel a student who sexually assaults another student on school property or at an off-campus school-sponsored activity?

A.1. A school is required to suspend a student who physically harms another student. Sexual assault could possibly qualify as “physical harm”, but the statute does not define this term. Each local school board may use different definitions and standards for misconduct that qualifies as physical harm. This means attorneys and advocates should consult the published student conduct code of the local school board that governs the school attended by the offending student.

Q&A 1. SOURCES:

[Ala. Code § 16-1-24.1](#) (b) The principal shall notify appropriate law enforcement officials when any person violates local board of education policies concerning ... physical harm to a person, or threatened physical harm to a person.... If that person is a student enrolled in any public school in the State of Alabama, the local school system shall immediately suspend that person from attending regular classes....

Q.2. How long is a suspension for sexual assault?

A.2. Alabama school discipline statutes do not address this question.

Q.3. How long is an expulsion for sexual assault?

A.3. Alabama school discipline statutes do not address this question.

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QUESTIONS AND ANSWERS

Q.4. Can a student be suspended or expelled for sexually assaulting another student if the sexual assault did not occur on school property or at an off-campus school-sponsored activity?

A.4. Alabama school discipline statutes do not address this question.

Q.5. Are certain students exempt from suspension or expulsion for sexual assault?

A.5. Yes. Under federal law, a student with a disability who has a 504 Plan or an Individualized Education Program (IEP) is exempt from an expulsion or a suspension lasting longer than 10 school days in a row if the misconduct (including sexual assault) was caused by the student's disability or the school's failure to implement the student's 504 Plan or IEP. However, this exemption does not apply if the misconduct involved serious bodily injury or if the student is substantially likely to injure themselves or others in the future if they stay in school. In those cases, the school can move the student to an alternative school for up to 45 school days at a time.

Q&A 5. SOURCES:

[U.S. Dep't of Ed. Office for Civil Rights Fact Sheet on Student Discipline Under Section 504 of the Rehabilitation Act of 1973](#) (issued July 19, 2022);

[U.S. Dep't of Ed. Office of Special Education and Rehabilitative Services Q&A on IDEA's Discipline Provisions](#) (issued July 19, 2022)

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QUESTIONS AND ANSWERS

Q.6. Is a school required to report incidents of sexual assault to law enforcement?

A.6. Schools must report incidents to law enforcement under the following circumstances:

- (1) Principals must report to law enforcement: (a) physical harm to a person that violates school policies and (b) physically violent incidents that require medical attention and occur on school property or during off-campus school-sponsored activities.
- (2) Most school employees must report sexual abuse (regardless of where it occurs) of a child (younger than 18) to law enforcement or the Department of Human Resources (DHR). If DHR receives the report, it must notify law enforcement.
- (3) Any school employee who is responsible for the care of an adult (18 or older) with an intellectual or developmental disability must report sexual abuse of such adult (regardless of where it occurs) to DHR or law enforcement.

Q&A 6. SOURCES:

[Ala. Code § 16-1-24.1](#) (b) The principal shall notify appropriate law enforcement officials when any person violates local board of education policies concerning ... physical harm to a person....

[Ala. Code § 16-1-24](#) (a) For purposes of this section, the following words and phrases shall have the following respective meanings, unless the context clearly indicates otherwise: (1) INCIDENT. Any act of physical violence, with or without a weapon ... Provided, however, that incidents involving only students from the same school wherein no dangerous weapon was involved and no bodily injury requiring medical attention occurs shall not be required to be reported as provided herein.

(b) It is the intention of the Legislature by passage of the section to require principals, teachers and other school employees of public elementary, junior and senior high schools to make reports of violent disruptive incidents occurring on school property during school hours or during school activities conducted on or off school property after school hours or at any other time when such incident can be reasonably related to school or school functions....

QUESTIONS AND ANSWERS

Q&A 6. SOURCES:

(c) Principals shall file a report within 72 hours with the superintendent of education of any incident of which they have knowledge. A copy of the report shall also be furnished [to] ... the county sheriff by the superintendent of education.

[Ala. Code § 26-14-3](#) (a) ...public and private K-12 employees, school teachers and officials, ... when the child is known or suspected to be a victim of child abuse..., shall be required to report orally, either by telephone or direct communication immediately, and shall be followed by a written report, to a duly constituted authority....

(c) When the Department of Human Resources receives initial reports of suspected abuse..., as defined in Section 26-14-1, ... the Department of Human Resources shall transmit a copy of school reports to the law enforcement agency....

[Ala. Code §26-14-1](#) For the purposes of this chapter, the following terms shall have the meanings respectively ascribed to them by this section:

(1) ABUSE. Harm or threatened harm to a child's health or welfare. Harm or threatened harm to a child's health or welfare can occur through ... sexual abuse or attempted sexual abuse, or sexual exploitation or attempted sexual exploitation. Sexual abuse includes the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct or any simulation of the conduct for the purpose of producing any visual depiction of the conduct; or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children as those acts are defined by Alabama law....

(3) CHILD. Either of the following:

a. A person under the age of 18 years.

b. A person under the age of 19 years who is in need of protective services and does not qualify for adult protective services under Chapter 9 of Title 38.

(4) DULY CONSTITUTED AUTHORITY. The chief of police of a municipality or municipality and county; or the sheriff, ...; or the Department of Human Resources; or any person, organization, corporation, group, or agency authorized and designated by the Department of Human Resources to receive reports of child abuse and neglect....

[Ala. Code § 38-9-8](#) (a) ... any caregiver having reasonable cause to believe that any protected person has been subjected to ... sexual abuse ... shall report or cause a report to be made as follows: (1) An oral report, by telephone or otherwise, shall be made immediately, followed by a written report, to the county department of human resources or to the chief of police of the city or city and county, or to the sheriff....

QUESTIONS AND ANSWERS

Q&A 6. SOURCES:

[Ala. Code §38-9-2](#) For the purposes of this chapter, the following terms shall have the following meanings:

(3) CAREGIVER. An individual ... who has assumed the responsibility for the care of the person voluntarily, by contract, or as a result of the ties of friendship....

(18) PROTECTED PERSON. Any person 18 years of age or older subject to protection under this chapter and not otherwise subject to the jurisdiction of the juvenile court or any person, including, but not limited to, persons with a neurodegenerative disease, persons with intellectual disabilities and developmental disabilities, or any person 18 years of age or older who is not otherwise subject to the jurisdiction of the juvenile court and who is mentally or physically incapable of adequately caring for himself or herself and his or her interests without serious consequences to himself or herself or others....

(22) SEXUAL ABUSE. Any conduct that constitutes a crime under Article 4 of Chapter 6 of Title 13A.

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