

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



**VICTIM
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ARIZONA

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. Expulsion is permitted (but not required) if determined appropriate by the school district.

Q&A 1. SOURCES:

[Ariz. Rev. Stat. § 15-841](#) B. A pupil may be expelled for continued open defiance of authority, continued disruptive or disorderly behavior, violent behavior that includes use or display of a dangerous instrument or a deadly weapon as defined in section 13-105, use or possession of a gun, or excessive absenteeism.... A school district may expel pupils for actions other than those listed in this subsection as the school district deems appropriate.

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

A.2. Suspension is temporary and for a specified period of time. However, the statute does not specify a minimum or maximum time period for suspension.

Q&A 2. SOURCES:

[Ariz. Rev. Stat. § 15-840](#) 2. In this article, unless the context otherwise requires: "Suspension" means the temporary withdrawal of the privilege of attending a school for a specified period of time.

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

A.3. Expulsion is permanent unless the school board determines otherwise.

QUESTIONS AND ANSWERS

Q&A 3. SOURCES:

[Ariz. Rev. Stat. § 15-840](#) 1. In this article, unless the context otherwise requires: "Expulsion" means the permanent withdrawal of the privilege of attending a school unless the governing board reinstates the privilege of attending the school.

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. Arizona 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.

Also, under Arizona law, students under the age of seven (7) are exempt from suspension and expulsion. Students aged seven (7) or older in kindergarten through fourth grade can be suspended or expelled but only under limited aggravating circumstances and after feasible alternative interventions have failed.

QUESTIONS AND ANSWERS

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)

[Ariz. Rev. Stat. § 15-843](#) K. Except as provided in subsection L of this section, a school district or charter school may suspend or expel a pupil who is enrolled in a kindergarten program, first grade, second grade, third grade or fourth grade only if all of the following apply:

1. The pupil is seven years of age or older.
2. The pupil engaged in conduct on school grounds that meets one of the following criteria:
...
(c) Immediately endangers the health or safety of others.
(d) The pupil's behavior is determined by the school district governing board or charter school governing body to qualify as aggravating circumstances and all of the following apply:
 - (i) The pupil is engaged in persistent behavior that has been documented by the school and that prevents other pupils from learning or prevents the teacher from maintaining control of the classroom environment.
 - (ii) The pupil's ongoing behavior is unresponsive to targeted interventions ... that includes consultation with a school counselor, school psychologist or other mental health professional or social worker....
 - (iii) The pupil's parent or guardian was notified and consulted about the ongoing behavior....
3. Failing to remove the pupil from the school building would create a safety threat that cannot otherwise reasonably be addressed or qualifies as aggravating circumstances as specified in paragraph 2 of this subsection.
4. Before suspending or expelling the pupil, the school district or charter school considers and, if feasible while maintaining the health and safety of others, in consultation with the pupil's parent or guardian to the extent possible, employs alternative behavioral and disciplinary interventions that are available to the school district or charter school, that are appropriate to the circumstances and that are considerate of health and safety....

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

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

- (1) A school board must report a sex offense (including sexual assault) that occurs on school property to law enforcement.
- (2) Any school employee must report a sex offense (including sexual assault) (regardless of where it occurs) committed against a minor (younger than 18) to law enforcement or the Department of Child Safety (DCS). If DCS receives the report it must notify law enforcement.
- (3) Some individuals who work in schools (including social workers, speech therapists, occupational therapists, physical therapists, and developmental disability service providers) must report – to law enforcement or adult protective services - sexual abuse or sexual assault (regardless of where it occurs) of an adult (18 or older) with a disability who is unable to protect themselves.

Q&A 6. SOURCES:

[Ariz. Rev. Stat. § 15-341](#) A.30. The governing board shall ... Report to local law enforcement agencies any suspected crime against a person ... that is a serious offense as defined in [section 13-706](#) [including sexual assault and sexual conduct with a minor under 15] or that involves ... serious physical injury and any conduct that poses a threat of death or serious physical injury to employees, students or anyone on the property of the school.... For the purposes of this paragraph ... "serious physical injury" have the same meanings prescribed in [section 13-105](#).

[Ariz. Rev. Stat. § 13-3620](#) A. Any person who reasonably believes that a minor is or has been the victim of physical injury, abuse, child abuse, a reportable offense ... shall immediately report ... to a peace officer, to the department of child safety or to a tribal law enforcement or social services agency for any Indian minor who resides on an Indian reservation, except if the report concerns a person who does not have care, custody or control of the minor, the report shall be made to a peace officer only.... For the purposes of this subsection, "person" means: ... 4. School personnel ... who develop the reasonable belief in the course of their employment.

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Q&A 6. SOURCES:

H. ...Notwithstanding any other statute, when the department receives these reports, it shall immediately notify a peace officer in the appropriate jurisdiction.

P. For the purposes of this section:

1. "Abuse" has the same meaning prescribed in section 8-201.
2. "Child abuse" means child abuse pursuant to section 13-3623....
4. "Reportable offense" means any of the following:
 - (a) Any offense listed in [chapters 14](#) [sexual offenses, including sexual assault] and 35.1 [sexual exploitation of children] of this title or section 13-3506.
 - (b) Surreptitious photographing, videotaping, filming or digitally recording or viewing a minor pursuant to section 13-3019.

[Ariz. Rev. Stat. § 8-201](#) 2.(b)(i) "Abuse" includes: Inflicting or allowing sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553, incest pursuant to section 13-3608 or child sex trafficking pursuant to section 13-3212.

[Ariz. Rev. Stat. § 1-215](#) 21. In the statutes and laws of this state, unless the context otherwise requires: "Minor" means a person under eighteen years of age.

[Ariz. Rev. Stat. § 46-454](#) A. A ... speech, physical or occupational therapist, ... social worker, ... developmental disabilities provider, ... or other person who has responsibility for the care of a vulnerable adult and who has a reasonable basis to believe that abuse ... of the vulnerable adult has occurred shall immediately report or cause reports to be made of such reasonable basis to a peace officer or to the adult protective services central intake unit....

[Ariz. Rev. Stat. § 46-451](#) A. In this chapter, unless the context otherwise requires:

1. "Abuse" means: ... (d) Sexual abuse or sexual assault....
12. "Vulnerable adult" means an individual who is eighteen years of age or older and who is unable to protect himself from abuse, neglect or exploitation by others because of a physical or mental impairment. Vulnerable adult includes an incapacitated person as defined in section [14-5101](#).

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