

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



**VICTIM  
RIGHTS  
LAW CENTER**

## CALIFORNIA

### 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](mailto: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.** Yes, both suspension and expulsion are required for sexual assault, as well as attempted sexual assault and sexual battery.

### Q&A 1. SOURCES:

**EDC 48915** (c)The principal or superintendent of schools shall immediately suspend, pursuant to Section **48911**, and shall recommend expulsion of a pupil that he or she determines has committed any of the following acts at school or at a school activity off school grounds: ...(4) Committing or attempting to commit a sexual assault as defined in subdivision (n) of Section **48900** or committing a sexual battery as defined in subdivision (n) of Section 48900.

(d)The governing board of a school district shall order a pupil expelled upon finding that the pupil committed an act listed in subdivision (c).

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

**A.2.** Up to 30 school days in a school year, with exceptions.

### Q&A 2. SOURCES:

**EDC 48903** (a) Except as provided in subdivision (g) of Section **48911** and in Section **48912**, the total number of days for which a pupil may be suspended from school shall not exceed 20 school days in any school year, unless for purposes of adjustment, a pupil enrolls in or is transferred to another regular school, an opportunity school or class, or a continuation education school or class, in which case the total number of schooldays for which the pupil may be suspended shall not exceed 30 days in any school year.

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

**A.3.** One calendar year, but it can be less on a case-by-case basis.

## QUESTIONS AND ANSWERS

### Q&A 3. SOURCES:

[EDC 48916](#) (a) ...For a pupil who has been expelled pursuant to subdivision (c) of Section [48915](#), the governing board shall set a date of one year from the date the expulsion occurred, when the pupil shall be reviewed for readmission to a school maintained by the district, except that the governing board may set an earlier date for readmission on a case-by-case basis.

**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.** No. A school cannot suspend or expel a student for sexually assaulting another student if the sexual assault did not occur on school property or at an off-campus school-sponsored activity. However, if the student is convicted of a violent felony or certain misdemeanors, the school has the option to transfer the student to another school after an attempt at other resolution methods has failed (i.e., restorative justice, counseling). Also, the student may have done other things to the survivor while at school (like bullying or creating a hostile environment) that could result in suspension or expulsion (for more on this, see answer 7 on pages 7 and 8 of this resource).

### Q&A 4. SOURCES:

[EDC 48900](#) (s) A pupil shall not be suspended or expelled for any of the acts enumerated in this section unless the act is related to a school activity or school attendance occurring within a school under the jurisdiction of the superintendent of the school district or principal or occurring within any other school district. A pupil may be suspended or expelled for acts that are enumerated in this section and related to a school activity or school attendance that occur at any time, including, but not limited to, any of the following: (1) While on school grounds. (2) While going to or coming from school. (3) During the lunch period whether on or off the campus. (4) During, or while going to or coming from, a school-sponsored activity.

## QUESTIONS AND ANSWERS

### Q&A 4. SOURCES:

[EDC 48929](#) Notwithstanding any other law, the governing board of a school district may transfer to another school in that school district a pupil enrolled in that school district who has been convicted of a violent felony, as defined in subdivision (c) of [Section 667.5 of the Penal Code](#), or convicted of a misdemeanor listed in [Section 29805 of the Penal Code](#) if the pupil to be transferred and the victim of the crime for which the pupil was convicted are enrolled at the same school, subject to satisfaction of both of the following conditions:

(a) The governing board of the school district has adopted a policy at a regularly scheduled meeting that contains all of the following provisions:

- (1) A requirement that the pupil and pupil's parent or guardian be notified of the right to request a meeting with the school principal or designee of the school or school district.
- (2) A requirement that the school first attempt to resolve the conflict before transferring a pupil, including, but not limited to, using restorative justice, counseling, or other services.
- (3) Whether the decision to transfer a pupil is subject to periodic review and the procedure for conducting the review.
- (4) The process to be used by the governing board of the school district to consider and approve or disapprove of the recommendation of the school principal or other school or school district designee to transfer the pupil.

(b) The governing board of the school district has provided notice of the policy to parents or guardians as part of the annual notification required pursuant to Section 48980.

## QUESTIONS AND ANSWERS

**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)

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

**A.6.** Yes. Most, if not all, school employees must report a sexual assault of any child (younger than 18) to law enforcement or the county welfare department. If the county welfare department receives a report, it must then notify law enforcement. Also, school employees must report sexual assault of adults (18 or older) with certain disabilities to law enforcement or the adult protective services agency. If the adult protective services agency receives a report, it must then notify law enforcement.

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

## QUESTIONS AND ANSWERS

### Q&A 6. SOURCES:

[PEN 11165.9](#) Reports of suspected child abuse ... shall be made by mandated reporters... to any police department or sheriff's department, ... or the county welfare department....

[PEN 11166](#) (j) (1) A county probation or welfare department shall ... report ... to the law enforcement agency having jurisdiction over the case ... and to the district attorney's office every known or reasonably suspected instance of child abuse....

[PEN 11165.7](#) (a) As used in this article, "mandated reporter" is defined as any of the following: (1) A teacher. (2) An instructional aide. (3) A teacher's aide or teacher's assistant employed by a public or private school. (4) A classified employee of a public school. (5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of a public or private school.... (16) An employee of a school district police or security department.... (42) An athletic coach, athletic administrator, or athletic director employed by any public or private school that provides any combination of instruction for kindergarten, or grades 1 to 12, inclusive.

[PEN 11165](#) As used in this article "child" means a person under the age of 18 years.

[PEN 11165.6](#) As used in this article, the term "child abuse or neglect" includes physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse [including sexual assault] as defined in Section [11165.1](#)....

[WIC 15630](#) (a) A person who has assumed full or intermittent responsibility for the care or custody of ... [a] dependent adult, whether or not they receive compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for ... dependent adults, or any ... dependent adult care custodian ... is a mandated reporter.

[WIC 15610.17](#) "Care custodian" means an administrator or an employee of any of the following public or private facilities or agencies, or persons providing care or services for ... dependent adults, including members of the support staff and maintenance staff:... (f) Secondary schools that serve 18- to 22-year-old dependent adults....

[WIC 15630](#) (b)(1) A mandated reporter who, in their professional capacity, or within the scope of their employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, ... shall report the known, suspected, or alleged instance of abuse ... immediately or as soon as practicably possible.

[WIC 15630](#) (b)(1)(F) If the abuse has occurred in any place other than a long-term care facility, a state mental hospital, or a state developmental center, the report shall be made to the adult protective services agency or the local law enforcement agency.

[WIC 15640](#) (a)(1) An adult protective services agency shall ... report by telephone to the law enforcement agency ... any known or suspected instance of criminal activity....

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

## QUESTIONS AND ANSWERS

### Q&A 6. SOURCES:

[WIC 15610.23](#) (a) “Dependent adult” means a person, regardless of whether the person lives independently, between the ages of 18 and 64 years who resides in this state and who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age.

[WIC 15610.63](#) “Physical abuse” means any of the following: ... (e) Sexual assault....

**Q.7.** How do California school discipline laws address suspension and expulsion for other forms of sex-based or potentially sex-based misconduct?

CONDUCT	SUSPENSION OR EXPULSION?	SOURCES
Sexual Harassment - 1st Offense (not applicable to K-3 students)	Suspension or expulsion is permitted, but not required, if the student’s presence causes a danger.	<a href="#">EDC 48900.2</a> <a href="#">EDC 48900.5</a> (a) <a href="#">EDC 48915</a> (e)(2)
Sexual Harassment - Repeat Offenses (not applicable to K-3 students)	Suspension or expulsion is permitted but not required.	<a href="#">EDC 48900.2</a> <a href="#">EDC 48900.5</a> (a) <a href="#">EDC 48915</a> (e)(1)
Creating Hostile Environment - 1st Offense (not applicable to K-3 students)	Suspension or expulsion is permitted, but not required, if the student’s presence causes a danger.	<a href="#">EDC 48900.4</a> <a href="#">EDC 48900.5</a> (a) <a href="#">EDC 48915</a> (e)(2)

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Creating Hostile Environment - Repeat Offenses (not applicable to K-3 students)	Suspension or expulsion is permitted but not required.	<a href="#">EDC 48900.4</a> <a href="#">EDC 48900.5</a> (a) <a href="#">EDC 48915</a> (e)(1)
Bullying (including Cyber Sexual Bullying) - 1st Offense	Suspension or expulsion is permitted, but not required, if the student's presence causes a danger.	<a href="#">EDC 48900</a> (r) <a href="#">EDC 48900.5</a> (a) <a href="#">EDC 48915</a> (e)(2)
Bullying (including Cyber Sexual Bullying) - Repeat Offenses	Suspension or expulsion is permitted but not required.	<a href="#">EDC 48900</a> (r) <a href="#">EDC 48900.5</a> (a) <a href="#">EDC 48915</a> (e)(1)

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