

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



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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. Transferring the offending student to another school is required if: (1) the offending student pleads guilty, is convicted of, or is found delinquent for a felony offense related to sexual battery, lewdness and indecent exposure, or abuse of children; and (2) the offending student and the student survivor or the survivor's sibling attend the same school.

Suspension or expulsion is permitted if: (1) the sexual assault occurred on school property; and (2) the offending student pleads guilty, is convicted of, or is found delinquent for any felony.

Without a conviction or delinquent adjudication, suspension is permitted if the sexual assault qualifies as grounds for suspension under the local school board's code of student conduct. Without a conviction or delinquent adjudication, expulsion is permitted if: (1) under the local school board's code of student conduct the sexual assault is considered a serious breach of conduct that substantially disrupts school order; and (2) alternative disciplinary measures were attempted before recommending expulsion. Each local school board may use different definitions and standards for misconduct that warrants suspension or expulsion. This means attorneys and advocates should consult the published code of student conduct of the local school board that governs the school attended by the offending student.

Q&A 1. SOURCES:

F.S. 1006.13 (6)(a) ... [W]henver any student who is attending a public school is adjudicated guilty of or delinquent for, or is found to have committed, regardless of whether adjudication is withheld, or pleads guilty or nolo contendere to, a felony violation of: ... 4. Chapter 794, relating to sexual battery; 5. Chapter 800, relating to lewdness and indecent exposure; 6. Chapter 827, relating to abuse of children ...

QUESTIONS AND ANSWERS

Q&A 1. SOURCES:

and, before or at the time of such adjudication, withholding of adjudication, or plea, the offender was attending a school attended by the victim or a sibling of the victim of the offense, the Department of Juvenile Justice shall notify the appropriate district school board of the adjudication or plea, the requirements in this paragraph, and whether the offender is prohibited from attending that school or riding on a school bus whenever the victim or a sibling of the victim is attending the same school or riding on the same school bus... Upon receipt of such notice, the district school board shall take appropriate action to effectuate the provisions in paragraph (b).

(b) ... Any offender described in paragraph (a), who is not exempted as provided in paragraph (a), may not attend any school attended by the victim or a sibling of the victim of the offense or ride on a school bus on which the victim or a sibling of the victim is riding. The offender shall be permitted by the district school board to attend another school within the district in which the offender resides, only if the other school is not attended by the victim or sibling of the victim of the offense; or the offender may be permitted by another district school board to attend a school in that district if the offender is unable to attend any school in the district in which the offender resides.

(c) If the offender is unable to attend any other school in the district in which the offender resides and is prohibited from attending a school in another school district, the district school board in the school district in which the offender resides shall take every reasonable precaution to keep the offender separated from the victim while on school grounds or on school transportation. The steps to be taken by a district school board to keep the offender separated from the victim must include, but are not limited to, in-school suspension of the offender and the scheduling of classes, lunch, or other school activities of the victim and the offender so as not to coincide.

F.S. 1003.31 (3) Nothing shall prohibit a district school board from having the right to expel, or to take disciplinary action against, a student who is found to have committed an offense on school property at any time if: (a) The student is found to have committed a delinquent act which would be a felony if committed by an adult; (b) The student has had adjudication withheld for a delinquent act which, if committed by an adult, would be a felony; or (c) The student has been found guilty of a felony.

F.S. 1006.07 (2) The district school board shall: ... Adopt a code of student conduct for elementary schools and a code of student conduct for middle and high schools.... Each code shall include, but is not limited to: (a) Consistent policies and specific grounds for disciplinary action, including in-school suspension, out-of-school suspension, expulsion....

QUESTIONS AND ANSWERS

Q&A 1. SOURCES:

F.S. 1006.09 (1)(b) The principal or the principal's designee may suspend a student only in accordance with the rules of the district school board....

F.S. 1006.09 (1)(c) The principal or the principal's designee may recommend to the district school superintendent the expulsion of any student who has committed a serious breach of conduct, including, but not limited to, ... violence against persons ... or any other act which substantially disrupts the orderly conduct of the school.... Any recommendation of expulsion shall include a detailed report by the principal or the principal's designated representative on the alternative measures taken prior to the recommendation of expulsion.

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

A.2. Up to 10 school days but it can be longer if an expulsion decision is pending.

Q&A 2. SOURCES:

F.S. 1003.01 (13)(b) "Suspension," also referred to as out-of-school suspension, means the temporary removal of a student from all classes of instruction on public school grounds and all other school-sponsored activities, except as authorized by the principal or the principal's designee, for a period not to exceed 10 school days....

F.S. 1006.08 (1) ... When district school board action on a recommendation for the expulsion of a student is pending, the district school superintendent may extend the suspension assigned by the principal beyond 10 school days if such suspension period expires before the next regular or special meeting of the district school board.

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

A.3. Up to the remainder of the school year plus one additional school year.

Q&A 3. SOURCES:

F.S. 1003.01 (10) "Expulsion" means the removal of the right and obligation of a student to attend a public school under conditions set by the district school board, and for a period of time not to exceed the remainder of the term or school year and 1 additional year of attendance.

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. Suspension is required for sexual assault of another student that did not occur on school property or at an off-campus school-sponsored activity if: (1) the offending student is charged with any violent felony crime or any felony delinquent act; and (2) the offending student and the student survivor attend the same school; and (3) the sexual assault negatively impacts the educational program, discipline, or welfare of the school. If the two students do not attend the same school, suspension is permitted but not required. Expulsion is required for sexual assault of another student that did not occur on school property or at an off-campus school-sponsored activity if: (1) the offending student is convicted of any violent felony crime or found responsible for any felony delinquent act; and (2) the offending student and the student survivor attend the same school. If the two students do not attend the same school, expulsion is permitted but not required.

Transfer (of the offending student) to another school is required for sexual assault of another student that did not occur on school property or at an off-campus school-sponsored activity if: (1) the offending student pleads guilty, is convicted of, or is found delinquent for a felony offense related to sexual battery, lewdness and indecent exposure, or abuse of children; and (2) the offending student and the student survivor or the survivor's sibling attend the same school.

Q&A 4. SOURCES:

F.S. 1006.09 (2) Suspension proceedings, pursuant to rules of the State Board of Education, may be initiated against any enrolled student who is formally charged with a felony, or with a delinquent act which would be a felony if committed by an adult, by a proper prosecuting attorney for an incident which allegedly occurred on property other than public school property, if that incident is shown...

QUESTIONS AND ANSWERS

Q&A 4. SOURCES:

to have an adverse impact on the educational program, discipline, or welfare in the school in which the student is enrolled. Any student who is suspended as the result of such proceedings may be suspended from all classes of instruction on public school grounds during regular classroom hours for a period of time, which may exceed 10 days, as determined by the district school superintendent.... If the court determines that the student did commit the felony or delinquent act which would have been a felony if committed by an adult, the district school board may expel the student....

F.S. 1006.09 (4) When a student has been the victim of a violent crime perpetrated by another student who attends the same school, the school principal shall make full and effective use of the provisions of subsection (2) and s. 1006.13(6).

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)

QUESTIONS AND ANSWERS

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

A.6. Yes. Schools must report sexual battery and other acts that threaten school safety committed on school property or at off-campus school-sponsored activities to law enforcement. Also, any person (including school staff) must report, to the Department of Children and Families (DCF), sexual abuse (regardless of where it occurs) committed against (1) any child (younger than 18, unmarried, and not emancipated) or (2) an adult (18 or older) with a disability who needs assistance with daily living, self-care, or protection. DCF must then notify law enforcement.

Q&A 6. SOURCES:

F.S. 1006.13 (4)(a) Each district school board shall enter into agreements with the county sheriff's office and local police department specifying guidelines for ensuring that acts that pose a threat to school safety, whether committed by a student or adult, are reported to a law enforcement agency.

F.S. 1012.799 Instructional personnel or administrative personnel having knowledge that a sexual battery has been committed by a student upon another student must report the offense to a law enforcement agency having jurisdiction over the school plant or over the place where the sexual battery occurred if not on the grounds of the school plant.

F.S. 39.201 (1)(a)2. Any person who knows, or has reasonable cause to suspect, that a child is the victim of sexual abuse or juvenile sexual abuse shall report such knowledge or suspicion to the central abuse hotline....

F.S. 39.201 (5)(a)2. Within 48 hours after the central abuse hotline receives a report ... the department shall ... send a written report of the allegation to the appropriate county sheriff's office.

F.S. 39.01 (12) "Child" or "youth" means any unmarried person under the age of 18 years who has not been emancipated by order of the court.

F.S. 39.01 (41) "Juvenile sexual abuse" means any sexual behavior by a child which occurs without consent, without equality, or as a result of coercion.

F.S. 39.01 (90) "Victim" means any child who has sustained or is threatened with physical, mental, or emotional injury identified in a report involving child abuse, neglect, or abandonment, or child-on-child sexual abuse.

QUESTIONS AND ANSWERS

Q&A 6. SOURCES:

F.S. 415.1034 (1)(a) Any person ... who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited must immediately report such knowledge or suspicion to the central abuse hotline.

F.S. 415.1055 (3) If at any time during a protective investigation the department has reasonable cause to believe that a vulnerable adult has been abused, neglected, or exploited by another person, the appropriate law enforcement agency shall be immediately notified....

F.S. 415.102 (27) “Sexual abuse” means acts of a sexual nature committed in the presence of a vulnerable adult without that person’s informed consent. “Sexual abuse” includes, but is not limited to, the acts defined in s. 794.011(1)(j), fondling, exposure of a vulnerable adult’s sexual organs, or the use of a vulnerable adult to solicit for or engage in prostitution or sexual performance.

F.S. 415.102 (28) “Vulnerable adult” means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

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