

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. Yes, suspension or expulsion is permitted but not required. Also, transferring the offending student to an alternative school is encouraged over suspension or expulsion.

Q&A 1. SOURCES:

[O.C.G.A. § 20-2-751.5](#) (a) Each student code of conduct shall contain provisions that address the following conduct of students during school hours, at school related functions, and on the school bus in a manner that is appropriate to the age of the student: ... (5) Physical assault or battery of other students, including sexual harassment as defined pursuant to Title IX of the Education Amendments of 1972....

[O.C.G.A. § 20-2-753](#) (a) ... local boards of education shall appoint a disciplinary hearing officer, panel, or tribunal of school officials to hold a disciplinary hearing following any instance of an alleged violation of the student code of conduct where the principal recommends a suspension or expulsion of longer than ten school days...

[O.C.G.A. § 20-2-755](#) The disciplinary officer, panel, or tribunal of school officials ... shall determine what, if any, disciplinary action shall be taken. Such action may include, but is not limited to, expulsion, long-term suspension, or short-term suspension....

[O.C.G.A. § 20-2-735](#) (f) and [O.C.G.A. § 20-2-768](#)(c) It is the policy of this state that it is preferable to reassign disruptive students to alternative educational settings rather than to suspend or expel such students from school.

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

A.2. Up to a school quarter or semester. However, if the student was suspended for being charged with, convicted of, or adjudicated for committing a felony crime or felony delinquent act, the school is permitted, but not required, to refuse to allow the student to return to school.

QUESTIONS AND ANSWERS

Q&A 2. SOURCES:

[O.C.G.A. § 20-2-751](#) (5) “Long-term suspension” means the suspension of a student from a public school for more than ten school days but not beyond the current school quarter or semester. (6) “Short-term suspension” means the suspension of a student from a public school for not more than ten school days.

[O.C.G.A. § 20-2-768](#) (a) Each local board of education is authorized to refuse to readmit or enroll any student who has been suspended ... for being convicted of, being adjudicated to have committed, being indicted for, or having information filed for the commission of any felony or any delinquent act under Code Sections 15-11-602 and 15-11-707 which would be a felony if committed by an adult....

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

A.3. Longer than a school quarter or semester. In addition, if the student was expelled for being charged with, convicted of, or adjudicated for committing a felony crime or felony delinquent act, the school is permitted, but not required, to refuse to allow the student to return to school.

Q&A 3. SOURCES:

[O.C.G.A. § 20-2-751](#) (2) “Expulsion” means expulsion of a student from a public school beyond the current school quarter or semester.

[O.C.G.A. § 20-2-768](#) (a) Each local board of education is authorized to refuse to readmit or enroll any student who has been ... expelled for being convicted of, being adjudicated to have committed, being indicted for, or having information filed for the commission of any felony or any delinquent act under Code Sections 15-11-602 and 15-11-707 which would be a felony if committed by an adult....

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. Yes, suspension or expulsion is permitted for a sexual assault that did not occur on school property or at an off-campus school-sponsored activity if: (1) the sexual assault could result in a felony criminal charge; and (2) the offending student's presence at school poses a danger to others or disrupts the educational process.

Q&A 4. SOURCES:

O.C.G.A. § 20-2-751.5 (c) Each student code of conduct shall also contain provisions that address any off-campus behavior of a student which could result in the student being criminally charged with a felony and which makes the student's continued presence at school a potential danger to persons or property at the school or which disrupts the educational process.

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

A.5. Yes, some students are exempt from suspension or expulsion under certain conditions:

(1) 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.

(2) Under Georgia law, a student in 3rd grade or below cannot be suspended or expelled for more than 5 school days in a school year unless: (a) other disciplinary interventions have failed; or (b) the student's behavior endangers the physical safety of others at school.

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)

[O.C.G.A. § 20-2-742](#) (b) No student in public preschool through third grade shall be expelled or suspended from school for more than five consecutive or cumulative days during a school year without first receiving a multi-tiered system of supports, such as response to intervention, unless ... such student's behavior endangers the physical safety of other students or school personnel....

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

A.6. No. However, most, if not all, school employees must report sexual assault of any child (younger than 18) to the Division of Family and Children Services (DFCS). DFCS must then notify law enforcement if it believes the reported sexual assault occurred. Also, school employees must report sexual assault of adults (18 or older) with certain disabilities to an adult protection agency. The adult protection agency then must notify law enforcement if it suspects a crime occurred.

Q&A 6. SOURCES:

[O.C.G.A. § 20-2-756](#) (a) The school administration, disciplinary hearing officer, panel, tribunal of school officials, or the local board of education may, when any alleged criminal action by a student occurs, report the incident to the appropriate law enforcement agency or officer for investigation to determine if criminal charges or delinquent proceedings should be initiated.

[O.C.G.A. § 19-7-5](#) (c)(1) The following persons having reasonable cause to believe that suspected child abuse has occurred shall report or cause reports of such abuse to be made as provided in this Code section: ...(H) School teachers; (I) School administrators; (J) School counselors, visiting teachers, school social workers, or school psychologists....

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Q&A 6. SOURCES:

(e)(2) ... an oral report ... or a written report ... shall be made immediately, but in no case later than 24 hours from the time there is reasonable cause to believe that suspected child abuse has occurred. When a report is being made by electronic submission or facsimile to the Division of Family and Children Services of the Department of Human Services, it shall be done in the manner specified by the division. Oral reports shall be followed by a later report in writing, if requested, to a child welfare agency providing protective services, as designated by the Division of Family and Children Services of the Department of Human Services, or, in the absence of such agency, to an appropriate police authority or district attorney.... If a report of child abuse is made to the child welfare agency ... and the agency has reasonable cause to believe such report is true or the report contains any allegation or evidence of child abuse, then the agency shall immediately notify the appropriate police authority or district attorney....

(b) As used in this Code section, the term: ...

(4) “Child” means any person under 18 years of age.

(5) “Child abuse” means: (D) Sexual abuse ... of a child...

(17) “Sexual abuse” means a person’s employing, using, persuading, inducing, enticing, or coercing any minor who is not such person’s spouse to engage in any act which involves: (A) Sexual intercourse;... (G) Physical contact in an act of apparent sexual stimulation or gratification with any person’s clothed or unclothed genitals, pubic area, or buttocks or with a female’s clothed or unclothed breasts....

O.C.G.A. § 30-5-4 (a)(1)(A) The following persons having reasonable cause to believe that a disabled adult ... has been the victim of abuse, other than by accidental means, ... shall report or cause reports to be made in accordance with the provisions of this Code section: (i) Any person required to report child abuse as provided in subsection (c) of Code Section 19-7-5....

(b)(1)(A) A report that a disabled adult ... has been the victim of abuse... shall be made to an adult protection agency providing protective services ... and to an appropriate law enforcement agency or prosecuting attorney.... If a crime is suspected, the report shall immediately be forwarded to the appropriate law enforcement agency or prosecuting attorney.

O.C.G.A. § 30-5-3 As used in this chapter, the term:

(1) “Abuse” means the willful infliction of... sexual abuse... to a disabled adult....

(5)(A) “Disabled adult” means a person 18 years of age or older who is not a resident, but who: Is mentally or physically incapacitated...

(13) “Mentally or physically incapacitated” means an impairment which substantially affects an individual’s ability to: (A) Provide personal protection; (B) Provide necessities, including but not limited to food, shelter, clothing, medical, or other health care; (C) Carry out the activities of daily living; or (D) Manage his or her resources.

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QUESTIONS AND ANSWERS

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

CONDUCT	SUSPENSION OR EXPULSION?	SOURCES
Bullying (including Cyberbullying) – 1st and 2nd offense	Suspension or expulsion is permitted but not required.	O.C.G.A. §§ 20-2-751.5(a)(15) ; 20-2-753(a) ; 20-2-755
Bullying (including Cyberbullying) – 3rd offense	Transfer to alternative school is required for students in grades 6-12.	O.C.G.A. § 20-2-751.4
Sexual Harassment	Suspension or expulsion is permitted but not required.	O.C.G.A. §§ 20-2-751.5(a)(4) ; 20-2-753(a) ; 20-2-755

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