

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. Suspension is permitted, but not required, for conduct that disrupts school order or effectiveness. Expulsion is permitted, but not required, (1) for conduct that continuously disrupts school order or effectiveness; or (2) if the offending student's presence at school is harmful to the health and safety of other students. Each of these categories arguably could include sexual assault depending on the circumstances.

Idaho school discipline laws require local school boards to create and implement local policies regarding discipline and sexual assault response. 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:

I.C.A. § 33-205 (1) The board of trustees may deny enrollment, or may deny attendance at any of its schools by expulsion, to any pupil ... whose conduct ... is such as to be continuously disruptive of school discipline or of the instructional effectiveness of the school, or whose presence in a public school is detrimental to the health and safety of other pupils....

(4) The superintendent of any district or the principal of any school may temporarily suspend any pupil for disciplinary reasons, including ... for ... conduct disruptive of good order or of the instructional effectiveness of the school....

IDAPA 08.02.03 160.01. Each school district and public charter school will have a comprehensive school district or charter school wide policy and procedures encompassing the following: ... Discipline ... Sexual Assault Response.

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

A.2. Up to 20 school days.

QUESTIONS AND ANSWERS

Q&A 2. SOURCES:

[I.C.A. § 33-205](#) (4) ...A temporary suspension by the principal shall not exceed five (5) school days, and the school superintendent may extend the temporary suspension an additional ten (10) school days. Provided, that on a finding by the board of trustees ... that immediate return to school attendance by the temporarily suspended student would be detrimental to other pupils' health, welfare, or safety, the board of trustees may extend the temporary suspension for an additional five (5) school days.

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

A.3. Idaho school discipline laws do not specify a minimum or maximum length of time for expulsion.

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. Idaho school discipline laws 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.

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)

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

A.6. Yes. Teachers and others must report sexual assault of any child (younger than 18) to law enforcement or the Department of Health and Welfare. Also, school employees must report – to Adult Protective Services [APS] – sexual assault of any adult (18 or older) with a disability who is unable to protect themselves. APS must then notify law enforcement.

Q&A 6. SOURCES:

[I.C.A. § 16-1605](#) (1) Any ... school teacher ... or other person having reason to believe that a child under the age of eighteen (18) years has been abused ... shall report ... such conditions or circumstances to the proper law enforcement agency or the department [of health and welfare]...

[I.C.A. § 16-1602](#) (1)(b) "Abused" means any case in which a child has been the victim of: Sexual conduct...

[I.C.A. § 39-5303](#) (1) ... [E]mployees of an entity responsible for providing care to a vulnerable adult ... who have reasonable cause to believe that a vulnerable adult is being or has been maltreated shall report such information to the commission's designated APS [adult protective services] provider....

[I.C.A. § 39-5310](#) (1) If, as the result of any investigation initiated under the provisions of this chapter, it appears that the maltreatment has caused injury or a serious imposition on the rights of the vulnerable adult, the commission shall immediately notify the appropriate law enforcement agency....

QUESTIONS AND ANSWERS

Q&A 6. SOURCES:

[I.C.A. § 39-5302](#) (b) "Adult" means a person aged eighteen (18) years or older....

(z) "Sexual abuse" means touching, fondling, intercourse, or any other sexual activity with a vulnerable adult when the vulnerable adult is unable to understand, unwilling to consent, threatened, or physically forced....

(dd) "Vulnerable adult" means an adult who is unable to protect himself from maltreatment because of: (i) A mental, physical, or developmental disability; ...

(ee) "Vulnerable adult maltreatment" or "maltreatment" means the intentional or negligent infliction of pain or injury on a vulnerable adult, including ... sexual abuse.

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

CONDUCT	SUSPENSION OR EXPULSION?	SOURCES
Bullying	Suspension is permitted but not required.	I.C.A. § 33-205 (4)
Harassment	Suspension is permitted but not required.	I.C.A. § 33-205 (4)

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