

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



**VICTIM  
RIGHTS  
LAW CENTER**

## INDIANA

### 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, suspension or expulsion is permitted (but not required) if:

- (1) The sexual assault qualifies as student misconduct or substantial disobedience under the school’s discipline rules; or
- (2) The sexual assault qualifies as unlawful activity and: (a) the sexual assault interferes with school purposes or functions, or (b) removing the offending student is needed to bring back order or protect others at school.

Indiana school discipline laws do not define the terms “student misconduct”, “substantial disobedience”, and “unlawful activity”. Each of these terms arguably could include sexual assault. However, each local school board may use different definitions and standards for these terms. 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:**

**IC 20-33-8-14** (a) The following are the grounds for student suspension or expulsion, subject to the procedural requirements of this chapter and as stated by school corporation rules: (1) Student misconduct. (2) Substantial disobedience.

(b) The grounds for suspension or expulsion listed in subsection (a) apply when a student is: (1) on school grounds immediately before or during school hours, or immediately after school hours, or at any other time when the school is being used by a school group; (2) off school grounds at a school activity, function, or event; or (3) traveling to or from school or a school activity, function, or event.

**IC 20-33-8-15** In addition to the grounds specified in section 14 of this chapter, a student may be suspended or expelled for engaging in unlawful activity on or off school grounds if: (1) the unlawful activity may reasonably be considered to be an interference with school purposes or an educational function; or (2) the student's removal is necessary to restore order or protect persons on school property; including an unlawful activity during weekends, holidays, other school breaks, and the summer period when a student may not be attending classes or other school functions.

## QUESTIONS AND ANSWERS

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

**A.2.** Up to 10 school days, but longer if an expulsion decision is pending and extending the suspension would prevent or substantially lower the risk of disruption to the school environment or physical harm to the offending student or others at school.

### Q&A 2. SOURCES:

**IC 20-33-8-18** (a) A principal may suspend a student for not more than ten (10) school days under section 14, 15, or 16 of this chapter. However, the student may be suspended for more than ten (10) school days under section 23 of this chapter.

**IC 20-33-8-23** The superintendent or the person designated by the superintendent... may continue suspension of a student for more than the ten (10) school day period of the principal's suspension and until the time of the expulsion decision under section 19 of this chapter if the superintendent or the designated person determines that the student's continued suspension will prevent or substantially reduce the risk of: (1) interference with an educational function or school purposes; or (2) a physical injury to the student, other students, school employees, or visitors to the school....

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

**A.3.** Up to two semesters.

### Q&A 3. SOURCES:

**IC 20-33-8-20** (a) ...[A] student may not be expelled for a longer period than the remainder of the school year in which the expulsion took effect if the misconduct occurs during the first semester. If a student is expelled during the second semester, the expulsion remains in effect for summer school and may remain in effect for the first semester of the following school year, unless otherwise modified or terminated by order of the governing body....

## 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 (but not required) for sexual assault that did not occur on school property or at an off-campus school-sponsored activity if:

- (1) the sexual assault qualifies as unlawful activity; and
- (2) the sexual assault interferes with school purposes and functions, or removing the student is needed to bring back order or protect others at school.

Indiana school discipline laws do not define the term “unlawful activity”. This term arguably could include sexual assault. However, each local school board may use different definitions and standards for “unlawful activity”. 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 4. SOURCES:**

**IC 20-33-8-15** ...[A] student may be suspended or expelled for engaging in unlawful activity... off school grounds if: (1) the unlawful activity may reasonably be considered to be an interference with school purposes or an educational function; or (2) the student's removal is necessary to restore order or protect persons on school property; including an unlawful activity during weekends, holidays, other school breaks, and the summer period when a student may not be attending classes or other school functions.

## 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. School employees must report sexual assault of any child (younger than 18) to law enforcement or the Department of Child Services (DCS). If DCS receives a report, it must then notify law enforcement. Also, school employees must report battery of an adult (18 or older) with an intellectual disability or mental health issue who's unable to care for themselves to law enforcement or the adult protective services agency.

### Q&A 6. SOURCES:

[IC 31-33-5-1](#) In addition to any other duty to report arising under this article, an individual who has reason to believe that a child is a victim of child abuse ... shall make a report....

## QUESTIONS AND ANSWERS

### Q&A 6. SOURCES:

[IC 31-33-5-2](#) (b) If an individual is required to make a report ... in the individual's capacity as a member of the staff of a... school,... the individual shall immediately make a report to: (1) the department; or (2) the local law enforcement agency....

[IC 31-33-7-5](#) A copy of the written report of the department shall immediately be made available to: (1) the appropriate law enforcement agency; (2) the prosecuting attorney....

[IC 31-9-2-13](#) (d) ... "[C]hild", for purposes of the juvenile law... means: (1) a person who is less than eighteen (18) years of age....

[IC 31-9-2-14](#) (a) "Child abuse or neglect", for purposes of ... IC 31-33..., refers to: (1) a child described in IC 31-34-1-1 through IC 31-34-1-5,... regardless of whether the child needs care, treatment, rehabilitation, or the coercive intervention of a court....

[IC 31-34-1-3](#) (a) A child is a child in need of services if, before the child becomes eighteen (18) years of age: (1) the child is the victim of an offense under: (A) IC 35-42-4-1 [rape];... (C) IC 35-42-4-3 [child molesting];... (E) IC 35-42-4-5 [vicarious sexual gratification; sexual conduct in minor's presence]; (F) IC 35-42-4-6 [child solicitation];... (H) IC 35-42-4-8 [sexual battery]; (I) IC 35-42-4-9 [sexual misconduct with a minor]....

[IC 12-10-3-9](#) (a) An individual who believes or has reason to believe that another individual is an endangered adult shall make a report under this chapter. (b) If an individual is required to make a report ... in the individual's capacity as a member of the staff of a... school,... the individual shall immediately notify the individual in charge of the... school,... who also becomes responsible to report or cause a report to be made....

[IC 12-10-3-10](#) (a) Each endangered adult report made under this chapter shall be communicated immediately to at least one (1) of the following: (1) The adult protective services unit. (2) A law enforcement agency.

[IC 12-10-3-2](#) (a) Except as provided in subsection (b), as used in this chapter, "endangered adult" means an individual who is: (1) at least eighteen (18) years of age; (2) incapable by reason of mental illness, intellectual disability, dementia, habitual drunkenness, excessive use of drugs, or other physical or mental incapacity of... providing or directing the provision of self-care; and (3) harmed or threatened with harm as a result of:... (B) a battery offense included in [IC 35-42-2](#)....

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