

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



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KANSAS

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) for conduct that endangers others, conduct that invades the rights of others, or conduct that is criminal or delinquent, each of which arguably could include sexual assault.

Q&A 1. SOURCES:

[K.S.A. 72-6114](#) The board of education of any school district may suspend or expel, or by regulation authorize any certificated employee or committee of certificated employees to suspend or expel, any pupil guilty of any of the following:... (c) conduct which endangers the safety of others or which substantially impinges upon or invades the rights of others at school, on school property, or at a school supervised activity; (d) conduct which, if the pupil is an adult, constitutes the commission of a felony or, if the pupil is a juvenile, would constitute the commission of a felony if committed by an adult; (e) conduct at school, on school property, or at a school supervised activity which, if the pupil is an adult, constitutes the commission of a misdemeanor or, if the pupil is a juvenile, would constitute the commission of a misdemeanor if committed by an adult....

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

A.2. Up to 90 school days.

Q&A 2. SOURCES:

[K.S.A. 72-6115](#) (a) A suspension may be for a short term not exceeding 10 school days, or for an extended term not exceeding 90 school days....

QUESTIONS AND ANSWERS

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

A.3. Up to 186 school days.

Q&A 3. SOURCES:

[K.S.A. 72-6115](#) (a) ...An expulsion may be for a term not exceeding 186 school days....

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 a sexual assault that did not occur on school property or at an off-campus school-sponsored activity if the sexual assault amounts to a felony criminal act.

Q&A 4. SOURCES:

[K.S.A. 72-6114](#) The board of education of any school district may suspend or expel, or by regulation authorize any certificated employee or committee of certificated employees to suspend or expel, any pupil guilty of any of the following:... (d) conduct which, if the pupil is an adult, constitutes the commission of a felony or, if the pupil is a juvenile, would constitute the commission of a felony if committed by an adult....

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 criminal acts committed on school property or at off-campus school-sponsored activities to law enforcement. Also, most, if not all, school employees must report sexual assault (regardless of where it occurs) of (1) any child (younger than 18) or (2) an adult (18 or older) unable to protect themselves to the Department of Children and Families (DCF). DCF must then share the report with law enforcement and work with law enforcement to investigate.

QUESTIONS AND ANSWERS

Q&A 6. SOURCES:

[K.S.A. 72-6143](#)(b)(1) Each board of education shall adopt a policy that includes: A requirement that an immediate report be made to the appropriate state or local law enforcement agency by or on behalf of any school employee who knows or has reason to believe that an act has been committed at school, on school property, or at a school supervised activity and that the act involved conduct which constitutes the commission of a felony or misdemeanor....

[K.S.A. 38-2223](#)(a)(1) When any of the following persons has reason to suspect that a child has been harmed as a result of physical, mental or emotional abuse or neglect or sexual abuse, the person shall report the matter promptly; (C) teachers, school administrators and other employees of an educational institution that the child is attending and any member of the board of directors of the Kansas state high school activities association ..., and any person who is employed by or is an officer of such association....

[K.S.A. 38-2223](#)(c) Reports made pursuant to this section shall be made to the secretary [of the department of children and families]....

[K.S.A. 38-2226](#)(b) When a report of child abuse or neglect indicates: (1) That there is serious physical harm to, serious deterioration of or sexual abuse of the child; and (2) that action may be required to protect the child, the investigation shall be conducted as a joint effort between the secretary [of the department of children and families] and the appropriate law enforcement agency or agencies, with a free exchange of information between them....

[K.S.A. 38-2202](#)(mm) "Sexual abuse" means any contact or interaction with a child in which the child is being used for the sexual stimulation of the perpetrator, the child or another person....

[K.S.A. 39-1431](#) (a)(1) When any of the following persons has reasonable cause to suspect or believe that an adult is in need of protective services or being harmed as a result of abuse, neglect or financial exploitation, such person shall promptly report the matter as provided by the provisions of this section:... (H) teachers, school administrators or other employees of any Kansas educational institution ... that the adult is attending.... (b)... Reports shall be made to the Kansas department for children and families....

[K.S.A. 39-1433](#)(a) The Kansas department for children and families, upon receiving a report that an adult is being or has been harmed as a result of abuse, neglect or financial exploitation, shall: (1) Immediately notify, in writing, the appropriate law enforcement agency when a criminal act has occurred or appears to have occurred....

QUESTIONS AND ANSWERS

Q&A 6. SOURCES:

[K.S.A. 39-1430](#)(b)(1) "Adult" means a person 18 years of age or older alleged to be unable to protect such person's own interest and who is harmed or threatened with harm, whether financial, mental or physical in nature.... (c) "Abuse" means any act or failure to act performed intentionally or recklessly that causes or is likely to cause harm to an adult, including:... (2) any sexual act with an adult when the adult does not consent or when the other person knows or should know that the adult is incapable of resisting or declining consent to the sexual act due to mental deficiency or disease or due to fear of retribution or hardship....

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