

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



**VICTIM
RIGHTS
LAW CENTER**

KENTUCKY

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 or expulsion is permitted, but not required, for assault, battery, or abuse of another student.

Q&A 1. SOURCES:

KRS 158.150 (1)(a) ...[A]ssault or battery or abuse of other students ... on school property, as well as off school property at school-sponsored activities, constitutes cause for suspension or expulsion from school...

KRS 158.150 (2)(b)2. The [local school] board shall also adopt a policy requiring disciplinary actions, up to and including expulsion from school, for a student who is determined by the board to have: Physically assaulted or battered or abused ... other students at a school or school function under the board's jurisdiction....

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

A.2. Kentucky school discipline laws do not address this question.

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

A.3. Kentucky school discipline laws do not address this question.

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 or expulsion is permitted, but not required, for assault, battery, or abuse of another student that did not occur on school property or at an off-campus school-sponsored activity if the incident is likely to substantially disrupt the educational process.

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Q&A 4. SOURCES:

[KRS 158.150](#) (2)(b)3. The [local school] board shall also adopt a policy requiring disciplinary actions, up to and including expulsion from school, for a student who is determined by the board to have: Physically assaulted, battered, or abused ... other students off school property and the incident is likely to substantially disrupt the educational process.

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.

Also, under state law, students below fourth grade are exempt from suspension unless they are a danger to themselves or others.

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)

[KRS 158.150](#) (9) Suspension of primary school students shall be considered only in exceptional cases where there are safety issues for the child or others.

[KRS 158.031](#) (1) ..."[P]rimary school program" means that part of the elementary school program in which children are enrolled from the time they begin school until they are ready to enter the fourth grade....

QUESTIONS AND ANSWERS

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

A.6. Yes. School employees must report sexual offenses committed on school property or at an off-campus school-sponsored activity to law enforcement. Also, school employees must report - to law enforcement or the Cabinet for Health and Family Services - sexual abuse (regardless of where it occurs) of (1) a child (younger than 18) or (2) an adult (18 or older) with a disability who is unable to protect themselves. If the Cabinet receives a report, it must notify law enforcement.

Q&A 6. SOURCES:

KRS 158.155 (2)(b) Any school employee shall immediately report pursuant to subsection (10) of this section any act which the employee has a reasonable cause to believe has occurred on school property or at a school-sponsored or sanctioned event involving: ... A sexual offense....

(3) Any school employee who receives information from a student or other person of conduct which is required to be reported under subsection (2) of this section shall report the conduct pursuant to subsection (10) of this section.

(10) Notice required pursuant to this section shall be given to any law enforcement agency created by the local board of education, and to: (a) A local law enforcement agency not created by the local board of education; or (b) The Department of Kentucky State Police.

KRS 620.030 (1) Any person who knows or has reasonable cause to believe that a child is ... abused shall immediately cause an oral or written report ... to be made to a local law enforcement agency or to the Department of Kentucky State Police, the cabinet [for Health and Family Services] or its designated representative, the Commonwealth's attorney, or the county attorney.... If the cabinet receives a report of abuse or neglect allegedly committed by a person other than a parent, guardian, fictive kin, person in a position of authority, person in a position of special trust, or person exercising custodial control or supervision, the cabinet shall refer the matter to the Commonwealth's attorney or the county attorney and the local law enforcement agency or the Department of Kentucky State Police....

QUESTIONS AND ANSWERS

Q&A 6. SOURCES:

(2)(a)1. Any person, including but not limited to a ... teacher, school personnel, ... [or] child-caring personnel ... who knows or has reasonable cause to believe that a child is ... abused, regardless of whether the person believed to have caused the ... abuse is a parent, guardian, fictive kin, person in a position of authority, person in a position of special trust, person exercising custodial control or supervision, or another person, or who has attended such child as a part of his or her professional duties, shall: Immediately make an oral or written report ... in accordance with subsection (1) of this section....

[KRS 600.020](#) (1)(a)5. "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when: His or her parent, guardian, person in a position of authority or special trust, ... or other person exercising custodial control or supervision of the child: ... Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child....

(9) "Child" means any person who has not reached his or her eighteenth birthday....

[KRS 209.030](#) (2) Any person ... having reasonable cause to suspect that an adult has suffered abuse ... shall report or cause reports to be made in accordance with the provisions of this chapter....

(3) An oral or written report shall be made immediately to the cabinet upon knowledge of suspected abuse ... of an adult.

(5)(a) Upon receipt of the report, the cabinet shall ... Notify within twenty-four (24) hours of the receipt of the report the appropriate law enforcement agency....

[KRS 209.020](#) (4) "Adult" means a person eighteen (18) years of age or older who, because of mental or physical dysfunctioning, is unable to manage his or her own resources, carry out the activity of daily living, or protect himself or herself from neglect, exploitation, or a hazardous or abusive situation without assistance from others, and who may be in need of protective services.

(8) "Abuse" means ... sexual abuse.

QUESTIONS AND ANSWERS

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

CONDUCT	SUSPENSION OR EXPULSION?	SOURCES
Sexual Harassment	Suspension or expulsion is permitted, but not required.	KDE Model Policy A09.42811

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