

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. Expulsion is permitted (but not required) for intentionally disobedient or disorderly conduct and for violent conduct, each of which arguably could include sexual assault, (though the suspension and expulsion statute does not define these terms). Suspension is permitted (but not required) for violating school rules. Each local school board may use different definitions and standards for misconduct that warrants suspension or expulsion. This means attorneys and advocates should consult the published student conduct code of the local school board that governs the school attended by the offending student. Also note that schools are strongly encouraged to minimize the use of suspension and expulsion and to use alternative disciplinary measures, even for conduct that could injure or harm other students.

Q&A 1. SOURCES:

[MRS 20-A §1001](#) Subsection 9. ...[I]f found necessary for the peace and usefulness of the school, a school board shall expel any student...:

A. Who is deliberately disobedient or deliberately disorderly;

B. For infractions of violence....

The school board may authorize the principal to suspend students ... for infractions of school rules....

[MRS 20-A §1001](#) Subsection 15-A. When revising the prescribed consequences for violation of the student code of conduct... a school board shall consider districtwide disciplinary policies that: ... B. Focus on positive and restorative interventions that are consistent with evidence-based practices rather than set punishments for specific behavior and avoid so-called zero-tolerance practices unless specifically required by federal or state laws, rules or regulations....

[MRS 20-A §6555](#) Subsection 1. C. "Dangerous behavior" means behavior of a student that presents a risk of injury or harm to a student or others.

Subsection 2. Upon receipt of a report made by a teacher or school staff person of an incident of dangerous behavior, a school administrative unit shall review the reported incident and develop an individualized response plan.... If the report of the incident of dangerous behavior is substantiated, the school administrative unit shall... develop an individualized response plan to avoid future dangerous behavior, which may include but is not limited to: A. Minimizing suspension and expulsion of the student....

QUESTIONS AND ANSWERS

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

A.2. Up to three days for students in 5th grade or below. Up to 10 days for students in 6th grade or above.

Q&A 2. SOURCES:

[MRS 20-A §1001](#) Subsection 9. ...The school board may authorize the principal to suspend students up to a maximum of 10 days.... An out-of-school suspension for a student who is enrolled in grade 5 or below may not exceed 3 days....

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

A.3. An expulsion can last up to one school year, or it can last indefinitely until the student meets conditions developed by the school superintendent.

Q&A 3. SOURCES:

[MRS 20-A §1001](#) Subsection 9-C. A. The school board may expel the student for a specific period of time not to exceed the total number of instructional days approved by the school board for the current school year; or B. The school board may expel the student for an unspecified period of time and authorize the superintendent to provide the expelled student with a reentry plan that specifies the conditions that must be met in order for the student to be readmitted to school after the 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. Maine school discipline laws do not address this question.

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.

Also, under Maine law, students in 5th grade or below are exempt from expulsion and suspension. However, the suspension exemption does not apply if the student poses an immediate danger of serious physical injury to themselves or others and alternative disciplinary measures would not work.

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)

[MRS 20-A §1001](#) Subsection 9. ...[A] school board shall expel any student, except a student who is enrolled in grade 5 or below.... [T]he school board may not authorize the principal to issue an out-of-school suspension to a student who is enrolled in grade 5 or below ... unless the principal determines that there is an imminent danger of serious physical injury to the student or others and less restrictive interventions would be ineffective.

QUESTIONS AND ANSWERS

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

A.6. Yes. Most, if not all, school employees must report sexual assault of any child (younger than 18) to the district attorney's office. Also, any school employee who provides care to an adult (18 or older) with a disability who needs assistance with daily living, must report a sexual assault of that adult to the Department of Health and Human Services (DHHS). DHHS must then notify law enforcement and the district attorney's office.

Q&A 6. SOURCES:

[MRS 22 §4011-A](#) Subsection 1. The following adult persons shall immediately report or cause a report to be made to the department when the person knows or has reasonable cause to suspect that a child has been or is likely to be abused: A. When acting in a professional capacity: ... (11) A teacher; (12) A guidance counselor; (13) A school official ... (32) A school bus driver or school bus attendant....

Subsection 2. When, while acting in a professional capacity, any person required to report under this section knows or has reasonable cause to suspect that a child has been abused ... by a person not responsible for the child ..., the person immediately shall report or cause a report to be made to the appropriate district attorney's office....

[MRS 22 §4002](#) Subsection 1. "Abuse" ... means a threat to a child's health or welfare by physical, mental or emotional injury or impairment, sexual abuse ... by a person responsible for the child....

Subsection 2. "Child" means any person who is less than 18 years of age.

[MRS 22 §3477](#) Subsection 1. The following persons immediately shall report to the department when the person knows or has reasonable cause to suspect that an incapacitated or dependent adult has been or is likely to be abused: ...B. Any person who has assumed full, intermittent or occasional responsibility for the care or custody of the incapacitated or dependent adult, regardless of whether the person receives compensation.

QUESTIONS AND ANSWERS

Q&A 6. SOURCES:

[MRS 22 §3485](#) Subsection 1. ...[W]hen the department receives a report ... that a person is suspected of abusing ... an incapacitated or dependent adult, the department shall immediately report the suspected abuse ... to the appropriate district attorney's office....

Subsection 2. Upon finding evidence indicating that a person has abused ... an incapacitated or dependent adult, resulting in serious harm, the department shall notify the appropriate district attorney or law enforcement agency of that finding.

[MRS 22 §3472](#) Subsection 1. "Abuse" means ... sexual abuse or sexual exploitation....

Subsection 2. "Adult" means any person who has attained 18 years of age or who is a legally emancipated minor....

Subsection 6. "Dependent adult" means an adult who has a physical or mental condition that substantially impairs the adult's ability to adequately provide for that adult's daily needs....

Subsection 10. "Incapacitated adult" means an adult who is unable to receive and evaluate information or make or communicate informed decisions to such an extent that the adult lacks the ability to meet essential requirements for physical health, safety or self-care, even with reasonably available appropriate technological assistance....

Subsection 13. "Serious harm" means: ... C. Sexual abuse or sexual exploitation....

Subsection 15. "Sexual abuse or sexual exploitation" means contact or interaction of a sexual nature involving an incapacitated or dependent adult without that adult's informed consent.

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