

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



**VICTIM
RIGHTS
LAW CENTER**

MARYLAND

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.

ISSUE DATE: JUNE 2025

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. Both suspensions and expulsions are meant to be used only as “last resort options” and school officials are required to keep the length of suspensions and expulsions as short as possible.

A suspension for 10 school days or less is permitted (but not required) if the sexual assault qualifies as conduct that warrants suspension under the local school board’s student discipline rules. Each local school board may use different definitions and standards for misconduct that warrants suspension. This means attorneys and advocates should consult the published student discipline rules of the local school board that governs the school attended by the offending student.

A suspension for longer than 10 school days (extended suspension) is permitted (but not required) if: (1) the offending student’s presence at school poses an imminent threat of serious harm to others at school; or (2) the offending student’s misconduct is persistently and extremely disruptive to other students’ learning, and attempts at alternative disciplinary measures have failed.

Expulsion is permitted (but not required) if the offending student’s presence at school poses an imminent threat of serious harm to others at school.

Q&A 1. SOURCES:

[COMAR 13A.08.01.11](#) A. ... [E]ach local board shall review and revise its student discipline policies and regulations.... The policies and regulations at minimum shall: ... (3) Describe the conduct that may lead to in-school and out-of-school suspension or expulsion; (4) Allow for discretion in imposing discipline; ... (6) Explain why and how long-term suspensions or expulsions are last-resort options.

QUESTIONS AND ANSWERS

Q&A 1. SOURCES:

[COMAR 13A.08.01.11](#) C. (3)(a) In accordance with the rules and regulations of the local board, each principal of a public school may suspend for cause, for not more than 10 school days, any student in the school who is under the direction of the principal....

[COMAR 13A.08.01.11](#) B. (3) “Extended suspension” means the exclusion of a student from a student’s regular program for a time period between 11 and 45 school days, which only may occur under the following circumstances: (a)(i) The student’s return to school ... would pose an imminent threat of serious harm to other students and staff; or (ii) The student has engaged in chronic and extreme disruption of the educational process that has created a substantial barrier to learning for other students across the school day, and other available and appropriate behavioral and disciplinary interventions have been exhausted. [and] (b) The superintendent or designated representative limits the duration of the exclusion to the shortest period practicable....

[COMAR 13A.08.01.11](#) B. (2) “Expulsion” ... only may occur under the following circumstances: (a) ... [T]he student’s return to school ... would pose an imminent threat of serious harm to other students or staff; [and] (b) The superintendent or designated representative limits the duration of the exclusion to the shortest period practicable....

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

A.2. A suspension can last from one to 45 school days.

Q&A 2. SOURCES:

[COMAR 13A.08.01.11](#) B. (3) “Extended suspension” means the exclusion of a student from a student’s regular program for a time period between 11 and 45 school days... (5) “Long-term suspension” means the removal of a student from school for a time period between 4 and 10 school days.... (9) “Short-term suspension” means the removal of a student from school for up to but not more than 3 school days....

QUESTIONS AND ANSWERS

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

A.3. An expulsion can last 45 school days or more.

Q&A 3. SOURCES:

[COMAR 13A.08.01.11](#) B. (2) “Expulsion” means the exclusion of the student from the student’s regular school program for 45 school days or longer....

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. If a student is arrested for a sexual offense that did not occur on school property or at an off-campus school-sponsored activity, a school is permitted (but not required) to prevent that offending student from attending the same school as the student survivor if it is necessary or appropriate to protect the survivor’s physical or mental well-being.

If a student is convicted or found responsible by a court for a sexual offense that did not occur on school property or at an off-campus school-sponsored activity, a school is required to prevent that offending student from attending the same school as the student survivor.

Q&A 4. SOURCES:

[COMAR 13A.08.01.17](#) A. (8) “Reportable offense” means an offense that: (a) Occurred off school premises; (b) Did not occur at an event sponsored by the school; and (c) Involved any of the following: (i) A crime of violence, as defined in Criminal Law Article, §14–101, Annotated Code of Maryland [including rape and attempted rape, 1st and 2nd degree sexual offense and attempted sexual offense, sexual abuse of a minor and attempted sexual abuse of a minor]....

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Q&A 4. SOURCES:

[COMAR 13A.08.01.17](#) H. Reportable Offense Involving Rape or a Sexual Offense. (1) Except as otherwise provided in H(2) of this regulation, the local superintendent and the school principal shall consider prohibiting a student who is arrested for a reportable offense involving rape or a sexual offense from attending the same school or riding on the same school bus as the alleged victim of the reportable offense if such action is necessary or appropriate to protect the physical or psychological well-being of the alleged victim.

(2) If a student is arrested for a reportable offense involving rape or a sexual offense and is convicted of or adjudicated delinquent for the rape or sexual offense, the student may not attend the same school or ride on the same school bus as the victim.

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 Maryland law, students in 2nd grade or below are exempt from suspension and expulsion. However, the suspension exemption does not apply if the student poses an imminent threat of serious harm to others at school and alternative disciplinary measures will not reduce or eliminate that threat. In such case, suspension is permitted for up to five school days.

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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)

COMAR 13A.08.01.11 C. (1)(a) Except as provided in C(1)(b), ... a student enrolled in a public prekindergarten program, kindergarten, first grade, or second grade may not be suspended or expelled from school.

(b) A student described under C(1)(a) ... may only be: ... (ii) Suspended for not more than 5 school days per incident if the school administration, in consultation with a school psychologist or other mental health professional, determines that there is an imminent threat of serious harm to other students or staff that cannot be reduced or eliminated through interventions and supports.

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

A.6. Schools must report to law enforcement any sexual assault committed by a student under 18 years old (regardless of where it occurs). Also, most, if not all, school employees must report - to the Department of Social Services - a sexual assault (regardless of where it occurs) of any child (younger than 18) if committed by the child's parent, the child's relative, a person who lives with the child, a person responsible for care or supervision of the child, or a person with custody of or authority over the child. That department must then notify law enforcement. Additionally, school social workers and case workers must report - to the Department of Social Services - a sexual assault (regardless of where it occurs) of any adult (18 or older) with a disability who needs assistance with daily living. That department must then notify law enforcement.

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Q&A 6. SOURCES:

[COMAR 13A.08.01.15](#) A. Delinquent acts are offenses committed by a person who is under 18 years old which would be crimes if committed by an adult. School officials shall promptly report to the responsible law enforcement agencies all delinquent acts coming to their attention whether occurring on or away from the school premises which involve students attending the particular school.

[M.C.A., Fam. Law, § 5-704](#) (a) ... [E]ach ... educator or human service worker ... acting in a professional capacity in this State who has reason to believe that a child has been subjected to abuse or neglect: (1) shall notify the local department or the appropriate law enforcement agency....

(b)(2)(i) An agency to which an oral report of suspected abuse or neglect is made ... shall immediately notify the other agency.

[M.C.A., Fam. Law, § 5-705](#) (a)(1) ... [A] person in this State other than [an] ... educator or human service worker... who has reason to believe that a child has been subjected to abuse or neglect shall notify the local department or the appropriate law enforcement agency.

(b)(1) An agency to which a report of suspected abuse or neglect is made under subsection (a) of this section shall immediately notify the other agency.

[M.C.A., Fam. Law, § 5-701](#) (b)(1)(ii) “Abuse” means sexual abuse of a child, whether physical injuries are sustained or not....

(e) “Child” means any individual under the age of 18 years....

(g)(1) “Educator or human service worker” means any professional employee of any correctional, public, parochial or private educational, health, juvenile service, social or social service agency, institution, or licensed facility....

(y) “Sexual abuse” means any act that involves: (1) sexual molestation or exploitation of a child by: (i) a parent; (ii) a household member or family member; (iii) a person who has permanent or temporary care or custody of the child; (iv) a person who has responsibility for supervision of the child; or (v) a person who, because of the person’s position or occupation, exercises authority over the child....

[M.C.A. Fam. Law, § 14-302](#) ... (a)(1) [E]ach ... human service worker who contacts, examines, attends, or treats an alleged vulnerable adult, and who has reason to believe that the alleged vulnerable adult has been subjected to abuse ... or exploitation shall: (i) notify the local department....

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Q&A 6. SOURCES:

[M.C.A. Fam. Law, § 14-305](#) (3) Based on the investigation under this subtitle, the local department shall: ... report to the appropriate local law enforcement agency any incident of abuse, neglect, or exploitation of an alleged vulnerable adult where the possibility of a crime being committed against the alleged vulnerable adult is indicated....

[M.C.A., Fam. Law, § 14-101](#) (b) “Abuse” means the sustaining of any physical injury by a vulnerable adult as a result of cruel or inhumane treatment or as a result of a malicious act by any person....

(f) “Exploitation” means any action which involves the misuse of a vulnerable adult’s ... person....

(h)(2) “Human service worker” includes: (i) any social worker; and (ii) any caseworker....

(q) “Vulnerable adult” means an adult who lacks the physical or mental capacity to provide for the adult’s daily needs.

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

CONDUCT	SUSPENSION OR EXPULSION?	SOURCES
Bullying (including cyber-bullying)	Suspension or expulsion is permitted, but not required, if: (1) alternative disciplinary measures have failed; or (2) a student’s presence at school poses a threat to others’ safety.	Maryland's Model Policy on Bullying, Harassment, or Intimidation

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Sexual harassment	Suspension or expulsion is permitted, but not required, if: (1) alternative disciplinary measures have failed; or (2) a student's presence at school poses a threat to others' safety.	<u>Maryland's Model Policy on Bullying, Harassment, or Intimidation</u>
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This project was supported by Grant No. 15JOVW-23-GK-05167-MUMU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Justice.