



MASSACHUSETTS

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.

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

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) under certain conditions:

- (1) A school is permitted to suspend if (a) the student is charged with a felony criminal complaint or felony delinquency complaint AND (b) the student's presence would substantially negatively affect the school environment.
- (2) A school is permitted to expel if (a) the student is convicted (found guilty) of a felony or adjudicated delinquent (found responsible) for a felony delinquency AND (b) the student's presence would substantially negatively affect the school environment.
- (3) Without a felony charge or felony conviction/adjudication, a school is permitted to suspend if (a) there are specific documented reasons that other remedies are not appropriate or would not work OR (b) the student's presence at school poses a specific risk of serious harm (physical or otherwise) to another.

Q&A 1. SOURCES:

[M.G.L. 71 Section 37H1/2](#) (1) Upon the issuance of a criminal complaint charging a student with a felony or upon the issuance of a felony delinquency complaint against a student, the principal or headmaster of a school in which the student is enrolled may suspend such student for a period of time determined appropriate by said principal or headmaster if said principal or headmaster determines that the student's continued presence in school would have a substantial detrimental effect on the general welfare of the school.... (2) Upon a student being convicted of a felony or upon an adjudication or admission in court of guilt with respect to such a felony or felony delinquency, the principal or headmaster of a school in which the student is enrolled may expel said student if such principal or headmaster determines that the student's continued presence in school would have a substantial detrimental effect on the general welfare of the school.

QUESTIONS AND ANSWERS

Q&A 1. SOURCES:

[M.G.L. 71 Section 37H3/4](#) (a) This section shall govern the suspension and expulsion of students enrolled in a public school in the commonwealth who are not charged with a violation of subsections (a) or (b) of section 37H or with a felony under section 37H1/2. (b) Any principal, headmaster, superintendent or person acting as a decision-maker at a student meeting or hearing, when deciding the consequences for the student, shall consider ways to re-engage the student in the learning process; and shall not suspend or expel a student until alternative remedies have been employed and their use and results documented, following and in direct response to a specific incident or incidents, unless specific reasons are documented as to why such alternative remedies are unsuitable or counter-productive, and in cases where the student's continued presence in school would pose a specific, documentable concern about the infliction of serious bodily injury or other serious harm upon another person while in school....

[604 CMR 53.05](#) In every case of student misconduct for which suspension may be imposed, a principal, headmaster, superintendent or other person acting as a decision-maker at a student meeting or hearing shall first consider ways to re-engage the student in learning and shall not use suspension from school as a consequence until alternative remedies have been tried and documented, except as follows: (1) where said decision-maker documents specific reasons why alternative remedies are unsuitable or counterproductive; or (2) where the student's continued presence in school would pose a specific, documentable concern about the infliction of serious bodily injury or other serious harm to another person while in school....

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

A.2. For a suspension based on a felony charge, the maximum length is the remainder of the school year. For a suspension not based on a felony charge, the maximum length is 90 school days in a school year.

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QUESTIONS AND ANSWERS

Q&A 2. SOURCES:

603 CMR 53.02 Short-term Suspension means the removal of a student from the school premises and regular classroom activities for ten consecutive school days or less.... Long-term Suspension means the removal of a student from the school premises and regular classroom activities for more than ten consecutive school days, or for more than ten school days cumulatively for multiple disciplinary offenses in any school year.... Except for students who are charged with a disciplinary offense set forth in M.G.L. c. 71, § 37H(a) or (b), or M.G.L. c. 71, § 37H ½ no student may be placed on long-term suspension for one or more disciplinary offenses for more than 90 school days in a school year beginning with the first day that the student is removed from school. No long-term suspension shall extend beyond the end of the school year in which such suspension is imposed.

M.G.L. 71 Section 37H3/4 (a) This section shall govern the suspension and expulsion of students enrolled in a public school in the commonwealth who are not charged with a violation of subsections (a) or (b) of section 37H or with a felony under section 37H1/2.... (f) No student shall be suspended or expelled from a school or school district for a time period that exceeds 90 school days, beginning the first day the student is removed from an assigned school building.

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

A.3. An expulsion is more than 90 school days in a school year and can continue indefinitely or permanently.

Q&A 3. SOURCES:

603 CMR 53.02 Expulsion means the removal of a student from the school premises, regular classroom activities, and school activities for more than 90 school days, indefinitely, or permanently, as permitted under M. G.L. c. 71, § 37H or 37H½ for: ...(d) a felony charge or felony delinquency complaint or conviction, or adjudication or admission of guilt with respect to such felony, if a principal determines that the student's continued presence in school would have a substantial detrimental effect on the general welfare of the school, as provided in M.G.L. c. 71, § 37H or 37H½.

603 CMR 53.12 (2) The principal may remove a student who has committed a disciplinary offense under M.G.L. c. 71, § 37H or 37H½ from school for more than 90 days in a school year.

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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, under certain conditions:

(1) A school is permitted to suspend if (a) the student is charged with a felony criminal complaint or felony delinquency complaint AND (b) the student's presence would substantially negatively affect the school environment.

(2) A school is permitted to expel if (a) the student is convicted (found guilty) of a felony or adjudicated delinquent (found responsible) for a felony delinquency AND (b) the student's presence would substantially negatively affect the school environment.

Without a felony charge or conviction/adjudication, a school cannot suspend or expel a student for sexually assaulting another student if the sexual assault did not occur on school property or at an off-campus school-sponsored activity, unless the offending student also does things at school to create a hostile school environment for the student survivor.

Q&A 4. SOURCES:

[M.G.L. 71 Section 84](#) No student shall be suspended, expelled, or otherwise disciplined... for conduct which is not connected with any school-sponsored activities....

[M.G.L. 71 Section 37H1/2](#) Notwithstanding the provisions of section eighty-four and sections sixteen and seventeen of chapter seventy-six: (1) Upon the issuance of a criminal complaint charging a student with a felony or upon the issuance of a felony delinquency complaint against a student, the principal or headmaster of a school in which the student is enrolled may suspend such student for a period of time determined appropriate by said principal or headmaster if said principal or headmaster determines that the student's continued presence in school would have a substantial detrimental effect on the general welfare of the school.... (2) Upon a student being convicted of a felony or upon an adjudication or admission in court of guilt with respect to such a felony or felony delinquency, the principal or headmaster of a school in which the student is enrolled may expel said student if such principal or headmaster determines that the student's continued presence in school would have a substantial detrimental effect on the general welfare of the school.

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. No. However, most, if not all, school employees must report sexual assault of any child (younger than 18) to the Department of Children and Families (DCF). DCF must then notify law enforcement if it believes the reported sexual assault occurred. Also, school employees must report sexual assault of adults (18 or older) with certain disabilities to the Disabled Persons Protection Commission (DPPC). DPPC must then notify law enforcement if it believes the reported sexual assault occurred.

QUESTIONS AND ANSWERS

Q&A 6. SOURCES:

[M.G.L. 119 Section 51A](#) (a) A mandated reporter who, in his professional capacity, has reasonable cause to believe that a child is suffering physical or emotional injury resulting from: (i) abuse inflicted upon him which causes harm or substantial risk of harm to the child's health or welfare, including sexual abuse... shall immediately communicate with the department [of children and families] orally and, within 48 hours, shall file a written report with the department detailing the suspected abuse or neglect.... A mandated reporter may, in addition to filing a report under this section, contact local law enforcement authorities.

[M.G.L. 119 Section 51B](#) (k) The department [of children and families] shall notify and shall transmit copies of substantiated 51A reports ... to the district attorney ... and to the local law enforcement authorities ... when the department has reasonable cause to believe that ... (2) a child has been sexually assaulted.... The department [of children and families] shall immediately report to the district attorney and local law enforcement authorities ... when early evidence indicates there is reasonable cause to believe that... (2) a child has been sexually assaulted....

[M.G.L. 119 Section 21](#) As used in sections 21 to 51H, inclusive, the following words shall have the following meanings, unless the context clearly otherwise requires: "Child", a person under the age of 18.... "Mandated reporter", a person who is: ... (ii) a public or private school teacher, educational administrator, guidance or family counselor, child care worker, person paid to care for or work with a child in any public or private facility, ... licenser of the department of early education and care or school attendance officer... (v) in charge of a ... school or facility or that person's designated agent....

[M.G.L. 19C Section 10](#) ... mandated reporters shall notify the [disabled persons protection] commission orally of any reportable condition immediately upon becoming aware of such condition and shall report in writing within forty-eight hours after such oral report...

[M.G.L. 19C Section 4](#) (c) ... Upon receipt of a report of abuse of a disabled person ... the commissioners ... shall, if the special investigative unit has determined that there is reason to believe that a criminal offense has been committed, immediately refer such report... to the attorney general or a district attorney for the county wherein the alleged criminal offense occurred....

QUESTIONS AND ANSWERS

Q&A 6. SOURCES:

M.G.L. 19C Section 1 As used in this chapter, the following words shall, unless the context requires otherwise, have the following meanings:— "Disabled person", a person between the ages of eighteen to fifty-nine, inclusive, who is a person with an intellectual disability as defined by section 1 of chapter 123B, or who is otherwise mentally or physically disabled and as a result of such mental or physical disability is wholly or partially dependent on others to meet his daily living needs.... "Mandated reporter",... public or private school teacher, educational administrator, guidance or family counselor.... "Reportable condition", a serious physical or emotional injury resulting from abuse, including unconsented to sexual activity.

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