

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



**VICTIM
RIGHTS
LAW CENTER**

MICHIGAN

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. Permanent expulsion (with possible reinstatement) is permitted for sexual assault (called “criminal sexual conduct” in Michigan) occurring on school property or at an off-campus school-sponsored activity if the school demonstrates expulsion is justified after considering these seven factors: the student’s age, the student’s disciplinary history, the student’s disability status, the seriousness of the sexual assault, the safety risk to others at school, the appropriateness of restorative practices, and the appropriateness of an intervention less severe than expulsion.

Q&A 1. SOURCES:

[MCL §380.1311](#) (2) Subject to ... section 1310d, if a pupil ... commits criminal sexual conduct in a school building or on school grounds ... the school board ... shall expel the pupil from the school district permanently, subject to possible reinstatement....

(12)(b) As used in this section: "Criminal sexual conduct" means a violation of section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code ... MCL 750.520b [1st degree felony criminal sexual conduct], 750.520c [2nd degree felony criminal sexual conduct], 750.520d [3rd degree felony criminal sexual conduct], 750.520e [4th degree misdemeanor criminal sexual conduct], and 750.520g [felony assault with intent to commit criminal sexual conduct].

[MCL §380.1310d](#) (1) Before suspending or expelling a pupil under section ... 1311(2), ... the board of a school district ... or a superintendent, [or] school principal ... shall consider each of the following factors:

- (a) The pupil's age.
- (b) The pupil's disciplinary history.
- (c) Whether the pupil is a student with a disability.
- (d) The seriousness of the violation or behavior committed by the pupil.
- (e) Whether the violation or behavior committed by the pupil threatened the safety of any pupil or staff member.

QUESTIONS AND ANSWERS

Q&A 1. SOURCES:

(f) Whether restorative practices will be used to address the violation or behavior committed by the pupil.

(g) Whether a lesser intervention would properly address the violation or behavior committed by the pupil.

(2) ... [T]his section applies to give the board of a school district ... discretion over whether or not to suspend or expel a pupil under section ... 1311(2).... In exercising this discretion with regard to a suspension of more than 10 days or an expulsion, there is a rebuttable presumption that a suspension or expulsion is not justified unless the board ... can demonstrate that it considered each of the factors listed under subsection (1). For a suspension of 10 or fewer days, there is no rebuttable presumption, but the board or board of directors, or its designee, shall consider each of the factors listed under subsection (1)....

(4) ... [C]onsideration of the factors listed in subsection (1) is mandatory before suspending or expelling a student under section ... 1311(2)....

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

A.2. A suspension can last up to 59 school days.

Q&A 2. SOURCES:

[MCL §380.1310d](#) (5)(c) As used in this section: "Suspend" means to exclude a pupil from school for disciplinary reasons for a period of fewer than 60 school days.

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

A.3. An expulsion can last 60 school days or more. Also, an expulsion can be permanent if (1) the sexual assault occurred on school property or at an off-campus school-sponsored activity; or (2) the offending student and the student survivor are enrolled in the same school district and the offending student pleads to, is convicted of, or is found responsible in juvenile court for criminal sexual conduct. However, a permanently expelled student in 5th grade or below can apply to be readmitted to a school in the district after 10 school days of expulsion. A permanently expelled student in 6th grade or above can apply to be readmitted to a school in the district after 180 school days of expulsion.

QUESTIONS AND ANSWERS

Q&A 3. SOURCES:

[MCL §380.1310d](#) (5)(a) "Expel" means to exclude a pupil from school for disciplinary reasons for a period of 60 or more school days.

[MCL §380.1311](#) (2) Subject to ... section 1310d, if a pupil ... commits criminal sexual conduct in a school building or on school grounds, or pleads to, is convicted of, or is adjudicated for criminal sexual conduct against another pupil enrolled in the same school district, the school board ... shall expel the pupil ... permanently, subject to possible reinstatement under subsection (6)....

(6) The parent or legal guardian of an individual expelled under subsection (2) ... may petition the expelling school board for reinstatement of the individual to public education in the school district. ... All of the following apply to reinstatement under this subsection: ... (b) ... An individual who was in grade 5 or below at the time of the expulsion ... under subsection (2) ... shall not be reinstated before the expiration of 10 school days after the date of the expulsion. An individual who was in grade 6 or above at the time of the expulsion shall not be reinstated before the expiration of 180 school days after the date of 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. Suspension or temporary expulsion is permitted for sexual assault that did not occur on school property or at an off-campus school-sponsored activity if: (1) the offending student and student survivor are enrolled in the same school district; and (2) the school demonstrates expulsion is justified after considering the seven factors listed in A.1. above.

Permanent expulsion (with possible reinstatement) is permitted for sexual assault that did not occur on school property or at a school-sponsored activity if: (1) the offending student and student survivor are enrolled in the same school district; (2) the offending student pleads guilty to, is convicted of, or is adjudicated (found responsible) in juvenile court for criminal sexual conduct; and (3) the school demonstrates expulsion is justified after considering the seven factors listed in A.1. above.

QUESTIONS AND ANSWERS

Q&A 4. SOURCES:

[MCL §380.1311](#) (1) ... [T]he school board, or the school district superintendent, a school building principal, or another school district official ... may authorize or order the suspension or expulsion ... of a pupil who commits criminal sexual conduct against another pupil enrolled in the same school district ... if, in the judgment of the school board, ... the interest of the school is served by the authorization or order....

(2) Subject to ... section 1310d, if a pupil ... pleads to, is convicted of, or is adjudicated for criminal sexual conduct against another pupil enrolled in the same school district, the school board ... shall expel the pupil from the school district permanently, subject to possible reinstatement....

(12)(b) As used in this section: "Criminal sexual conduct" means a violation of section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b [1st degree felony criminal sexual conduct], 750.520c [2nd degree felony criminal sexual conduct], 750.520d [3rd degree felony criminal sexual conduct], 750.520e [4th degree misdemeanor criminal sexual conduct], and 750.520g [felony assault with intent to commit criminal sexual conduct].

[MCL §380.1310d](#) (1) Before suspending or expelling a pupil under section ... 1311(1), [or] 1311(2), ... the board of a school district ... or a superintendent, [or] school principal ... shall consider each of the following factors:

- (a) The pupil's age.
- (b) The pupil's disciplinary history.
- (c) Whether the pupil is a student with a disability.
- (d) The seriousness of the violation or behavior committed by the pupil.
- (e) Whether the violation or behavior committed by the pupil threatened the safety of any pupil or staff member.
- (f) Whether restorative practices will be used to address the violation or behavior committed by the pupil.
- (g) Whether a lesser intervention would properly address the violation or behavior committed by the pupil.

(2) ... [T]his section applies to give the board of a school district ... discretion over whether or not to suspend or expel a pupil under section ... 1311(1), [or] 1311(2).... In exercising this discretion with regard to a suspension of more than 10 days or an expulsion, there is a rebuttable presumption that a suspension or expulsion is not justified unless the board ... can demonstrate that it considered each of the factors listed under subsection (1). For a suspension of 10 or fewer days, there is no rebuttable presumption, but the board or board of directors, or its designee, shall consider each of the factors listed under subsection (1)....

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QUESTIONS AND ANSWERS

Q&A 4. SOURCES:

(4) ... [C]onsideration of the factors listed in subsection (1) is mandatory before suspending or expelling a student under section ... 1311(1), [or] 1311(2)....

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. School employees must report to the Department of Health and Human Services (DHHS) a sexual assault of any child (younger than 18) if committed by a person responsible for the child's welfare. DHHS must then notify law enforcement. Additionally, school employees must report to the Department of Social Services a sexual assault of any adult (18 or older) with a disability who is unable to protect themselves. The Department of Social Services must then notify law enforcement.

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QUESTIONS AND ANSWERS

Q&A 6. SOURCES:

[MCL §722.622](#) (f) "Child" means an individual under 18 years of age.

(g) "Child abuse" means harm or threatened harm to a child's health or welfare that occurs through nonaccidental ... sexual abuse ... by a parent, a legal guardian, any other person responsible for the child's health or welfare, a teacher, a teacher's aide, a member of the clergy, or an individual 18 years of age or older who is involved with a youth program.

[MCL §722.623](#) (1)(a) A ... school administrator, school counselor or teacher ... who has reasonable cause to suspect child abuse ... shall make an immediate report to centralized intake....

(6) If an allegation, written report, or subsequent investigation of suspected child abuse ... indicates a violation of section ... 520b to 520g of the Michigan penal code ... MCL 750.520b to 750.520g [felony and misdemeanor criminal sexual conduct], or if the allegation, written report, or subsequent investigation indicates that the suspected child abuse ... was committed by an individual who is not a person responsible for the child's health or welfare ... the department must transmit a copy of the allegation or written report and the results of any investigation to a law enforcement agency....

[MCL §400.11a](#) (1) A person who is employed, licensed, registered, or certified to provide ... educational ... services; an employee of an agency licensed to provide .. educational ... services ... who suspects or has reasonable cause to believe that an adult has been abused ... shall make immediately... an oral report to the county department of social services....

(5) The county department shall report to a police agency any criminal activity that it believes to be occurring, upon receipt of the oral report.

[MCL §400.11](#) (a) "Abuse" means harm or threatened harm to an adult's health or welfare caused by another person. Abuse includes, but is not limited to ... sexual abuse....

(b) "Adult in need of protective services" or "adult" means a vulnerable person not less than 18 years of age who is suspected of being or believed to be abused

(f) "Vulnerable" means a condition in which an adult is unable to protect himself or herself from abuse, ... because of a mental or physical impairment....

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