

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



**VICTIM
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MINNESOTA

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 violation of a school rule, significantly disruptive behavior, and behavior that endangers others at school, each of which arguably could include sexual assault. However, before suspending or expelling, a school must try alternative disciplinary measures unless the student poses an immediate and substantial danger to themselves or others at school.

Minnesota school discipline laws require local school boards to define criteria for suspension and expulsion within the three categories mentioned above. Each local school board may use different criteria. This means attorneys and advocates should consult the published code of student conduct of the local school board that governs the school attended by the offending student.

Q&A 1. SOURCES:

[M.S. 121A.41 Subd. 2.](#) "Dismissal" means the denial of the current educational program to any pupil, including exclusion, expulsion, and suspension...

[M.S. 121A.55](#) (a) ...Each school board must establish uniform criteria for dismissal...

[M.S. 121A.45 Subd. 1.](#) No school shall dismiss any pupil without attempting to use nonexclusionary disciplinary policies and practices before dismissal proceedings or pupil withdrawal agreements, except where it appears that the pupil will create an immediate and substantial danger to self or to surrounding persons or property.

[M.S. 121A.45 Subd. 2.](#) Grounds for dismissal. A pupil may be dismissed on any of the following grounds:

(a) willful violation of any reasonable school board regulation....

(b) willful conduct that significantly disrupts the rights of others to an education, or the ability of school personnel to perform their duties, or school sponsored extracurricular activities; or

(c) willful conduct that endangers the pupil or other pupils, or surrounding persons....

QUESTIONS AND ANSWERS

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

A.2. Up to 10 school days, which can be extended to 15 school days if: (1) the student poses an immediate and substantial danger to themselves or others at school; or (2) an expulsion is pending.

Q&A 2. SOURCES:

[M.S. 121A.41 Subd. 10.](#) "Suspension" means an action by the school administration, under rules promulgated by the school board, prohibiting a pupil from attending school for a period of no more than ten school days.... The school administration may not impose consecutive suspensions against the same pupil for the same course of conduct, or incident of misconduct, except where the pupil will create an immediate and substantial danger to self or to surrounding persons or property, or where the district is in the process of initiating an expulsion, in which case the school administration may extend the suspension to a total of 15 school days.

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

A.3. Up to one calendar year.

Q&A 3. SOURCES:

[M.S. 121A.41 Subd. 5.](#) "Expulsion" means a school board action to prohibit an enrolled pupil from further attendance for up to 12 months from the date the pupil is expelled.

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. Minnesota school discipline laws do not address this question.

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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 Minnesota law, students in 3rd grade and below are exempt from suspension and expulsion, unless: (1) the student poses a serious threat to the safety of themselves or others; and (2) attempts at alternative disciplinary measures have failed.

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)

M.S. 121A.425 Subd. 1. (a) A pupil enrolled in the following is not subject to dismissals under this chapter: (1) a preschool or prekindergarten program ... or (2) kindergarten through grade 3....

(c) Notwithstanding this subdivision, expulsions and exclusions may be used only after [nonexclusionary discipline] resources ... have been exhausted, and only in circumstances where there is an ongoing serious safety threat to the child or others.

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

A.6. Most, if not all, school staff must report – to a welfare agency or law enforcement – a sexual assault of any child (younger than 18), if committed by someone responsible for the child’s care, with a significant relationship to the child, or in a position of authority. Also, school staff must report – to the Department of Human Services (DHS) – a sexual assault of any adult (18 or older) with a disability who needs help with self-care and is unable to protect themselves. DHS must then notify law enforcement.

Q&A 6. SOURCES:

[M.S. 260E.06 Subd. 1.](#) (a) A person who knows or has reason to believe a child is being maltreated ... or has been maltreated ... shall immediately report the information to the local welfare agency, agency responsible for assessing or investigating the report, police department, county sheriff, tribal social services agency, or tribal police department if the person is: (1) a professional or professional's delegate who is engaged in the practice of ... education....

[M.S. 260E.03 Subd. 12.](#) "Maltreatment" means any of the following acts or omissions: ... (4) sexual abuse under subdivision 20....

[M.S. 260E.03 Subd. 20.](#) "Sexual abuse" means the subjection of a child by a person responsible for the child's care, by a person who has a significant relationship to the child, or by a person in a current or recent position of authority, to any act that constitutes ... criminal sexual conduct in the first degree, ... second degree, ... third degree, ... fourth degree, ... fifth degree, ... sexual extortion, or ... solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children....

[M.S. 645.451 Subd. 2.](#) "Minor" means an individual under the age of 18.

[M.S. 626.557 Subd. 3.](#) (a) A mandated reporter who has reason to believe that a vulnerable adult is being or has been maltreated, or who has knowledge that a vulnerable adult has sustained a physical injury which is not reasonably explained shall immediately report the information to the common entry point.

[M.S. 626.557 Subd. 9.](#) (d) The common entry point shall immediately report to a law enforcement agency any incident in which there is reason to believe a crime has been committed.

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Q&A 6. SOURCES:

[M.S. 626.5572 Subd. 5.](#) "Common entry point" means the entity responsible for receiving reports of alleged or suspected maltreatment of a vulnerable adult....

[M.S. 626.5572 Subd. 16.](#) "Mandated reporter" means a professional or professional's delegate while engaged in: ... (3) education....

[M.S. 626.5572 Subd. 15.](#) "Maltreatment" means abuse as defined in subdivision 2....

[M.S. 626.5572 Subd. 2.](#) "Abuse" means: (a) An act against a vulnerable adult that constitutes a violation of, an attempt to violate, or aiding and abetting a violation of: ... (4) criminal sexual conduct in the first through fifth degrees....

[M.S. 626.5572 Subd. 21.](#) (a) "Vulnerable adult" means any person 18 years of age or older who: ... (4) ... possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction: (i) that impairs the individual's ability to provide adequately for the individual's own care without assistance, including the provision of food, shelter, clothing, health care, or supervision; and (ii) because of the dysfunction or infirmity and the need for care or services, the individual has an impaired ability to protect the individual's self from maltreatment.

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