



MISSISSIPPI

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: MISSISSIPPI

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, expulsion, or placement in an alternative school is permitted (but not required) if the school administration decides the offending student's presence at school would disrupt the school environment or harm the best interest and well-being of others at school. Suspension, expulsion, or placement in an alternative school is also permitted for misconduct that would warrant such disciplinary action under the local school boards code of student conduct. Mississippi's school discipline laws give local school boards broad authority to designate the grounds for suspension and expulsion, and each local school board may set different standards in this area. 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 to find out if suspension and/or expulsion is an option.

Q&A 1. SOURCES:

[Miss. Code Ann. § 37-9-71](#) The superintendent of schools and the principal of a school shall have the power to suspend or expel a pupil for good cause, including misconduct in the school or on school property, on the road to and from school, or at any school-related activity or event when such conduct by a pupil, in the determination of the superintendent or principal, renders that pupil's presence in the classroom a disruption to the educational environment of the school or a detriment to the best interest and welfare of the pupils and teacher of such class as a whole, or for any reason for which such pupil might be suspended, dismissed or expelled by the school board under state or federal law or any rule, regulation or policy of the local school district....

[Miss. Code Ann. § 37-11-55](#) The local school board shall adopt and make available ... a code of student conduct.... The code shall be based on the rules governing student conduct and discipline adopted by the school board.... The code shall include, but not be limited to:

- (a) Specific grounds for disciplinary action under the school district's discipline plan;
- (b) Procedures to be followed for acts requiring discipline, including suspensions and expulsion....

QUESTIONS AND ANSWERS

Q&A 1. SOURCES:

[Miss. Code Ann. § 37-7-301](#) The school boards of all school districts shall have the following powers, authority and duties in addition to all others imposed or granted by law, to wit: ... (e) To suspend or to expel a pupil or to change the placement of a pupil to the school district's alternative school or homebound program for misconduct in the school or on school property, ... on the road to and from school, or at any school-related activity or event, ... when such conduct by a pupil, in the determination of the school superintendent or principal, renders that pupil's presence in the classroom a disruption to the educational environment of the school or a detriment to the best interest and welfare of the pupils and teacher of such class as a whole ... and to delegate such authority to the appropriate officials of the school district...

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

A.2. Mississippi's school discipline laws do not address this question.

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

A.3. Mississippi's school discipline laws do not address this question.

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, expulsion, or placement in an alternative school is permitted (but not required) for a sexual assault that did not occur at school or a school-sponsored activity if the school administration decides the offending student's presence at school would disrupt the school environment or harm the best interest and well-being of others at school.

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QUESTIONS AND ANSWERS

Q&A 4. SOURCES:

[Miss. Code Ann. § 37-7-301](#) The school boards of all school districts shall have the following powers, authority and duties in addition to all others imposed or granted by law, to wit: ... (e) To suspend or to expel a pupil or to change the placement of a pupil to the school district's alternative school or homebound program ... for conduct occurring on property other than school property or other than at a school-related activity or event when such conduct by a pupil, in the determination of the school superintendent or principal, renders that pupil's presence in the classroom a disruption to the educational environment of the school or a detriment to the best interest and welfare of the pupils and teacher of such class as a whole, and to delegate such authority to the appropriate officials of the school district....

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)

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QUESTIONS AND ANSWERS

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

A.6. Yes, schools must report the following incidents to law enforcement:

(1) The superintendent must report sex offenses that occur on school property or during a school-sponsored event to law enforcement.

(2) Any school employee must report - to the Department of Child Protective Services (CPS) – sexual abuse (regardless of where it occurs) of a child (younger than 18 and not married or in the military) that is committed or permitted by the child’s parent, guardian, custodian, or caregiver. CPS must then notify law enforcement.

(3) Most, if not all, school employees must report – to law enforcement – a sex crime (regardless of where it occurs) committed by an adult against a minor (younger than 16).

(4) Any person, including any school employee, must report - to the Department of Human Services (DHS) - sexual abuse (regardless of where it occurs) of a person (of any age) with a disability who is unable to care for or protect themselves. DHS must then notify the district attorney and Attorney General.

Q&A 6. SOURCES:

[Miss. Code Ann. § 37-11-29](#) (3) When the superintendent or his designee has a reasonable belief that an act has occurred on educational property or during a school related activity involving any of the offenses set forth in subsection (6) of this section, the superintendent or his designee shall immediately report the act to the appropriate local law enforcement agency. For purposes of this subsection, “school property” shall include any public school building, bus, public school campus, grounds, recreational area or athletic field in the charge of the superintendent....

(6) For purposes of this section, “unlawful activity” means any of the following: ... (e) Rape, as defined under Mississippi law; (f) Sexual battery, as defined under Mississippi law; ... (i) Fondling, touching, handling, etc., a child for lustful purposes, as defined in Section 97-5-23.

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QUESTIONS AND ANSWERS

Q&A 6. SOURCES:

[Miss. Code Ann. § 43-21-353](#) (1) Any public or private school employee or any other person having reasonable cause to suspect that a child is ... an abused child, or a victim of commercial sexual exploitation or human trafficking shall cause an oral report to be made immediately by telephone or otherwise and followed as soon thereafter as possible by a report in writing to the Department of Child Protection Services.... Upon receiving a report that a child has been sexually abused ... or upon receiving any report of abuse that would be a felony under state or federal law, the Department of Child Protection Services shall immediately notify the law enforcement agency in whose jurisdiction the abuse occurred.

[Miss. Code Ann. § 43-21-105](#) (d) “Child” and “youth” are synonymous, and each means a person who has not reached his eighteenth birthday. A child who has not reached his eighteenth birthday and is on active duty for a branch of the armed services or is married is not considered a “child” or “youth”....

[Miss. Code Ann. § 43-21-105](#) (m) “Abused child” means a child whose parent, guardian or custodian or any person responsible for his care or support, whether legally obligated to do so or not, has caused or allowed to be caused, upon the child, sexual abuse, sexual exploitation, commercial sexual exploitation.... “Abused child” also means a child who is or has been trafficked within the meaning of the Mississippi Human Trafficking Act by any person, without regard to the relationship of the person to the child.

[Miss. Code Ann. § 97-5-51](#) (1)(a) “Sex crime against a minor” means any offense under at least one of the following statutes when committed by an adult against a minor who is under the age of sixteen:

- (i) Section 97-3-65 relating to rape;
- (ii) Section 97-3-71 relating to rape and assault with intent to ravish;
- (iii) Section 97-3-95 relating to sexual battery;
- (iv) Section 97-5-23 relating to the touching of a child, mentally defective or incapacitated person or physically helpless person for lustful purposes;
- (v) Section 97-5-41 relating to the carnal knowledge of a stepchild, adopted child or child of a cohabiting partner;
- (vi) Section 97-5-33 relating to exploitation of children;
- (vii) Section 97-3-54.1(1)(c) relating to procuring sexual servitude of a minor;
- (viii) Section 43-47-18 relating to sexual abuse of a vulnerable person;
- (ix) Section 97-1-7 relating to the attempt to commit any of the offenses listed in this subsection;
- (x) Section 97-29-51 relating to procuring sexual services of a minor; and
- (xi) Section 43-47-18 and Section 43-47-19 relating to sexual battery abuse of a vulnerable person who is a minor.

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QUESTIONS AND ANSWERS

Q&A 6. SOURCES:

(1)(b) “Mandatory reporter” means any of the following individuals performing their occupational duties: ... teaching or child care provider....

(1)(e) “Teaching or child care provider” means anyone who provides training or supervision of a minor under the age of sixteen, including a teacher, teacher’s aide, principal or staff member of a public or private school, social worker, probation officer, foster home parent, group home or other child care institutional staff member, personnel of residential home facilities, a licensed or unlicensed day care provider.

(2)(a) A mandatory reporter shall make a report if it would be reasonable for the mandatory reporter to suspect that a sex crime against a minor has occurred.

(3)(a) A report required under subsection (2) must be made immediately to the law enforcement agency in whose jurisdiction the reporter believes the sex crime against the minor occurred.

[Miss. Code Ann. § 43-47-7](#) (1)(a) [A]ny person ... who knows or suspects that a vulnerable person has been or is being abused ... shall immediately report such knowledge or suspicion to the Department of Human Services.... If the vulnerable person is a minor, then such report may be made to the Department of Child Protection Services....

(8) Upon reasonable cause to believe that a ... person has abused ... a vulnerable person, the department shall promptly notify the district attorney of the county in which the vulnerable person is located and the Office of the Attorney General....

[Miss. Code Ann. § 43-47-5](#) (a) “Abuse” means the commission of a willful act, or the willful omission of the performance of a duty, which act or omission contributes, tends to contribute to, or results in the infliction of physical pain, injury or mental anguish on or to a vulnerable person.... “Abuse” includes the sexual abuse delineated in Section 43-47-18....

(q) “Vulnerable person” means a person, whether a minor or adult, whose ability to perform the normal activities of daily living or to provide for his or her own care or protection from abuse, neglect, exploitation or improper sexual contact is impaired due to a mental, emotional, physical or developmental disability or dysfunction, or brain damage or the infirmities of aging....

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