

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



**VICTIM
RIGHTS
LAW CENTER**

NEW JERSEY

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 conduct that poses a continuing physical danger to other students and for physical assault. Each of these categories arguably could include sexual assault depending on the circumstances.

New Jersey school discipline laws require local school boards to identify behaviors that result in suspension and expulsion within the 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:

[N.J.S.A. § 18A:37-2](#) ... Conduct which shall constitute good cause for suspension or expulsion of a pupil guilty of such conduct shall include, but not be limited to, any of the following: ... c. Conduct of such character as to constitute a continuing danger to the physical well-being of other pupils; d. Physical assault upon another pupil....

[N.J.A.C. 6A:16-7.1](#) (a) Each district board of education shall develop, adopt, disseminate, and implement a code of student conduct that establishes standards, policies, and procedures for ... student behavioral expectations on school grounds.... (c) The code of student conduct shall include, at a minimum: ... 2. A description of behaviors that result in suspension or expulsion, pursuant to N.J.S.A. 18A:37-2....

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

A.2. New Jersey statutes and regulations do not specify a minimum or maximum length of time for suspensions.

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QUESTIONS AND ANSWERS

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

A.3. New Jersey statutes and regulations do not specify a minimum or maximum length of time for expulsions.

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 and expulsion are permitted, but not required, for a sexual assault that does not occur on school property or at an off-campus school-sponsored activity under the following conditions: (1) the suspension or expulsion is necessary for the safety, security, and well-being of the offending student or others at school; and (2) the sexual assault materially and substantially interferes with school operations; and (3) the sexual assault qualifies as conduct that warrants suspension or expulsion under the local school board's code of student conduct.

Q&A 4. SOURCES:

N.J.A.C. 6A:16-7.1 (a) Each district board of education shall develop, adopt, disseminate, and implement a code of student conduct that establishes standards, policies, and procedures for ... student behavioral expectations ... , as appropriate, for conduct away from school grounds.... (c) The code of student conduct shall include, at a minimum: ... 2. A description of behaviors that result in suspension or expulsion, pursuant to N.J.S.A. 18A:37-2....

N.J.A.C. 6A:16-7.5 (a) School authorities have the right to impose a consequence on a student for conduct away from school grounds that is consistent with the district board of education's code of student conduct, pursuant to N.J.A.C. 6A:16-7.1.

1. This authority shall be exercised only when it is reasonably necessary for the student's physical or emotional safety, security and well-being or for reasons relating to the safety, security and well-being of other students, staff or school grounds, pursuant to N.J.S.A. ... 18A:37-2.

2. This authority shall be exercised only when the conduct that is the subject of the proposed consequence materially and substantially interferes with the requirements of appropriate discipline in the operation of the school.

3. The consequence pursuant to (a) above shall be handled in accordance with the district board of education's approved code of student conduct, pursuant to N.J.A.C. 6A:16-7.1....

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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 New Jersey law, students in preschool are exempt from suspension and expulsion. Students in kindergarten through 2nd grade are exempt from expulsion, but they are not exempt from suspension for violent or sexual misconduct.

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)

[N.J.S.A. § 18A:37-2a](#) 1.a. ... [A] student who is enrolled in grades kindergarten through two in a school district or charter school shall not be expelled from school....

b. ... [A] student who is enrolled in grades kindergarten through two in a school district or charter school shall not receive an out-of-school suspension, except when the suspension is based on conduct that is of a violent or sexual nature that endangers others.

c. ... [A] student who is enrolled in preschool in a school district or charter school shall not be suspended, and shall not be expelled from school....

QUESTIONS AND ANSWERS

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

A.6. Yes. School officials must report criminal sexual acts committed on school property or at off-campus school-sponsored activities to law enforcement.

Q&A 6. SOURCES:

[N.J.A.C. 6A:16-6.3](#) (d) The designated school official ... shall immediately notify the designated law enforcement official whenever a school employee in the course of the school employee's employment develops reason to believe a crime involving sexual penetration or criminal sexual conduct has been committed on school grounds, or by or against a student during school operating hours or during school-related functions or activities.

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

CONDUCT	SUSPENSION OR EXPULSION?	SOURCES
Harassment	Suspension or expulsion is permitted, but not required.	N.J.S.A. § 18A:37-2.k.

QUESTIONS AND ANSWERS

Bullying	Suspension or expulsion is permitted, but not required.	N.J.S.A. § 18A:37-2.k.
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