

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



**VICTIM
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NEW YORK

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 is permitted (but not required) for conduct that is violent or a danger to the health, safety, or morals of others at school - each of which arguably could include sexual assault.

New York school discipline laws do not mention expulsion.

Q&A 1. SOURCES:

[N.Y. Educ. Law § 3214](#). 2-a. a. Violent pupil. ... [A] violent pupil is an elementary or secondary student under twenty-one years of age who ... (2) commits, while on school district property, an act of violence upon another student or any other person lawfully upon said property...

3.a. The board of education, board of trustees or sole trustee, the superintendent of schools, district superintendent of schools or principal of a school may suspend ... [a] pupil who is ... violent ... or whose conduct otherwise endangers the safety, morals, health or welfare of others.

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

A.2. If the school does not provide a disciplinary hearing, the suspension must be five school days or less. With a disciplinary hearing, a suspension can last longer than five school days, and the law does not set a maximum time period. Each local school board sets a minimum length of suspension for violent conduct in a published student code of conduct.

Q&A 2. SOURCES:

[N.Y. Educ. Law § 3214](#). 3.c.(1) No pupil may be suspended for a period in excess of five school days unless such pupil and the person in parental relation to such pupil shall have had an opportunity for a fair hearing....

QUESTIONS AND ANSWERS

Q&A 2. SOURCES:

[N.Y. Educ. Law § 2801](#). 2.m. The board of education or the trustees ... of every school district ... and every board of cooperative educational services and county vocational extension board, shall adopt and amend ... a code of conduct for the maintenance of order on school property, including a school function, which shall govern the conduct of students.... Such code of conduct shall include, at a minimum ... a minimum suspension period for acts that would qualify the pupil to be defined as a violent pupil ... provided that the suspending authority may reduce such period on a case by case basis to be consistent with any other state and federal law....

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

A.3. New York school discipline laws do not mention 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. New York school discipline laws do not address this question.

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.

QUESTIONS AND ANSWERS

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. Yes. Schools must notify law enforcement of crimes that occur on school property or at school-sponsored activities.

Q&A 6. SOURCES:

[N.Y. Educ. Law § 2801](#). 2.h. The board of education or the trustees ... of every school district ... and every board of cooperative educational services and county vocational extension board, shall adopt and amend ... a code of conduct for the maintenance of order on school property, including a school function, which shall govern the conduct of students.... Such code of conduct shall include, at a minimum: ... provisions setting forth the procedures by which local law enforcement agencies shall be notified of code violations which constitute a crime....

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