



NORTH CAROLINA

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: NORTH CAROLINA

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. Expulsion or placement in an alternative setting is permitted (but not required) for a student who is convicted of a sex offense and required to register as a sex offender. However, if such a student is allowed to remain on school property, school staff must supervise the student at all times. Also, long-term suspension or expulsion is permitted (but not required) for a “serious violation” of the school’s code of student conduct that threatens the safety of others at school or substantially disrupts the educational environment. North Carolina school discipline laws do not define the term “serious violation”. This term arguably could include sexual assault. However, each local school board may use different definitions and standards for “serious violation”. 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.C.G.S. 115C-390.2](#) (f) Governing body policies shall ... restrict the availability of long-term suspension or expulsion to ... serious violations of the governing body's Code of Student Conduct that either threaten the safety of students, staff, or school visitors or threaten to substantially disrupt the educational environment.... The principal may, however, in his or her discretion, determine that aggravating circumstances justify treating a minor violation as a serious violation.

[N.C.G.S. 115C-390.5](#) (a) The principal shall have authority to impose short-term suspension on a student who willfully engages in conduct that violates a provision of the Code of Student Conduct authorizing short-term suspension.

[N.C.G.S. 115C-390.7](#) (a) A principal may recommend to the superintendent the long-term suspension of any student who willfully engages in conduct that violates a provision of the Code of Student Conduct that authorizes long-term suspension.

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QUESTIONS AND ANSWERS

Q&A 1. SOURCES:

[N.C.G.S. 115C-390.11](#) (a) ...[A] governing body of a public school unit may expel any student 14 years of age or older whose continued presence in school constitutes a clear threat to the safety of other students or school staff....

(a)(2) A governing body of a public school unit may expel any student subject to [G.S. 14-208.18](#) [convicted sex offender registry requirement].... Prior to ordering the expulsion of a student, the governing body shall consider whether there are alternative education services that may be offered to the student. As provided by G.S. 14-208.18(f), if the governing body determines that the student shall be provided educational services on school property, the student shall be under the supervision of school personnel at all times.

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

A.2. A suspension can last up to a full semester.

Q&A 2. SOURCES:

[N.C.G.S. 115C-390.1](#) (b)(7) Long-term suspension. - The exclusion for more than 10 school days of a student from school attendance for disciplinary purposes.... If the offense leading to the long-term suspension occurs before the final quarter of the school year, the exclusion shall be no longer than the remainder of the school year in which the offense was committed. If the offense leading to the long-term suspension occurs during the final quarter of the school year, the exclusion may include a period up to the remainder of the school year in which the offense was committed and the first semester of the following school year.

(b)(12) Short-term suspension. - The exclusion of a student from school attendance for disciplinary purposes for up to 10 school days....

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

A.3. An expulsion is indefinite.

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Q&A 3. SOURCES:

[N.C.G.S. 115C-390.1](#) (b)(5) Expulsion. - The indefinite exclusion of a student from school enrollment for disciplinary purposes.

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. Expulsion or placement in an alternative setting is permitted (but not required) for a sexual assault that did not occur at school or a school-sponsored activity if the student is convicted of a sex offense and required to register as a sex offender. However, if such a student is allowed to remain on school property, school staff must supervise the student at all times.

Also, suspension is permitted (but not required) for a sexual assault that did not occur at school or a school-sponsored activity if the sexual assault does or reasonably could directly and immediately impact orderly and efficient school operations or safety of others at school.

Q&A 4. SOURCES:

[N.C.G.S. 115C-390.2](#) (c) Governing body policies may authorize suspension for conduct not occurring on educational property, but only if the student's conduct otherwise violates the Code of Student Conduct and the conduct has or is reasonably expected to have a direct and immediate impact on the orderly and efficient operation of the schools or the safety of individuals in the school environment.

[N.C.G.S. 115C-390.11](#) (a)(2) A governing body of a public school unit may expel any student subject to [G.S. 14-208.18](#) [convicted sex offender registry requirement] in accordance with the procedures of this section. Prior to ordering the expulsion of a student, the governing body shall consider whether there are alternative education services that may be offered to the student. As provided by G.S. 14-208.18(f), if the governing body determines that the student shall be provided educational services on school property, the student shall be under the supervision of school personnel at all times.

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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 North Carolina law, students under the age of 14 are exempt from expulsion. However, this age limit does not apply to registered sex offenders.

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.C.G.S. 115C-390.11](#) (a) ...[A] governing body of a public school unit may expel any student 14 years of age or older whose continued presence in school constitutes a clear threat to the safety of other students or school staff....

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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. The principal must report sex offenses committed on school property to law enforcement. Also, any person or school must report - to the Department of Social Services - (1) a sexual assault (regardless of where it occurs) of any child (younger than 18, and not married, emancipated, or in the military) that is committed, permitted, or encouraged by the child's parent, guardian, custodian, or caretaker; and (2) a sexual assault (regardless of where it occurs) of any adult (18 or older) who is incapacitated due to a disability. The Department of Social Services must share such reports with law enforcement.

Q&A 6. SOURCES:

[N.C.G.S. 115C-288](#) (g) When the principal has personal knowledge or actual notice from school personnel that an act has occurred on school property involving ... sexual assault, sexual offense, rape, ... [or] indecent liberties with a minor ... the principal shall immediately report the act to the appropriate local law enforcement agency.

[N.C.G.S. 7B-301](#) (a) Any person or institution who has cause to suspect that any juvenile is abused ... as defined by G.S. 7B-101 ... shall report the case of that juvenile to the director of the department of social services in the county where the juvenile resides or is found.

[N.C.G.S. 7B-307](#) (a) If the director finds evidence that a juvenile may have been abused as defined by G.S. 7B-101, the director shall make an immediate oral and subsequent written report of the findings to the district attorney or the district attorney's designee and the appropriate local law enforcement agency.... If the director receives information that a juvenile may have been physically harmed in violation of any criminal statute by any person other than the juvenile's parent, guardian, custodian, or caretaker, the director shall make an immediate oral and subsequent written report of that information to the district attorney or the district attorney's designee and to the appropriate local law enforcement agency....

[N.C.G.S. 7B-101](#) (14) Juvenile. - A person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the Armed Forces of the United States.

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Q&A 6. SOURCES:

[N.C.G.S. 7B-101](#) (1) Abused juveniles. - Any juvenile less than 18 years of age ... (ii) whose parent, guardian, custodian, or caretaker: ... d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree forcible rape, as provided in G.S. 14-27.21; second-degree forcible rape as provided in G.S. 14-27.22; statutory rape of a child by an adult as provided in G.S. 14-27.23; first-degree statutory rape as provided in G.S. 14-27.24; first-degree forcible sex offense as provided in G.S. 14-27.26; second-degree forcible sex offense as provided in G.S. 14-27.27; statutory sexual offense with a child by an adult as provided in G.S. 14-27.28; first-degree statutory sexual offense as provided in G.S. 14-27.29; sexual activity by a substitute parent or custodian as provided in G.S. 14-27.31; sexual activity with a student as provided in G.S. 14-27.32; unlawful sale, surrender, or purchase of a minor, as provided in G.S. 14-43.14; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-205.3(b); and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1....

[N.C.G.S. 108A-102](#) (a) Any person having reasonable cause to believe that a disabled adult is in need of protective services shall report such information to the director [of the department of social services].

[N.C.G.S. 108A-109](#) Upon finding evidence indicating that a person has abused, neglected, or exploited a disabled adult, the director shall notify the district attorney.

[N.C.G.S. 108A-101](#) (a) The word "abuse" means the willful infliction of physical pain, injury or mental anguish....

(d) The words "disabled adult" shall mean any person 18 years of age or over or any lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated due to an intellectual disability, cerebral palsy, epilepsy or autism; organic brain damage caused by advanced age or other physical degeneration in connection therewith; or due to conditions incurred at any age which are the result of accident, organic brain damage, mental or physical illness, or continued consumption or absorption of substances.

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Q&A 6. SOURCES:

(e) A "disabled adult" shall be "in need of protective services" if that person, due to his physical or mental incapacity, is unable to perform or obtain for himself essential services and if that person is without able, responsible, and willing persons to perform or obtain for his essential services....

(n) The words "protective services" shall mean services provided by the State or other government or private organizations or individuals which are necessary to protect the disabled adult from abuse....

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