

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



**VICTIM  
RIGHTS  
LAW CENTER**

**OHIO**

## 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](mailto: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.** Expulsion is permitted, but not required, for criminal acts that cause serious physical harm or put others' health and safety in imminent and severe danger. Serious physical harm includes: a mental health issue that requires hospitalization or extended psychiatric care, physical harm that could lead to death, permanent or substantial temporary incapacity, permanent or serious temporary disfigurement, or severe or prolonged pain. Depending on the circumstances, a sexual assault could arguably meet one or more of these definitions. Unlike expulsion, Ohio school discipline laws do not specify the types of conduct that may warrant a suspension, but instead give local school boards the responsibility of making that determination. Each local school board may use different definitions and standards for misconduct that warrants suspension. This means attorneys and advocates should consult the published student conduct code of the local school board that governs the school attended by the offending student.

### Q&A 1. SOURCES:

[ORC §3313.661](#) (A) ...[T]he board of education of each city, exempted village, and local school district shall adopt a policy regarding suspension, expulsion, removal, and permanent exclusion that specifies the types of misconduct for which a pupil may be suspended, expelled, or removed....

[ORC §3313.66](#) (B)(4) The board of education ... may ... authorize the superintendent of schools to expel a pupil from school ... for committing an act that is a criminal offense when committed by an adult and that results in serious physical harm to persons as defined in division (A)(5) of section 2901.01 of the Revised Code ... while the pupil is at school, on any other property owned or controlled by the board, or at an interscholastic competition, an extracurricular event, or any other school program or activity....

(B)(6) The board of education ... may ... authorize the superintendent of schools to expel a pupil from school ... for actions that ... pose imminent and severe endangerment to the health and safety of other pupils or school employees....

## QUESTIONS AND ANSWERS

### Q&A 1. SOURCES:

[ORC §3313.66](#) (K)(4)(d) "Imminent and severe endangerment" means any of the following actions taken by a pupil: ... Committing an act that is a criminal offense when committed by an adult and that results in serious physical harm to persons as defined in division (A)(5) of section 2901.01 of the Revised Code ... while the pupil is at a school operated by the board, any other property owned or controlled by the board, or an interscholastic competition, extracurricular event, or any other program or activity sponsored by the school district or in which the district is a participant....

[ORC §2901.01](#) (A)(5) "Serious physical harm to persons" means any of the following:

- (a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;
- (b) Any physical harm that carries a substantial risk of death;
- (c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;
- (d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;
- (e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

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

**A.2.** Up to 10 school days.

### Q&A 2. SOURCES:

[ORC §3313.66](#) (A)(1) ...[T]he superintendent ... or the principal ... may suspend a pupil from school for not more than ten school days....

## QUESTIONS AND ANSWERS

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

**A.3.** The length of an expulsion depends on the conduct involved. If a student is suspended for a criminal act that caused serious physical harm, the expulsion can last up to one calendar year. If a student is suspended for an act that puts others' health and safety in imminent and severe danger, the expulsion can initially last up to 180 school days with the possibility of unlimited extensions in 90-school-day increments. If a student is suspended for an act other than the two types just mentioned, the expulsion can last up to 80 school days or the remainder of the current school term, whichever is longer.

### Q&A 3. SOURCES:

[ORC §3313.66](#) (B)(1) Except as provided under division ... (B)(4) ... or (6) of this section ... the superintendent ... may expel a pupil from school for a period not to exceed the greater of eighty school days or the number of school days remaining in the semester or term....

[ORC §3313.66](#) (B)(4) The board of education ... may ... authorize the superintendent of schools to expel a pupil from school for a period not to exceed one year for committing an act that is a criminal offense when committed by an adult and that results in serious physical harm to persons....

[ORC §3313.66](#) (B)(6) The board of education ... may ... authorize the superintendent of schools to expel a pupil from school for a period not to exceed one hundred eighty school days for actions that ... pose imminent and severe endangerment to the health and safety of other pupils or school employees.... (a)(ii) ...[I]f the superintendent determines that the pupil has not shown sufficient rehabilitation, the superintendent may extend the expulsion for an additional period not to exceed ninety school days.... (b) ...At the end of the extended expulsion period, the superintendent shall reassess the pupil ... and may reinstate the pupil or may extend the expulsion for another term, not to exceed ninety school days.... There is no limit on the number of times the superintendent may extend an expulsion under division (B)(6)(a)(ii) of this section....

## QUESTIONS AND ANSWERS

**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.** Ohio 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.

### **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)

## QUESTIONS AND ANSWERS

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

**A.6.** Yes. School employees and administrators must report, to a peace officer or the public children services agency, sexual assault of children younger than 18 or adults younger than 21 with developmental or physical disabilities. If the public children services agency receives the report, it must then notify law enforcement.

### Q&A 6. SOURCES:

[ORC §2151.421](#) (A)(1)(a) No person described in division (A)(1)(b) of this section who is acting in an official or professional capacity and knows, or has reasonable cause to suspect ... that a child under eighteen years of age, or a person under twenty-one years of age with a developmental disability or physical impairment, has suffered ... any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse ... shall fail to immediately report ... to the entity or persons specified in this division. ...[T]he person making the report shall make it to the public children services agency or a peace officer....

[ORC §2151.421](#) (B) Division (A)(1)(a) of this section applies to any person who is [a] ... licensed school psychologist; ... school teacher; school employee; school authority....

[ORC §2151.421](#) (E)(2)(c)(i) When a public children services agency receives a report, ... the public children services agency shall do all of the following: ... Unless an arrest is made at the time of the report that results in the appropriate law enforcement agency being contacted, ... notify the appropriate law enforcement agency of the report, if the public children services agency received ... [a] report of abuse of a child....

[ORC §2151.425](#) (B) "Sexual abuse of a child" means unlawful sexual conduct or sexual contact, as those terms are defined in section 2907.01 of the Revised Code, with a person under eighteen years of age or a person under twenty-one years of age with a developmental disability or physical impairment.

## QUESTIONS AND ANSWERS

**Q.7.** How do Ohio 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 is permitted but not required.	<a href="#">ORC §3313.666</a> (A)(2)(a); (B)(1)
Dating Violence	Suspension is permitted but not required.	<a href="#">ORC §3313.666</a> (A)(2)(b); (B)(1)
Bullying (including cyber-bullying)	Suspension is permitted but not required.	<a href="#">ORC §3313.666</a> (A)(1)-(2)(a); (B)(1)

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