

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



**VICTIM  
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LAW CENTER**

## **OREGON**

### **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).

ISSUE DATE: JUNE 2025

## 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 harassment, assault, and conduct that threatens the health or safety of students, each of which arguably could include sexual assault (though the suspension and expulsion statute does not define these terms). When deciding whether to suspend or expel, the school must consider the student's age and past behavior.

### Q&A 1. SOURCES:

**ORS 339.250** (2) Each district school board shall adopt written policies for the discipline, suspension or expulsion of any refractory student. The policies:

- (a) May allow discipline, suspension or expulsion for conduct that includes, but is not limited to:... (F) Use of threats, intimidation, harassment or coercion against a student or a school employee; (G) Assault of a school employee or another student...
- (b) Must require consideration of the age of a student and the past pattern of behavior of a student prior to imposing the suspension or expulsion of a student.
- (c) Must limit the use of expulsion to the following circumstances: (A) For conduct that poses a threat to the health or safety of students or school employees; (B) When other strategies to change student conduct have been ineffective...; or (C) When the expulsion is required by law.

**OAR 581-021-0055** (2) Students shall be liable to discipline, suspension, or expulsion for misconduct, including but not limited to:... (e) Assault or threats of harm....

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

**A.2.** Up to 10 school days. Extensions are allowed for completion of a physical or mental exam or incarceration.

## QUESTIONS AND ANSWERS

### Q&A 2. SOURCES:

[ORS 339.250](#) (2) Each district school board shall adopt written policies for the discipline, suspension or expulsion of any refractory student. The policies: ... (f) Must be limited so that:... (B) The duration of a suspension may not be more than 10 school days.

[OAR 581-021-0065](#) (5) School district boards shall limit suspension to a specific maximum number of days. That maximum shall not exceed ten school days.... (9) In special circumstances a suspension may be continued until some specific pending action occurs, such as a physical or mental examination, or incarceration by court action.

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

**A.3.** Up to one calendar year.

### Q&A 3. SOURCES:

[ORS 339.250](#) (2) Each district school board shall adopt written policies for the discipline, suspension or expulsion of any refractory student. The policies: ... (f) Must be limited so that: (A) The duration of an expulsion may not be more than one calendar year.

**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.** Oregon school discipline statutes and regulations do not address this question.

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## QUESTIONS AND ANSWERS

**Q.5.** Are certain students exempt from suspension or expulsion for sexual assault?

**A.5.** Yes, some students are exempt from suspension or expulsion under certain conditions:

(1) 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.

(2) Under Oregon law, students in 5th grade or below cannot be suspended or expelled unless (a) the conduct causes serious physical harm to or threatens the health or safety of another student or school staff, or (b) suspension or expulsion is required by law.

### **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)

**ORS 339.250** (2) Each district school board shall adopt written policies for the discipline, suspension or expulsion of any refractory student. The policies: (d) ...for a student who is in fifth grade or lower, must limit the use of out-of-school suspension or of expulsion to the following circumstances: (A) For nonaccidental conduct causing serious physical harm to a student or school employee; (B) When... the student's conduct poses a direct threat to the health or safety of students or school employees; or (C) When the suspension or expulsion is required by law.

## QUESTIONS AND ANSWERS

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

**A.6.** Yes. School employees must report - to law enforcement or the Department of Human Services (DHS) - sexual assault of unmarried children younger than 18 (or younger than 21 if in foster care or a developmental disabilities residential facility) and sexual assault of adults (18 or older) who have developmental disabilities or mental health issues and receive services from a community program or facility. If DHS receives the report, it must then notify law enforcement.

### Q&A 6. SOURCES:

**ORS 419B.010** (1) Any public or private official having reasonable cause to believe that any child with whom the official comes in contact has suffered abuse or that any person with whom the official comes in contact has abused a child shall immediately report or cause a report to be made in the manner required in ORS 419B.015....

**ORS 419B.015** (1)(a) ... A person making a report of child abuse that is required by ORS 419B.010 shall make the report to the department [of human services] ... or to a law enforcement agency.... (b)(A) When a report of alleged child abuse is received by the department [of human services], the department shall notify a law enforcement agency... (B) When a report of alleged child abuse is received by a law enforcement agency, the agency shall notify the department [of human services]....

**ORS 419B.005** (6) "Public or private official" means: ... (c) School employee ... (gg) Member of a school district board, an education service district board or a public charter school governing body....

**ORS 419B.005** (2) "Child" means an unmarried person who: (a) Is under 18 years of age; or (b) Is a child in care, as defined in ORS 418.257.

**ORS 418.257** (3)(a) "Child in care" means a person under 21 years of age who is residing in or receiving care or services from: (A) A child-caring agency or proctor foster home ... (B) A certified foster home; or (C) A developmental disabilities residential facility.

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## QUESTIONS AND ANSWERS

### Q&A 6. SOURCES:

**ORS 419B.005** (1)(a) “Abuse” means: (A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child that has been caused by other than accidental means, including any injury that appears to be at variance with the explanation given of the injury.... (C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are described in ORS chapter 163. (D) Sexual abuse, as described in ORS chapter 163....

**ORS 430.765** (1) Any public or private official who has reasonable cause to believe that any adult with whom the official comes in contact has suffered abuse, or that any person with whom the official comes in contact has abused an adult, shall report or cause a report to be made in the manner required in ORS 430.743.

**ORS 430.743** (1) When a report is required under ORS 430.765, an oral report shall be made immediately by telephone or otherwise to the Department of Human Services, the designee of the department or a law enforcement agency.... (2) When a report is received by the department’s designee ... [i]f there is reason to believe a crime has been committed, the designee shall immediately notify the law enforcement agency having jurisdiction....

**ORS 430.735** (1) “Abuse” means ... (d) Sexual abuse.... (13)(a) “Sexual abuse” means: (A) Sexual contact with a nonconsenting adult or with an adult considered incapable of consenting to a sexual act under ORS 163.315;... (E) Any sexual contact that is achieved through force, trickery, threat or coercion....

(2) “Adult” means a person 18 years of age or older: (a) With a developmental disability who is currently receiving services from a community program or facility or who was previously determined eligible for services as an adult by a community program or facility; (b) With a severe and persistent mental illness who is receiving mental health treatment from a community program; or (c) Who is receiving services for a substance use disorder or a mental illness in a facility or a state hospital.

This project was supported by Grant No. 15JOVW-23-GK-05167-MUMU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Justice.