



PENNSYLVANIA

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.

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, transfer, or reassignment is required if: (1) the offending student is convicted or found delinquent of sexual assault; and (2) the offending student and the survivor student attend the same school. Without a conviction or delinquent adjudication, suspension or expulsion is permitted (but not required) if the sexual assault qualifies as the type of misconduct that should result in removal from school under the local school board's exclusionary discipline rules. Each local school board may use different definitions and standards for misconduct that warrants suspension or expulsion. This means attorneys and advocates should consult the published student code of conduct or discipline rules of the local school board that governs the school attended by the offending student.

Q&A 1. SOURCES:

[24 P.S. § 13-1318](#) Every principal or teacher in charge of a public school may temporarily suspend any pupil on account of disobedience or misconduct.... The board may, after a proper hearing, suspend such child for such time as it may determine, or may permanently expel him....

[22 Pa. Code § 12.6](#) (a) The governing board shall define and publish the types of offenses that would lead to exclusion from school.... (b) Exclusion from school may take the form of suspension or expulsion.

[24 P.S. § 13-1318.1](#) (a)(1) Notwithstanding sections 510 and 2134, [24 P.S. §§ 5-510 and 21-2134] if a student enrolled in a public school entity is convicted or adjudicated delinquent of committing a sexual assault upon another student enrolled in the same public school entity, the public school entity shall, pursuant to applicable laws and regulations, take one of the following actions: (i) Expel the convicted or adjudicated student. (ii) Transfer the convicted or adjudicated student to an alternative education program. (iii) Reassign the convicted or adjudicated student to another school or educational program within the public school entity.

QUESTIONS AND ANSWERS

Q&A 1. SOURCES:

(2) A public school entity shall ensure that the convicted or adjudicated student is not educated in the same school building, transported on the same school vehicle or allowed to participate in the same school-sponsored activities at the same time as the victim.

(3) A public school entity may not take action under paragraph (1) if: (i) The public school entity has already expelled, transferred or reassigned the convicted or adjudicated delinquent student for the same sexual assault. (ii) The convicted or adjudicated student does not attend the same school as the victim....

(j) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Convicted” means a finding of guilty by a judge or a jury or the entry of a plea of guilty or nolo contendere for sexual assault whether or not judgment of sentence has been imposed.

“Public school entity” means a school district, independent school, area career and technical school, intermediate unit, charter school, regional charter school or cyber charter school.

“School setting” means in the school, on school grounds, in school vehicles, at a designated bus stop or at any activity sponsored, supervised or sanctioned by the school.

“School-sponsored activities” means any assemblies, field trips, class trips, graduation ceremonies, athletics, extracurricular activities, clubs, groups, teams or any activities sponsored, held or approved by the public school entity.

“Sexual assault” shall include any of the offenses specified under the following provisions of 18 Pa.C.S. (relating to crimes and offenses): Section 3121 (relating to rape). Section 3122.1 (relating to statutory sexual assault). Section 3123 (relating to involuntary deviate sexual intercourse). Section 3124.1 (relating to sexual assault). Section 3125 (relating to aggravated indecent assault). Section 3126 (relating to indecent assault).

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

A.2. Up to 10 school days in a row.

Q&A 2. SOURCES:

[22 Pa. Code § 12.6](#) (b)(1) Suspension is exclusion from school for a period of from 1 to 10 consecutive school days.... (v) Suspensions may not be made to run consecutively beyond the 10 school day period....

QUESTIONS AND ANSWERS

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

A.3. Eleven school days or more but could be permanent.

Q&A 3. SOURCES:

[22 Pa. Code § 12.6](#) (b)(2) Expulsion is exclusion from school by the governing board for a period exceeding 10 school days and may be permanent expulsion from the school rolls....

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, transfer, or reassignment is permitted (but not required) for sexual assault of another student that did not occur on school property or at an off-campus school-sponsored activity if: (1) the offending student is convicted or found delinquent of sexual assault; and (2) the offending student and the student survivor attend the same school; and (3) the sexual assault substantially interferes with the survivor's education, or creates a threatening or hostile environment at school, or substantially disrupts school operations.

Q&A 4. SOURCES:

[24 P.S. § 13-1318.1](#) (b) The public school entity may not be prohibited from taking action under this section for convictions or adjudications for sexual assaults that occur outside a school setting if the assault:

- (1) was against another student enrolled in the same public school entity; and
- (2) has the effect of: (i) substantially interfering with the victim's education; (ii) creating a threatening or hostile educational environment; or (iii) substantially disrupting the orderly operation of the school....

(j) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

QUESTIONS AND ANSWERS

Q&A 4. SOURCES:

“Convicted” means a finding of guilty by a judge or a jury or the entry of a plea of guilty or nolo contendere for sexual assault whether or not judgment of sentence has been imposed.

“Public school entity” means a school district, independent school, area career and technical school, intermediate unit, charter school, regional charter school or cyber charter school.

“School setting” means in the school, on school grounds, in school vehicles, at a designated bus stop or at any activity sponsored, supervised or sanctioned by the school.

“School-sponsored activities” means any assemblies, field trips, class trips, graduation ceremonies, athletics, extracurricular activities, clubs, groups, teams or any activities sponsored, held or approved by the public school entity.

“Sexual assault” shall include any of the offenses specified under the following provisions of 18 Pa.C.S. (relating to crimes and offenses): Section 3121 (relating to rape). Section 3122.1 (relating to statutory sexual assault). Section 3123 (relating to involuntary deviate sexual intercourse). Section 3124.1 (relating to sexual assault). Section 3125 (relating to aggravated indecent assault). Section 3126 (relating to indecent assault).

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. School administrators must report sexual assault and other sex-based crimes committed on school property or at off-campus school-sponsored activities to law enforcement. Also, school administrators and employees must report, to the Department of Human Services and law enforcement, sexual assault and other sex-based crimes (regardless of where it occurs) committed against (1) any child (younger than 18) or (2) an adult (18 or older) with a disability who receives services in or from the school.

Q&A 6. SOURCES:

[24 P.S. § 13-1306.2-B](#) (a) A regulation adopted under section 1302.1-A [24 P.S. § 13-1302.1-A (repealed)] and in effect as of the effective date [December 13, 2023] of this section shall be enforced ... and shall continue to have the same force and effect until modified or revised under this section.

[22 Pa. Code § 10.21](#) (a) The chief school administrator, or a designee, shall immediately notify the local police department when an offense listed in section 1303-A(b)(4.1) of the Safe Schools Act (24 P. S. § 13-1303-A(b)(4.1)) [repealed; see now 24 P.S. § 13-1319-B(b)(7)] occurs on school property, at a school sponsored activity or on a conveyance as described in the Safe Schools Act, such as a school bus, providing transportation to or from a school or school sponsored activity.

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QUESTIONS AND ANSWERS

Q&A 6. SOURCES:

[24 P.S. § 13-1306.2-B](#) (b) No later than three years after the effective date [December 13, 2023] of this section, the committee shall promulgate final-omitted regulations... The regulations shall include the following: ... (2) A protocol for the notification of the law enforcement agency when an offense listed under section 1319-B(b)(7) [24 P.S. § 13-1319-B(b)(7)] occurs on school property. The protocol shall include a requirement that the school entity immediately notify the law enforcement agency when an offense occurs.

[24 P.S. § 13-1319-B](#) (b)(7) Reports... shall include: ... The following offenses under 18 Pa.C.S.: ... Section 3121 (relating to rape). Section 3122.1 (relating to statutory sexual assault). Section 3123 (relating to involuntary deviate sexual intercourse). Section 3124.1 (relating to sexual assault). Section 3124.2 (relating to institutional sexual assault). Section 3125 (relating to aggravated indecent assault). Section 3126 (relating to indecent assault).

[23 Pa.C.S.A. § 6311](#) (a) The following adults shall make a report of suspected child abuse... if the person has reasonable cause to suspect that a child is a victim of child abuse: ... (4) A school employee....

[23 Pa.C.S.A. § 6313](#) (a)(1) A mandated reporter shall immediately make an oral report of suspected child abuse to the department....

[23 Pa.C.S.A. § 6365](#) (c) A multidisciplinary investigative team shall be used to coordinate child abuse investigations between county agencies and law enforcement....

[23 Pa.C.S.A. § 6303](#) (a) The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:... “Child.” An individual under 18 years of age.

[23 Pa.C.S.A. § 6304](#) (f)(2)(i) Acts constituting any of the following crimes against a child shall be subject to the reporting requirements of this chapter: (A) rape as defined in 18 Pa.C.S. § 3121; (B) involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123; (C) sexual assault as defined in 18 Pa.C.S. § 3124.1; (D) aggravated indecent assault as defined in 18 Pa.C.S. § 3125; (E) indecent assault as defined in 18 Pa.C.S. § 3126; and (F) indecent exposure as defined in 18 Pa.C.S. § 3127.

[35 P.S. § 10210.501](#) (a)(1) An employee or an administrator who has reasonable cause to suspect that a recipient is a victim of abuse or neglect shall immediately make an oral report to an agency. If applicable, the agency shall advise the employee or administrator of additional reporting requirements that may pertain under subsection (b)....

QUESTIONS AND ANSWERS

Q&A 6. SOURCES:

(b)(1) An employee or an administrator who has reasonable cause to suspect that a recipient is the victim of sexual abuse... shall, in addition to contacting the agency and the department, immediately contact appropriate law enforcement officials to make an oral report....

[35 P.S. § 10210.103](#) The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise: ...

“Abuse.” The occurrence of one or more of the following acts: ... (3) Sexual harassment, rape or abuse as the term is defined in 23 Pa.C.S. § 6102 ...

“Administrator.” The person responsible for the administration of a facility. The term includes a person responsible for employment decisions or an independent contractor.

“Adult.” A resident of this Commonwealth between 18 and 59 years of age who has a physical or mental impairment that substantially limits one or more major life activities....

“Employee.” An individual who is employed by a facility....

“Facility.” The term includes, but is not limited to:... (8) An organization or group of people that uses public funds and is paid, in part, to provide care and support to adults in a licensed or unlicensed setting....

“Recipient.” An adult who receives care, services or treatment in or from a facility.

“Sexual abuse.” Intentionally, knowingly or recklessly causing or attempting to cause rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault or incest, as defined by 18 Pa.C.S.

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