



## **SOUTH 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](mailto:TA@victimrights.org).

# FAQs: Exclusionary School Discipline Laws Impacting K-12 Student Survivors: SOUTH 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.** Suspension, expulsion, or transfer to an alternative school is permitted (but not required) for sexual assault on school property or at an off-campus school-sponsored activity.

### Q&A 1. SOURCES:

[S.C. Law § 59-63-210](#). (A) Any district board of trustees may authorize or order the expulsion, suspension, or transfer of any pupil for the commission of any crime, gross immorality, gross misbehavior, persistent disobedience, or for violation of written rules and promulgated regulations established by the district board, county board, or the State Board of Education, or when the presence of the pupil is detrimental to the best interest of the school.

[S.C. Reg. 43-279](#). IV.C.1. Criminal conduct is defined as those activities engaged in by student(s) which result in violence to oneself or another's person ... or which pose a direct and serious threat to the safety of oneself or others in the school. When school officials have a reasonable belief that students have engaged in such actions, then these activities usually require administrative actions which result in the immediate removal of the student from the school, the intervention of the School Resource Officer or other law enforcement authorities, and/or action by the local school board. The provisions of this regulation apply not only to within-school activities, but also to student conduct on school bus transportation vehicles, and during other school-sponsored activities.

[S.C. Reg. 43-279](#). IV.C.2.e. Acts of criminal conduct may include, but are not limited to: ... Sexual offenses....

[S.C. Reg. 43-279](#). IV.C.5. Possible sanctions to be applied in cases of criminal conduct may include, but are not limited to: a. Out-of-school suspension; b. Assignment to alternative schools; c. Expulsion....

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

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

## QUESTIONS AND ANSWERS

### Q&A 2. SOURCES:

[S.C. Law § 59-63-220](#). Any district board may confer upon any administrator the authority to suspend a pupil ... from the school not in excess of ten days for any one offense....

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

**A.3.** The remainder of the school year.

### Q&A 3. SOURCES:

[S.C. Law § 59-63-240](#). The board may expel for the remainder of the school year a pupil for any of the reasons listed in Section 59-63-210....

**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.** South Carolina school discipline laws and regulations do not address this question.

## QUESTIONS AND ANSWERS

**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)

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

**A.6.** Yes. School administrators must report criminal acts committed on school property or at off-campus school-sponsored activities to law enforcement. Also, most, if not all, school employees must report sexual assault (regardless of where it occurs) of any child (younger than 18) to the Department of Social Services (DSS) or law enforcement. If DSS receives the report, it must then notify law enforcement. School employees must also report - to Adult Protective Services (APS) - sexual assault (regardless of where it occurs) of any adult (18 or older) with a disability who is unable to protect themselves. APS must then notify law enforcement.

## QUESTIONS AND ANSWERS

### Q&A 6. SOURCES:

[S.C. Law § 59-24-60](#). Requirement of school officials to contact law enforcement authorities when criminal conduct occurs. In addition to other provisions required by law or by regulation of the State Board of Education, school administrators must contact law enforcement authorities immediately upon notice that a person is engaging or has engaged in activities on school property or at a school sanctioned or sponsored activity which may result or results in injury or serious threat of injury to the person or to another person....

[S.C. Reg. 43-279](#). IV.C.4.a. The basic enforcement procedures to be followed in instances of criminal conduct are: Upon observation or notification and verification of a criminal offense, the administrator shall contact the School Resource Officer or local law enforcement authorities immediately....

[S.C. Law § 63-7-310](#). (A) The following persons must report ... when, in such person's professional capacity, he has received information that gives him reason to believe that a child has been or may be abused: ... school teacher, counselor, principal, assistant principal, school attendance officer....

[S.C. Law § 63-7-310](#). (B) If a person required to report pursuant to subsection (A) has received information in the person's professional capacity which gives the person reason to believe that a child's physical or mental health or welfare has been or may be adversely affected by acts or omissions that would be child abuse or neglect if committed by a parent, guardian, or other person responsible for the child's welfare, but ... the act or omission was committed by a person other than the parent, guardian, or other person responsible for the child's welfare, the reporter must make a report to the appropriate law enforcement agency.

[S.C. Law § 63-7-310](#). (E) Reports ... may be made ... to the county department of social services or to a law enforcement agency....

[S.C. Law § 63-7-980](#). (B)(2) When the intake report is of alleged sexual abuse, the department must notify the appropriate law enforcement agency....

[S.C. Law § 63-7-20](#). (5) "Child" means a person under the age of eighteen.

[S.C. Law § 63-7-20](#). (6)(a)(ii) "Child abuse or neglect" or "harm" occurs when: the parent, guardian, or other person responsible for the child's welfare: commits or allows to be committed against the child a sexual offense....

[S.C. Law § 43-35-25](#). (A) A ... school teacher, counselor, psychologist, mental health or intellectual disability specialist ... having reason to believe that a vulnerable adult has been or is likely to be abused ... shall report the incident.... Any other person who has actual knowledge that a vulnerable adult has been abused ... shall report the incident...

[S.C. Law § 43-35-25](#). (D)(3) A person required to report ... must report the incident ... to: the Adult Protective Services Program....

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

## QUESTIONS AND ANSWERS

### Q&A 6. SOURCES:

[S.C. Law § 43-35-25](#). (G) ... [I]n cases of ... suspected sexual assault law enforcement must be contacted immediately.

[S.C. Law § 43-35-10](#). (1) "Abuse" means physical abuse or psychological abuse... (8) ... Physical abuse includes ... actual or attempted sexual battery.... (11) "Vulnerable adult" means a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection.....

**Q.7.** How do South Carolina school discipline laws address suspension and expulsion for other forms of sex-based or potentially sex-based misconduct?

CONDUCT	SUSPENSION OR EXPULSION?	SOURCES
Nonconsensual distribution of intimate images	Suspension, expulsion, or transfer to alternative school is permitted but not required.	<a href="#">S.C. Reg. 43-279</a> . IV.C.2.I.; <a href="#">S.C. Reg. 43-279</a> . IV.C.5.
Bullying or Harassment	Suspension, expulsion, or transfer to alternative school is permitted but not required.	<a href="#">S.C. Reg. 43-279</a> . IV.B.2.n.; <a href="#">S.C. Reg. 43-279</a> . IV.B.4.

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.