

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



**VICTIM
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VERMONT

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.

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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. Yes, suspension or expulsion is permitted, but not required, if the sexual assault makes the student's presence harmful to the school's welfare.

Q&A 1. SOURCES:

[16 V.S.A. § 1162](#) (a)(1) A superintendent or principal may... suspend a student... or, with the approval of the board of the school district, expel a student for misconduct: on school property, on a school bus, or at a school-sponsored activity when the misconduct makes the continued presence of the student harmful to the welfare of the school....

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

A.2. Up to ten school days.

Q&A 2. SOURCES:

[16 V.S.A. § 1162](#) (a) A superintendent or principal may... suspend a student for up to 10 school days....

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

A.3. Up to 90 school days or remainder of school year, whichever is longer.

Q&A 3. SOURCES:

[16 V.S.A. § 1162](#) (a) A superintendent or principal may... expel a student for up to the remainder of the school year or up to 90 school days, whichever is longer....

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. Yes, suspension or expulsion is permitted if (1) direct harm to the school's welfare is shown or (2) the sexual assault clearly and substantially interferes with another student's equal access to educational programs.

Q&A 4. SOURCES:

[16 V.S.A. § 1162](#) (a)(2) and (3) A superintendent or principal may... suspend a student... or, with the approval of the board of the school district, expel a student for misconduct: not on school property, on a school bus, or at a school-sponsored activity where direct harm to the welfare of the school can be demonstrated; or... where the misconduct can be shown to pose a clear and substantial interference with another student's equal access to educational programs

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 Vermont law, a student under age eight is exempt from suspension or expulsion unless the student poses an immediate threat of harm or danger to others at school.

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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)

[16 V.S.A. § 1162](#) (d) ...[A] student enrolled in a public school, approved independent school, or prequalified private prekindergarten program who is under eight years of age shall not be suspended or expelled from the school; provided, however, that the school may suspend or expel the student if the student poses an imminent threat of harm or danger to others in the school.

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

A.6. No. However, most if not all school employees must report sexual assault of any child (younger than 18) to the Department for Children and Families (DCF). DCF must then notify law enforcement. Also, school employees must report sexual assault of any adult (18 or older) with a disability who is unable to live independently or unable to protect themselves to Adult Protective Services (APS). APS is permitted to notify law enforcement.

Q&A 6. SOURCES:

[33 V.S.A. § 4913](#) (c) Any mandated reporter who reasonably suspects abuse or neglect of a child shall report in accordance with the provisions of section 4914 of this title....

[33 V.S.A. § 4915](#) (g) The Department shall report to and receive assistance from appropriate law enforcement in the following circumstances: (1) investigations of child sexual abuse by an alleged perpetrator 10 years of age or older;... (4) an incident in which a child suffers: (B) potential violations of:... (iv) 13 V.S.A. chapter 72 (sexual assault).

QUESTIONS AND ANSWERS

Q&A 6. SOURCES:

[33 V.S.A. § 4913](#) (a)(2) A mandated reporter is any individual who is employed by a school district or an approved or recognized independent school, or who is contracted and paid by a school district or an approved or recognized independent school to provide student services, including any: (A) school superintendent; (B) headmaster of an approved or recognized independent school...; (C) school teacher; (D) student teacher; (E) school librarian; (F) school principal; and (G) school guidance counselor....

[33 V.S.A. § 4912](#) (1) ...An “abused or neglected child” also means a child who is sexually abused or at substantial risk of sexual abuse by any person.... (3) “Child” means an individual under the age of majority.... (15) “Sexual abuse” consists of any act or acts by any person involving sexual molestation or exploitation of a child, including:... (I) sexual assault....

[33 V.S.A. § 6903](#) (a) All employees, contractors, volunteers, or grantees who directly provide... education... to adults who know of information of abuse, neglect, or exploitation of a vulnerable adult or who have reason to suspect that any vulnerable adult has been abused, neglected, or exploited shall report in accordance with the provisions of section 6904....

[33 V.S.A. § 6906](#) (a)(6) To the extent permitted by law, the Department may collaborate with law enforcement... to evaluate the risk to the vulnerable adult....

[33 V.S.A. § 6902](#) (1)(D)(ii) “Abuse” means: ... Any sexual activity or acts of a sexual nature with a vulnerable adult when the vulnerable adult does not consent or when the individual knows or should know that the vulnerable adult is incapable of resisting or consenting to the sexual activity due to age, disability, or fear of retribution or hardship, regardless of whether the individual has actual knowledge of the adult’s status as a vulnerable adult....

(3) “Acts of a sexual nature” means fondling, exposure of genitals, and lewd and lascivious conduct....

(34)(C) “Vulnerable adult” means any person 18 years of age or older who:... has a physical, mental, or developmental disability; infirmities as a result of brain damage or a mental condition... resulting in: (i) impairment of the individual’s ability to independently engage in activities of daily living or instrumental activities of daily living or to provide for some aspect of the adult’s own personal care without assistance; or (ii) some impairment of the adult’s ability to protect the adult from abuse, neglect, or exploitation.

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QUESTIONS AND ANSWERS

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

CONDUCT	SUSPENSION OR EXPULSION?	SOURCES
Bullying (including electronic)	Suspension or expulsion is permitted but not required.	16 V.S.A. § 11(a)(32) 16 V.S.A. § 570c Model HHB Procedure IV.A.(i)
Harassment (including electronic)	Suspension or expulsion is permitted but not required.	16 V.S.A. § 11(a)(26) 16 V.S.A. § 570a Model HHB Procedure IV.A.(i)

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