



WASHINGTON

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. Short-term suspension is permitted (but not required) if: (1) the sexual assault violates the local school board's student conduct rules, and (2) attempts at other forms of discipline have failed. Once suspended, the student can request readmission at any time.

Long-term suspension is permitted (but not required) if: (1) the student is found delinquent or convicted for a felony sex offense, or the sexual assault negatively impacts the health or safety of other students; and (2) the school considers other forms of discipline; and (3) the student's presence at school would pose an imminent danger to others at school or would materially and substantially disrupt the educational process. Once suspended, the student can request readmission at any time.

Expulsion is permitted (but not required) if: (1) the student is found delinquent or convicted for a felony sex offense, or the sexual assault negatively impacts the health or safety of other students; and (2) the school considers other forms of discipline; and (3) the student's presence at school would pose an imminent danger to others at school. Once expelled, the student can request readmission at any time.

When a student returns to school after a suspension or expulsion based on a felony sex offense involving rape or child molestation, the school is permitted (but not required) to keep the offending student and student survivor in different classrooms for as long as the offending student and student survivor attend the same school.

Q&A 1. SOURCES:

[WAC 392-400-430](#) (5) After suspending or expelling a student, a school district must: ...
(b) Allow the student to petition for readmission at any time.

[WAC 392-400-435](#) (1) Before administering a short-term ... suspension, a school district must first attempt one or more other forms of discipline to support the student in meeting behavioral expectations....

QUESTIONS AND ANSWERS

Q&A 1. SOURCES:

[WAC 392-400-440](#) (1) Before administering a long-term suspension, a school district must consider one or more other forms of discipline to support the student in meeting behavioral expectations....

(2) A school district may only administer a long-term suspension:

(a) For behavioral violations under RCW 28A.600.015 (6)(a) through (d); and

(b) After the school district has determined that, if the student returned to school before completing a long-term suspension: (i) The student would pose an imminent danger to students or school personnel; or (ii) The student would pose an imminent threat of material and substantial disruption of the educational process.

[WAC 392-400-445](#) (1) Before administering an expulsion, a school district must consider one or more other forms of discipline to support the student in meeting behavioral expectations.

(2) A school district may only administer an expulsion:

(a) For behavioral violations under RCW 28A.600.015 (6)(a) through (d); and

(b) After the school district has determined that if the student returned to school before completing an expulsion, the student would pose an imminent danger to students or school personnel.

[RCW 28A.600.015](#) (4) School districts may not impose long-term suspension or expulsion as a form of discretionary discipline....

(6) As used in this chapter, "discretionary discipline" means a disciplinary action taken by a school district for student behavior that violates rules of student conduct adopted by a school district board of directors,... but does not constitute action taken in response to any of the following: ... (b) An offense in RCW 13.04.155 [including delinquent adjudications or convictions for felony sex offenses];... or

(d) Behavior that adversely impacts the health or safety of other students....

(7) ... [S]chool districts are not required to impose long-term suspension or expulsion for behavior that constitutes a violation or offense listed under subsection (6)(a) through (d) of this section and should first consider alternative actions.

[RCW 28A.600.020](#) (5)(a) A principal shall consider imposing long-term suspension or expulsion as a sanction when deciding the appropriate disciplinary action for a student who... : ... (ii) Engages in one or more of the offenses listed in RCW 13.04.155 [including delinquent adjudications or convictions for felony sex offenses]....

[RCW 28A.600.460](#) (3) A student who commits an offense under chapter ... 9A.46 ... RCW [including rape and child molestation], when directed toward another student, may be removed from the classroom of the victim for the duration of the student's attendance at that school or any other school where the victim is enrolled. A student who commits an offense under one of the chapters enumerated in this section against a student ... may be expelled or suspended.

QUESTIONS AND ANSWERS

Q&A 1. SOURCES:

(4) Nothing in this section is intended to limit the authority of a school under existing law and rules to expel or suspend a student for misconduct or criminal behavior.

[WAC 392-400-810](#) (2) In accordance with RCW 28A.600.460, a school district may preclude a student from returning to the student's regular educational setting following the end date of a suspension or expulsion for the purpose of protecting victims of certain offenses, as follows: A student who commits an offense under RCW 28A.600.460(3), when directed toward another student, may be removed from the classroom of the victim for the duration of the student's attendance at that school or any other school where the victim is enrolled.

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

A.2. A short-term suspension can last up to 10 school days in a row. A student in fourth grade or below cannot spend more than 10 total school days during any academic term on short-term suspension. A student in fifth grade or above cannot spend more than 15 total school days in a semester or more than 10 total school days in a trimester on short-term suspension. A long-term suspension can last up to one academic term but can be extended beyond the academic term if the school makes that request to the superintendent.

Q&A 2. SOURCES:

[RCW 28A.600.015](#) (2) Short-term suspension procedures may be used for suspensions of students up to and including, 10 consecutive school days.

[WAC 392-400-435](#) (2) A school district may not administer a short-term ... suspension beyond the school year in which the behavioral violation occurred.

(3) (a) A school district may not administer a short-term ... suspension for a student in kindergarten through fourth grade for more than ten cumulative school days during any academic term; and (b) A school district may not administer a short-term ... suspension for a student in grades five through twelve: (i) For more than fifteen cumulative school days during any single semester; or (ii) For more than ten cumulative school days during any single trimester.

QUESTIONS AND ANSWERS

Q&A 2. SOURCES:

[WAC 392-400-440](#) (3)(a) A long-term suspension may not exceed the length of an academic term.

(b) A school district may not administer a long-term suspension beyond the school year in which the behavioral violation occurred.

WAC 392-400-445 (3)

[RCW 28A.600.020](#) (6) Any ... suspension or expulsion ... for more than ten days must have an end date of not more than the length of an academic term, as defined by the school board, from the time of corrective action.... Where warranted based on public health or safety, a school may petition the superintendent of the school district ... for authorization to exceed the academic term limitation....

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

A.3. An expulsion can last up to one academic term but can be extended beyond the academic term if the school makes that request to the superintendent.

Q&A 3. SOURCES:

[WAC 392-400-445](#) (3) An expulsion may not exceed the length of an academic term, unless the principal or designee petitions the school district superintendent for extension ... and the petition is granted.

[RCW 28A.600.020](#) (6) Any ... suspension or expulsion ... for more than ten days must have an end date of not more than the length of an academic term, as defined by the school board, from the time of corrective action.... Where warranted based on public health or safety, a school may petition the superintendent of the school district ... for authorization to exceed the academic term limitation....

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. Washington 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.

Also, under Washington law, any student in fourth grade or below is exempt from long-term suspension and expulsion.

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)

[WAC 392-400-440](#) (4) ... [A] school district may not administer a long-term suspension for any student in kindergarten through fourth grade.

[WAC 392-400-445](#) (4) ... [A] school district may not administer an expulsion for any student in kindergarten through fourth grade.

QUESTIONS AND ANSWERS

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

A.6. Yes. Most, if not all, school employees must report sexual assault of any child (younger than 18) to law enforcement or the Department of Children, Youth, and Families (DCYF). If DCYF receives a report, it must then notify law enforcement. Also, school employees must report, to law enforcement and the Department of Social and Health Services, a sexual assault of an adult who is under a guardianship or a conservatorship or has a developmental disability.

Q&A 6. SOURCES:

RWC 26.44.030 (1)(a) When any ... professional school personnel ... has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department....

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who ... has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to alleged sexual abuse, shall report such incident to the proper law enforcement agency....

RWC 26.44.020 (1) "Abuse or neglect" means sexual abuse, sexual exploitation ... or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety....

(2) "Child" or "children" means any person under the age of eighteen years of age.

RWC 74.34.035 (2) When there is reason to suspect that sexual assault [of a vulnerable adult] has occurred, mandated reporters shall immediately report to the appropriate law enforcement agency and to the department.

RWC 74.34.020 (13) "Mandated reporter" is ... professional school personnel....

(21) "Vulnerable adult" includes a person: ...

(b) Subject to a guardianship under RCW 11.130.265 or adult subject to conservatorship under RCW 11.130.360; or

(c) Who has a developmental disability as defined under RCW 71A.10.020....

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