



WEST VIRGINIA

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. If the sexual assault would qualify as a felony, then suspension is required, and expulsion is permitted (but not required). If the sexual assault would not qualify as a felony but involves physical aggression/force or the threat of physical aggression/force (such as forcing the touching or exposing of private body parts), then suspension and expulsion are permitted (but not required).

Q&A 1. SOURCES:

[W.V.C. §18A-5-1a](#) Subsection (b) A principal shall suspend a student from school, or from transportation to or from the school on any school bus, if the student... has: (i) Committed an act or engaged in conduct that would constitute a felony under the laws of this state if committed by an adult.... If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled.... If the county board finds that the student did commit the alleged violation, the county board may expel the student.

[126CSR99, Policy 4373, Expected Behavior in Safe and Supportive Schools](#) Chapter 2 Section 2 Level 4 Behaviors – A student will not commit an act or engage in conduct that would constitute a felony under the laws of this state if committed by an adult as outlined in W. Va. Code §18A-5-1a(b)(i). Such acts that would constitute a felony include, but are not limited to, ...sexual assault, as outlined in W. Va. Code §61-8B-3.... The principal shall suspend a student from school and from transportation if the principal determines the student committed an act or engaged in conduct that would constitute a felony. The principal shall request that the superintendent recommend to the board that the student be expelled....

[W.V.C. §18A-5-1a](#) Subsection (c) A principal may suspend a student from school, or transportation to or from the school on any school bus, if the student...: (i) Threatened to injure, or in any manner injured, a student.... If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled.... If the county board finds that the student did commit the alleged violation, the county board may expel the student.

QUESTIONS AND ANSWERS

Q&A 1. SOURCES:

[126CSR99, Policy 4373, Expected Behavior in Safe and Supportive Schools](#) Chapter 2 Section 2 Level 3 Behaviors – Severely Disruptive, Imminently Dangerous, Illegal, and/or Aggressive Behaviors are willfully committed and are known to be illegal and/or harmful to people and/or property. (Specific behaviors are outlined in W. Va. Code §18A-5-1a(c) and the principal shall address these inappropriate behaviors accordingly.) Sexual Violence: Physical act of aggression or force or the threat thereof which involves the touching of another’s intimate parts, or forcing a person to touch any person’s intimate parts....

[126CSR99, Policy 4373, Expected Behavior in Safe and Supportive Schools](#) §126-99-4.1 The expectations outlined in this policy in public schools in West Virginia during any education-sponsored event, at any location. Such locations may include, but are not limited to classrooms, other areas on school premises, school buses or other vehicles used for school-related events, or at any school-sponsored activity or event, whether or not it is held on school premises, in a building or other property used or operated by a county board of education, WVDE, WVBE, or in another facility or upon any other property being used by any of these agencies....

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

A.2. A school principal can suspend a student for up to 10 school days. The county board can extend the suspension for additional days.

Q&A 2. SOURCES:

[W.V.C. §18A-5-1a](#) Subsection (d) ...[T]he principal may suspend the student for a maximum of ten school days....

Subsection (f)... At the conclusion of the hearing the county board shall either: (1) Order the student reinstated immediately at the end of his or her initial suspension; (2) suspend the student for a further designated number of days; or (3) expel the student from the public schools of the county.

QUESTIONS AND ANSWERS

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

A.3. Up to one school year.

Q&A 3. SOURCES:

[W.V.C. §18A-5-1a](#) Subsection (i) Students may be expelled pursuant to this section for a period not to exceed one school 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. West Virginia school discipline statutes, regulations, and policies 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.

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 employees must report sexual assault (regardless of where it occurs) of any child younger than 18 to law enforcement and the Department of Human Services.

Q&A 6. SOURCES:

[W.V.C. §49-2-803](#) (a) Any... school teacher or other school personnel... who has reasonable cause to suspect that a child is neglected or abused, including sexual abuse or sexual assault, or observes the child being subjected to conditions that are likely to result in abuse or neglect shall immediately... report the circumstances to the Department of Human Services. In any case where the reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report to the State Police and any law-enforcement agency having jurisdiction to investigate the complaint.

[W.V.C. §49-1-202](#) "Child" or "Juvenile" means any person under eighteen years of age....

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

QUESTIONS AND ANSWERS

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

CONDUCT	SUSPENSION OR EXPULSION?	SOURCES
Sexual Harassment	Suspension and/or expulsion are permitted but not required.	W.V.C. §18A-5-1a(c) ; 126CSR99, Policy 4373, Expected Behavior in Safe and Supportive Schools Chapter 2 Section 2 Level 3 Behaviors and Chapter 4 Section 1
Sexual Misconduct (including indecent exposure and sharing sexually explicit material)	Suspension and/or expulsion are permitted but not required.	
Bullying (including Cyberbullying)	Suspension and/or expulsion are permitted but not required.	

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.