

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



**VICTIM  
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LAW CENTER**

**WISCONSIN**

## 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).

ISSUE DATE: JUNE 2025

## 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 is permitted (but not required) for conduct that violates the local school board rules or conduct that endangers the health or safety of others at school, both of which arguably could include sexual assault depending on the circumstances.

Expulsion is permitted (but not required) if (1) the conduct endangers the health or safety of others at school; and (2) expelling the student is in the school's best interest. Depending on the circumstances, sexual assault could arguably satisfy these conditions.

Each local school board may use different definitions and standards for conduct that endangers health or safety of others. 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:

W.S. [120.13\(1\)\(b\)2](#). The school district administrator or any principal or teacher designated by the school district administrator may suspend a pupil ... for any of the following reasons: a. Noncompliance with rules adopted under subd. 1. or school board rules.... c. Conduct by the pupil while at school or while under the supervision of a school authority that endangers the property, health or safety of others....

W.S. [120.13\(1\)\(c\)1](#). The school board may expel a pupil from school whenever it ... finds that the pupil engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others, ... and is satisfied that the interest of the school demands the pupil's expulsion....

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

**A.2.** Up to five school days, but can be up to 15 school days in a row if an expulsion hearing is pending.

## QUESTIONS AND ANSWERS

### Q&A 2. SOURCES:

W.S. [120.13\(1\)\(b\)2](#). The school district administrator or any principal or teacher designated by the school district administrator may suspend a pupil for not more than 5 school days or, if a notice of expulsion hearing has been sent ... for not more than a total of 15 consecutive school days....

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

**A.3.** Wisconsin school discipline laws do not address this question.

**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 is permitted (but not required) for conduct that did not occur on school property or at an off-campus school-sponsored activity if the conduct endangers the health or safety of others at school, which arguably could include sexual assault.

Expulsion is permitted (but not required) for conduct that did not occur on school property or at an off-campus school-sponsored activity if (1) the conduct endangers the health or safety of others at school and (2) expelling the student is in the school's best interest. Depending on the circumstances, sexual assault could arguably satisfy these conditions. Each local school board may use different definitions and standards for conduct, not occurring at school, that endangers health or safety of others. 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.

## QUESTIONS AND ANSWERS

### Q&A 4. SOURCES:

W.S. [120.13\(1\)\(b\)2](#). The school district administrator or any principal or teacher designated by the school district administrator may suspend a pupil ... for any of the following reasons: ... d. Conduct while not at school or while not under the supervision of a school authority that endangers the property, health or safety of others at school or under the supervision of a school authority....

W.S. [120.13\(1\)\(c\)1](#). The school board may expel a pupil from school whenever it ... finds that a pupil while not at school or while not under the supervision of a school authority engaged in conduct which endangered the property, health or safety of others at school or under the supervision of a school authority ..., and is satisfied that the interest of the school demands the pupil's expulsion....

**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)

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## QUESTIONS AND ANSWERS

**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 of Children and Families (DCF). DCF must then notify law enforcement.

### Q&A 6. SOURCES:

W.S. [48.981\(2\)\(a\)](#) Any of the following persons who has reasonable cause to suspect that a child seen by the person in the course of professional duties has been abused or neglected or who has reason to believe that a child seen by the person in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur shall, except as provided under subs. (2m) and (2r), report as provided in sub. (3): ... 14. A school teacher. 15. A school administrator. 16. A school counselor. 16m. A school employee not otherwise specified in this paragraph....

W.S. [48.981\(3\)\(a\)1.](#) A person required to report under sub. (2) shall immediately inform ... the county department or, in a county having a population of 750,000 or more, the department or a licensed child welfare agency ... or the sheriff or city, village, or town police department....

W.S. [48.981\(3\)\(a\)3.](#) Except as provided in sub. (3m), a county department, the department, or a licensed child welfare agency ... shall ... refer to the sheriff or police department all cases of suspected or threatened abuse, as defined in s. 48.02 (1) (b) to (f), reported to it...

W.S. [48.02\(2\)](#) "Child," when used without further qualification, means a person who is less than 18 years of age....

W.S. [48.02\(1\)\(b\)](#) "Abuse," ... means any of the following: ... Sexual intercourse or sexual contact under s. 940.225 [sexual assault], 948.02 [sexual assault of a child], 948.025 [repeated sexual assault of a child], or 948.085 [sexual assault of child in substitute care]....

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.