



COLORADO

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.

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

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 or expulsion is permitted (but not required) if the sexual assault is determined to be detrimental to the well-being or safety of others at school. Also, the school is required to consider suspension or expulsion, or place the offending student in an alternate education program if: (1) the student is between 12 and 18 years old, and (2) a charge is filed in juvenile or district court alleging the student committed a sex offense.

Q&A 1. SOURCES:

C.R.S. 22-33-106 (1) The following may be grounds for suspension or expulsion of a child from a public school during a school year: ... (c) Behavior on or off school property that is detrimental to the welfare or safety of other pupils or of school personnel, including behavior that creates a threat of physical harm to the child or to other children....

C.R.S. 22-33-105 (5)(a) Whenever a petition filed in juvenile court alleges that a child at least twelve years of age but under eighteen years of age has committed an offense that would constitute unlawful sexual behavior, as defined in section **16-22-102** (9), C.R.S. [including sexual assault], ... if committed by an adult or whenever charges filed in district court allege that a child has committed such an offense, ... the board of education of the school district or its designee shall determine whether the student has exhibited behavior that is detrimental to the safety, welfare, and morals of the other students or of school personnel in the school and whether educating the student in the school may disrupt the learning environment in the school, provide a negative example for other students, or create a dangerous and unsafe environment for students, teachers, and other school personnel.... If the board of education or its designee ... makes a determination that the student should not be educated in the school, it may proceed with suspension or expulsion in accordance with subsection (2) of this section and section 22-33-106. Alternatively, the board of education or its designee may determine that it will wait until the conclusion of the juvenile proceedings to consider the expulsion matter, in which case it shall be the responsibility of the district to provide the student with an appropriate alternate education program ... during the period pending the resolution of the juvenile proceedings.

QUESTIONS AND ANSWERS

Q&A 1. SOURCES:

(b) No student who is being educated in an alternate education program ... pursuant to paragraph (a) of this subsection (5) shall be allowed to return to the education program in the public school until there has been a disposition of the charge. If the student pleads guilty, is found guilty, or is adjudicated a delinquent juvenile, the school district may proceed in accordance with section 22-33-106 to expel the student. The time that a student spends in an alternate education program pursuant to paragraph (a) of this subsection (5) shall not be considered a period of expulsion.

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

A.2. A suspension can last up to 25 school days.

Q&A 2. SOURCES:

C.R.S. 22-33-105 (2) In addition to the powers provided in section 22-32-110, the board of education of each district may:

(a) Delegate to any school principal within the school district or to a person designated in writing by the principal the power to suspend a pupil in his school for not more than five school days on the grounds stated in section 22-33-106 ... (1)(c)....;

(b) Suspend, on the grounds stated in section 22-33-106, a pupil from school for not more than another ten school days, or may delegate such power to its executive officer; except that the latter may extend a suspension to an additional ten school days if necessary in order to present the matter to the next meeting of the board of education, but the total period of suspension pursuant to this paragraph (b) and paragraph (a) of this subsection (2) shall not exceed twenty-five school days....

QUESTIONS AND ANSWERS

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

A.3. An expulsion can last up to one year.

Also, if a student is expelled for a sex offense and is convicted, adjudicated delinquent, receives a deferred judgment, or placed in a diversion program as a result of committing the sex offense, then after the expulsion ends the school must prohibit the offending student from returning to the same school where the student survivor or their immediate family is enrolled or employed. If the school district does not have another school that the offending student can attend, then the school must ensure that, to the extent possible, the offending student does not have contact with the survivor student or their immediate family.

Q&A 3. SOURCES:

C.R.S. 22-33-105 (2) In addition to the powers provided in section 22-32-110, the board of education of each district may: ... (c) Deny admission to, or expel for any period not extending beyond one year, any student whom the board of education, in accordance with the limitations imposed by this article 33, determines does not qualify for admission to, or continued attendance at, the public schools of the district....

C.R.S. 22-33-106 (4)(a) Except as provided in paragraph (b) of this subsection (4), a school district shall prohibit any student who is expelled from a public school of the school district pursuant to paragraph (c) ... of subsection (1) of this section [detrimental behavior] ... from enrolling or reenrolling in the same school in which the victim of the offense or member of a victim's immediate family is enrolled or employed....

(b) In any school district that has only one school in which the expelled student can enroll, the school district shall either: (I) Prohibit the student expelled from the school district ... from enrolling or reenrolling in the same school in which the victim of the offense or member of a victim's immediate family is enrolled or employed; or (II) Design a schedule for the expelled student that, to the extent possible, avoids contact between the expelled student and the victim or a member of the victim's immediate family....

(d) The provisions of this subsection (4) shall apply only if the expelled student is convicted, is adjudicated a juvenile delinquent, receives a deferred judgment, or is placed in a diversion program as a result of committing the offense for which the student was expelled....

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. Suspension or expulsion is permitted (but not required) for sexual assault of another student that did not occur on school property or at an off-campus school-sponsored activity if the sexual assault is determined to be detrimental to the well-being or safety of others at school.

Also, the school is required to consider suspension or expulsion, or place the offending student in an alternate education program if: (1) the student is between 12 and 18 years old, and (2) a charge is filed in juvenile or district court alleging the student committed a sex offense.

Q&A 4. SOURCES:

C.R.S. 22-33-106 (1) The following may be grounds for suspension or expulsion of a child from a public school during a school year: ... (c) Behavior on or off school property that is detrimental to the welfare or safety of other pupils or of school personnel, including behavior that creates a threat of physical harm to the child or to other children....

(4)(a) Except as provided in paragraph (b) of this subsection (4), a school district shall prohibit any student who is expelled from a public school of the school district pursuant to paragraph (c) ... of subsection (1) of this section ... from enrolling or reenrolling in the same school in which the victim of the offense or member of a victim's immediate family is enrolled or employed....

(b) In any school district that has only one school in which the expelled student can enroll, the school district shall either: (I) Prohibit the student expelled from the school district ... from enrolling or reenrolling in the same school in which the victim of the offense or member of a victim's immediate family is enrolled or employed; or (II) Design a schedule for the expelled student that, to the extent possible, avoids contact between the expelled student and the victim or a member of the victim's immediate family....

(d) The provisions of this subsection (4) shall apply only if the expelled student is convicted, is adjudicated a juvenile delinquent, receives a deferred judgment, or is placed in a diversion program as a result of committing the offense for which the student was expelled....

QUESTIONS AND ANSWERS

Q&A 4. SOURCES:

[C.R.S. 22-33-105](#) (5)(a) Whenever a petition filed in juvenile court alleges that a child at least twelve years of age but under eighteen years of age has committed an offense that would constitute unlawful sexual behavior, as defined in section [16-22-102](#) (9), C.R.S. [including sexual assault], ... if committed by an adult or whenever charges filed in district court allege that a child has committed such an offense, ... the board of education of the school district or its designee shall determine whether the student has exhibited behavior that is detrimental to the safety, welfare, and morals of the other students or of school personnel in the school and whether educating the student in the school may disrupt the learning environment in the school, provide a negative example for other students, or create a dangerous and unsafe environment for students, teachers, and other school personnel.... If the board of education or its designee ... makes a determination that the student should not be educated in the school, it may proceed with suspension or expulsion in accordance with subsection (2) of this section and section 22-33-106.

Alternatively, the board of education or its designee may determine that it will wait until the conclusion of the juvenile proceedings to consider the expulsion matter, in which case it shall be the responsibility of the district to provide the student with an appropriate alternate education program ... during the period pending the resolution of the juvenile proceedings.

(b) No student who is being educated in an alternate education program ... pursuant to paragraph (a) of this subsection (5) shall be allowed to return to the education program in the public school until there has been a disposition of the charge. If the student pleads guilty, is found guilty, or is adjudicated a delinquent juvenile, the school district may proceed in accordance with section 22-33-106 to expel the student. The time that a student spends in an alternate education program pursuant to paragraph (a) of this subsection (5) shall not be considered a period of expulsion.

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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. Also, under Colorado law, students in second grade or below are exempt from suspension and expulsion unless: (1) the misconduct (including sexual assault) occurred on school property or at an off-campus school-sponsored activity, and (2) the misconduct endangers others' health or safety, and (3) the student's presence at school would create a safety threat that cannot be addressed by non-exclusionary measures, and (4) the school first considers the student's age, disciplinary history, and disability status; the seriousness of the misconduct; the safety of others at school; and the suitability of alternative disciplinary measures.

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)

[C.R.S. 22-33-106.1](#) (2) ...[A]n enrolling entity may impose an out-of-school suspension or expel a student enrolled in preschool, kindergarten, first grade, or second grade only if: (a) ... the student has engaged in conduct on school grounds, in a school vehicle, or at a school activity or sanctioned event that: ... (III) Endangers the health or safety of others; (b) The enrolling entity determines that failure to remove the student from the school building would create a safety threat that cannot otherwise be addressed; and

QUESTIONS AND ANSWERS

Q&A 5. SOURCES:

(c) The enrolling entity, on a case-by-case basis, considers each of the factors set forth in section [22-33-106](#) (1.2) before suspending or expelling the student. The enrolling entity shall document any alternative behavioral and disciplinary interventions that it employs before suspending or expelling the student.

(3) If an enrolling entity imposes an out-of-school suspension on a student who meets the criteria specified in subsection (2) of this section, the out-of-school suspension shall not exceed three school days unless the executive officer or chief administrative officer of the enrolling entity, or designee of either, determines that a longer period of suspension is necessary to resolve the safety threat or recommends that the student be expelled....

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

A.6. School officials and employees must report a sexual assault of any child (younger than 18) to law enforcement or the department of social services. If social services receives the report, it must then notify law enforcement. Also, school officials, employees, and volunteers must report to law enforcement a sexual assault of any adult (18 or older) with an intellectual or developmental disability.

Q&A 6. SOURCES:

[C.R.S. 19-3-304](#) (1)(a) ... [A] person specified in subsection (2) of this section who has reasonable cause to know or suspect that a child has been subjected to abuse ... or who has observed the child being subjected to circumstances or conditions that would reasonably result in abuse ... shall immediately upon receiving the information report or cause a report to be made of the fact ... to the county department, the local law enforcement agency, or through the child abuse reporting hotline system....

(2) Persons required to report the abuse ... or circumstances or conditions include a: ... (I) Public or private school official or employee....

[C.R.S. 19-3-307](#) (3)(a) A copy of the report of known or suspected child abuse ... shall be transmitted immediately by the county department to the district attorney's office and to the local law enforcement agency.

QUESTIONS AND ANSWERS

Q&A 6. SOURCES:

[C.R.S. 19-1-103](#) (1)(a) "Abuse" ... means an act or omission in one of the following categories that threatens the health or welfare of a child: ... (II) Any case in which a child is subjected to unlawful sexual behavior as defined in section [16-22-102](#) (9) [including sexual assault]....

(21) "Child" means a person under eighteen years of age.

[C.R.S. 18-6.5-108](#) (1)(a) ... [A] person specified in paragraph (b) of this subsection (1) who observes the mistreatment of ... an at-risk adult with IDD, or who has reasonable cause to believe that an at-risk adult with IDD has been mistreated or is at imminent risk of mistreatment, shall report such fact to a law enforcement agency...

(b) The following persons, whether paid or unpaid, shall report as required by subsection (1)(a) of this section: ... (XX) Personnel at schools serving persons in preschool through twelfth grade....

[C.R.S. 18-6.5-102](#) (1) "Abuse" means any of the following acts or omissions committed against an at-risk person: ... (c) Subjection to sexual conduct or contact classified as a crime under this title....

(2.5) "At-risk adult with IDD" means a person who is eighteen years of age or older and is a person with an intellectual and developmental disability, as defined in section 25.5-10-202 (26)(a), C.R.S....

(10.5) "Mistreated" or "mistreatment" means: (a) Abuse....

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