



DELAWARE

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: DELAWARE

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) for sexual assault.

Q&A 1. SOURCES:

[14 DE Admin. Code § 616](#).5.1.1 The Principal ... shall have the right to impose a Short-term Suspension on any student in the school who has violated the school's Student Code of Conduct....

5.2.1 The Superintendent ... shall have the right to impose a Long-term Suspension on any student in the school who has violated the school's Student Code of Conduct's listed acts of misconduct as defined in 14 DE Admin. Code 614.3 [see below - including rape, attempted rape, and sexual assault]....

[14 DE Admin. Code § 614](#).1.0 ... [T]his regulation provides uniform definitions for student conduct which may result in alternative placement or expulsion. This regulation shall apply to all school districts and charter schools. Nothing contained here shall be interpreted to require the alternative placement or expulsion of a student, nor shall this regulation be interpreted to restrict the ability of school districts and charter schools to determine which student conduct shall result in expulsion or an alternative placement....

3.0 The following definitions shall be used whenever a school district or charter school uses such conduct as a basis for alternative placement or expulsion of a student: ...

"Rape or Attempted Rape" means sexual intercourse and attempted Sexual Intercourse without consent of the victim in both cases....

"Sexual Assault" means any unwanted sexual behavior committed by a perpetrator who is a stranger to the victim or by a perpetrator who is known by the victim or related to the victim by blood, marriage or civil union. Behaviors that fall under this definition include but are not limited to: sexual harassment as defined in [§763 of Title 11](#); sexual contact as defined in [§761 of Title 11](#); Sexual Intercourse as defined in [§761 of Title 11](#); sexual penetration as defined in [§761 of Title 11](#); and child sexual abuse as defined in [§901 of Title 10](#).

QUESTIONS AND ANSWERS

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

A.2. A suspension can last anywhere from one school day to one school year.

Q&A 2. SOURCES:

[14 DE Admin. Code § 616.2.0](#) "Suspension, Long-term (Long-term Suspension)" means Disciplinary Action ... resulting in the student being removed from the Regular School Program for eleven (11) consecutive school days or more and not to exceed the total number of school days in a school year....

"Suspension, Short-term (Short-term Suspension)" means Disciplinary Action ... resulting in the student being removed from his Regular School Program for at least one (1) school day and not more than ten (10) consecutive school days....

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

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

Q&A 3. SOURCES:

[14 DE Admin. Code § 616.2.0](#) "Expulsion" means Disciplinary Action ... resulting in a student being removed from the Regular School Program for a duration not to exceed the total number of student days in a 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. Suspension or expulsion is permitted (but not required) for a sexual assault that did not occur on school property or at an off-campus school-sponsored activity if: (1) the Delaware Department of Justice reports the sexual assault to the school as alleged criminal conduct, and ...

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

QUESTIONS AND ANSWERS

A.4. ... (3) the school superintendent determines that the criminal conduct alleged in the report threatens the health, safety, and welfare of students and staff at school.

Q&A 4. SOURCES:

[14 DE Admin. Code § 613](#).1.0 ...[T]his regulation, which applies to all public school Districts and Charter Schools, provides uniform procedures for processing Delaware Attorney General's Reports.

2.0 In this regulation, the following terms and words shall have the following meaning unless the context clearly indicates otherwise: ...

“Attorney General's Report” or “Report” means the Delaware Department of Justice's report of: 1) an enrolled student’s alleged criminal conduct, regardless of jurisdiction, which shows disregard for the health, safety and welfare of others, including, but not limited to acts of violence....

“Disciplinary Action” means the action taken against the student identified for Short or Long-Term Suspension, Expulsion, or Alternative Placement. The student may be excluded from all school activities, including but not limited to, extracurricular sports/programs, field trips, and ceremonies; is not allowed on School Property unless placed in an Alternative Placement on School Property....

3.1.2.2 ...[T]he Superintendent or designee shall make a determination as to whether the student’s alleged actions are a threat to the health, safety and welfare of others, in particular, staff and students within the School Environment and action needs to be taken.

4.1 The decision to act upon the information provided in the Attorney General's Report and Criminal Justice Information shall be the sole discretion of the District or Charter School in accordance with the District's or Charter School's ... Student Code of Conduct. Such action may include, but is not limited to, student or Parent conference, counseling, safety planning and Disciplinary Action....

4.1.2 If a District or Charter School policy allows for Disciplinary Action to be taken in response to a student Attorney General's Report, the District's or Charter School's Student Code of Conduct shall include a statement that clearly gives notice that all off-campus, non-school activity conduct which shows disregard for the health, safety and welfare of others, including, but not limited to acts of violence ... may subject a student to Disciplinary Action....

QUESTIONS AND ANSWERS

Q&A 4. SOURCES:

4.1.2.1 Any Disciplinary Action taken by the District or Charter School in response to an Attorney General's Report that results in a Short-Term or Long-Term Suspension, Alternative Placement, or Expulsion of a student shall be in accordance with the requirements of 14 DE Admin. Code 614 and 616.

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)

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

A.6. Yes. Incidents must be reported to law enforcement under the following circumstances:

QUESTIONS AND ANSWERS

A.6. (1) Principals must report to law enforcement: (a) a sexual assault (or certain other sex offenses) of a student that occurred on school property or at an off-campus school-sponsored activity, and (b) a sexual assault (or certain other sex offenses) of a student by a school employee regardless of where it occurred.

(2) Any person, including school employees, must report sexual assault and other sex offenses (regardless of where it occurred) against a child (younger than 18) to the Department of Services for Children, Youth, and Their Families. The Department must then notify law enforcement.

(3) Any person, including school employees, must report – to the Department of Health and Social Services - sexual abuse (regardless of where it occurred) of and adult (18 or older) who has a disability and is unable to take care of themself.

Q&A 6. SOURCES:

14 Del. C. § 4112 (a) The following words, terms and phrases, when used in this section, shall have the meaning ascribed to them except where the context clearly indicates a different meaning: ... (13) “Violent felony” means a crime designated in **§ 4201(c) of Title 11** [including unlawful sexual contact I and II; unlawful sexual penetration I, II, III; unlawful sexual intercourse III; rape I, II, III, IV; and other sex offenses]...

(b)(1) Whenever a school employee has reliable information that would lead a reasonable person to believe that:

- a. A student ... has been the victim of: 1. A violent felony, or ... 3. An unlawful sexual contact III, which occurred on school property or at a school function; or
- b. A student has been the victim of: 1. A violent felony, or ... 3. Any sexual offense, as defined in **§ 761(i) of Title 11** [including sexual assault], and the offense was committed by another school employee regardless of whether the offense occurred on school property or at a school function;

then the school employee who has reliable information that would lead a reasonable person to believe that a crime has been committed shall immediately report the incident to the principal....

(b)(3) The principal shall immediately report the incident to the appropriate police agency....

QUESTIONS AND ANSWERS

Q&A 6. SOURCES:

16 Del. C. § 903 (a) Any person, agency, organization or entity who knows or in good faith suspects child abuse ... shall make a report to the Department [of Services for Children, Youth, and Their Families] in accordance with § 904 of this title....

16 Del. C. § 904 (a) A report of known or suspected child abuse or neglect, including human trafficking of a child, must be made orally by immediately contacting the Department's report line for the following circumstances:

- (1) Sexual abuse, including human trafficking of a child, where the alleged perpetrator has access to the alleged victim.

16 Del. C. § 905 (d) Upon receipt of a report on any multidisciplinary case, the Department shall notify the appropriate law-enforcement agency....

16 Del. C. § 902 For purposes of this chapter:

- (1) "Abuse" or "abused child" means as defined in § 901 of Title 10....
- (4) "Child" means any person who has not reached that person's own eighteenth birthday....
- (23) "Multidisciplinary case" means a comprehensive investigation by the multidisciplinary team for any child abuse ... report involving ... sexual abuse, which if true, would constitute a criminal violation against a child, or an attempt to commit any such crime, even if no crime is ever charged....
- (31) "Sexual abuse" means as defined in § 901 of Title 10.

10 Del. C. § 901 For the purpose of this chapter, unless the context indicates differently:

- (1) "Abuse" or "abused child" means that a person: a. Causes or inflicts sexual abuse on a child...
- (21) "Sexual abuse" means any act against a child that is described as a sex offense in **§761(i) of Title 11** [including sexual assault].

31 Del. C. § 3910 (a)(1) A person ... having reasonable cause to believe that an adult who is impaired ... and is in need of protective services shall report the information ... to the Department [of Health and Social Services]....

31 Del. C. § 3902 As used in this chapter:

- (1) "Abuse" means any of the following: ...c. Sexual abuse of an adult who is impaired....
- (3) "Adult who is impaired" means an individual 18 years or older who, because of physical or mental disability, is substantially impaired in the ability to provide adequately for the individual's own care and custody....

QUESTIONS AND ANSWERS

Q&A 6. SOURCES:

(5) “Alleged victim” means an adult who is impaired ... and may have been subject to abuse, neglect, self-neglect, or exploitation, based on a report to Adult Protective Services....

(21) “Protective services” means services that are furnished in an emergency to an alleged victim. “Protective services” includes any of the following: a. Preliminary investigation and evaluation of reports of the alleged victim needing protective service....

(24) “Sexual abuse” means forced or unwanted sexual interaction, either a touching or nontouching act, with an adult who is impaired or an adult who is incapacitated.

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

CONDUCT	SUSPENSION OR EXPULSION?	SOURCES
Bullying	Suspension or expulsion is permitted but not required.	14 DE Admin. Code § 616.5.2.1 ; 14 DE Admin. Code § 614.1.0-3.0
Cyberbullying	Suspension or expulsion is permitted but not required.	14 DE Admin. Code § 616.5.2.1 ; 14 DE Admin. Code § 614.1.0-3.0

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QUESTIONS AND ANSWERS

CONDUCT	SUSPENSION OR EXPULSION?	SOURCES
Image Based Sexual Abuse	Suspension or expulsion is permitted but not required.	14 DE Admin. Code § 616.5.2.1 ; 14 DE Admin. Code § 614.1.0-3.0 11 Del. C. §§ 1108 , 1109 , 1110A , 1111
Indecent Exposure	Suspension or expulsion is permitted but not required.	14 DE Admin. Code § 616.5.2.1 ; 14 DE Admin. Code § 614.1.0-3.0 ; 11 Del. C. §§ 764 , 765
Sexual Harassment	Suspension or expulsion is permitted but not required.	14 DE Admin. Code § 616.5.2.1 ; 14 DE Admin. Code § 614.1.0-3.0 ; 11 Del.C. § 763

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

QUESTIONS AND ANSWERS

CONDUCT	SUSPENSION OR EXPULSION?	SOURCES
Stalking	Suspension or expulsion is permitted but not required.	14 DE Admin. Code § 616.5.2.1 ; 14 DE Admin. Code § 614.1.0-3.0 ; 11 Del. C. § 1312
Teen Dating Violence	Suspension or expulsion is permitted but not required.	14 DE Admin. Code § 616.5.2.1 ; 14 DE Admin. Code § 614.1.0-3.0

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