

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



**VICTIM  
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LAW CENTER**

**HAWAII**

## 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).

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## 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, expulsion (known as “dismissal” in Hawaii), school transfer, or placement in an alternative program is permitted (but not required) for sexual assault.

### **Q&A 1. SOURCES:**

**[Haw. Admin. Rule 8-19-6 \(a\)](#)** The following prohibited conduct applies to all students in the public school system, on campus, or other department premises, on department transportation, or during a department sponsored activity or event on or off school property.

(1) Class A offenses: ... (Q) Sexual assault....

**[Haw. Admin. Rule 8-19-2](#)** "Sexual assault" means the act of committing unwanted physical contact of a sexual nature on a person, whether by an acquaintance or by a stranger. Such contact is unwanted when it occurs without consent of the person, or when the person is incapacitated or otherwise incapable of giving consent. Consent means affirmative, conscious, and voluntary agreement to engage in agreed upon forms of sexual contact. If a student is a subject of sexual assault and is under the age of consent, it shall be deemed that no consent was given. Sexual assault is a form of sexual harassment.

**[Haw. Admin. Rule 8-19-6 \(d\)](#)** Disciplinary action shall be taken for all class offenses in grades kindergarten through twelve in accordance with procedures established under this chapter and within the following options as determined by the authorities designated in section 8-19-5. Interventions to teach students appropriate behaviors must be instituted when disciplinary actions are imposed. Disciplinary action options may include the following: ...

- (10) Suspension of one to ten school days;
- (11) Suspension of eleven or more school days; ...
- (13) Disciplinary transfer;
- (14) Referral to alternative education programs;
- (15) Dismissal....

## QUESTIONS AND ANSWERS

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

**A.2.** A suspension can be one to 10 school days or 11 or more school days.

### Q&A 2. SOURCES:

[Haw. Admin. Rule 8-19-6 \(d\)](#) ... Disciplinary action options may include the following: ...

(10) Suspension of one to ten school days;

(11) Suspension of eleven or more school days; ...

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

**A.3.** An expulsion (known as a “dismissal” in Hawaii) is for the remainder of the school year.

### Q&A 3. SOURCES:

[Haw. Admin. Rule 8-19-2](#) "Dismissal" means the removal of a student from Hawaii public schools for the remainder of the 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.** Hawaii’s administrative rules and statutes on school discipline do not address this question.

## 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.

### 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.** Incidents of sexual assault must be reported to law enforcement under the following circumstances:

- (1) School employees must report sexual assault of a student that occurs on school property or at an off-campus school-sponsored activity to the principal. The principal must then notify law enforcement if there is a perceived danger that cannot be handled by the school staff.
- (2) School employees must report – to the Department of Human Services (DHS) or law enforcement – sexual assault (regardless of where it occurs) of a child (younger than 18) committed by a person who is related to the child, living with the child, or responsible for the child's care. If DHS receives the report, it must notify law enforcement.

## QUESTIONS AND ANSWERS

### Q&A 6. SOURCES:

[Haw. Admin. Rule 8-19-19](#) (a) Any teacher, official, or other employee of the department who is a witness to a class A [including sexual assault] or class B offense as defined in this chapter, or who has reasonable cause to believe that a class A or class B offense has been committed or will be committed, against a student ... shall promptly report the incident to the principal or designee....

(b) Upon receiving a ... report, the principal or designee shall conduct an investigation to determine whether the behavior requires a direct call to the police or whether the behavior can be handled through school disciplinary procedures. The principal or designee shall call the police whenever there is perceived danger and the behavior cannot be handled by the school staff.

[Haw. Rev. Stat. § 350-1.1](#) (a) Notwithstanding any other state law concerning confidentiality to the contrary, the following persons who, in their professional or official capacity, have reason to believe that child abuse ... has occurred or that there exists a substantial risk that child abuse ... may occur in the reasonably foreseeable future, shall immediately report the matter orally to the department [of human services] or to the police department: ... (2) Employees or officers of any public or private school....

[Haw. Rev. Stat. § 350-2](#) (b) The department shall inform the appropriate police department of all reports received by the department regarding a case of child abuse ..., including reports received under section 350-1.1

[Haw. Rev. Stat. § 350-1](#) For the purposes of this chapter, unless the context specifically indicates otherwise: ...

"Child" means a person who ... is less than eighteen years of age.

"Child abuse" means: (1) The acts or omissions of any person who, or legal entity which, is in any manner or degree related to the child, is residing with the child, or is otherwise responsible for the child's care, that have resulted in the physical or psychological health or welfare of the child, who is under the age of eighteen, to be harmed, or to be subject to any reasonably foreseeable, substantial risk of being harmed. The acts or omissions are indicated for the purposes of reports by circumstances that include but are not limited to: ...

(B) When the child has been the victim of sexual contact or conduct, including but not limited to sexual assault as defined in the Penal Code, molestation, sexual fondling, incest, or prostitution; obscene or pornographic photographing, filming, or depiction; or other similar forms of sexual exploitation, including but not limited to acts that constitute an offense pursuant to section 712-1202(1)(b)....

## QUESTIONS AND ANSWERS

**Q.7.** How do Hawaii 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, expulsion (known as “dismissal” in Hawaii), school transfer, or placement in an alternative program is permitted (but not required)	<a href="#">Haw. Admin. Rule 8-19-6(a)</a> (1)(B), (2)(A); <a href="#">Haw. Admin. Rule 8-19-6(d)</a> (10), (11), (13), (15)
Cyberbullying	Suspension, expulsion (known as “dismissal” in Hawaii), school transfer, or placement in an alternative program is permitted (but not required)	<a href="#">Haw. Admin. Rule 8-19-6(a)</a> (1)(D), (2)(B); <a href="#">Haw. Admin. Rule 8-19-6(d)</a> (10), (11), (13), (15)
Sexual Exploitation	Suspension, expulsion (known as “dismissal” in Hawaii), school transfer, or placement in an alternative program is permitted (but not required)	<a href="#">Haw. Admin. Rule 8-19-6(a)</a> (1)(R); <a href="#">Haw. Admin. Rule 8-19-6(d)</a> (10), (11), (13), (15)

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## QUESTIONS AND ANSWERS

CONDUCT	SUSPENSION OR EXPULSION?	SOURCES
Sexual Harassment	Suspension, expulsion (known as “dismissal” in Hawaii), school transfer, or placement in an alternative program is permitted (but not required)	<a href="#">Haw. Admin. Rule 8-19-6(a)</a> (1)(S), (2)(L); <a href="#">Haw. Admin. Rule 8-19-6(d)</a> (10), (11), (13), (15)
Stalking	Suspension, expulsion (known as “dismissal” in Hawaii), school transfer, or placement in an alternative program is permitted (but not required)	<a href="#">Haw. Admin. Rule 8-19-6(a)</a> (1)(T); <a href="#">Haw. Admin. Rule 8-19-6(d)</a> (10), (11), (13), (15)

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