

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



**VICTIM
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MONTANA

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.

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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 or expulsion is permitted (but not required) for conduct that “harms or threatens to harm another person”, which arguably could include sexual assault though the statute does not define “harm” or “threats to harm”. Each local school board may use different definitions and standards for these terms. This means attorneys and advocates should consult the published code of student conduct of the local school board that governs the school attended by the offending student.

Q&A 1. SOURCES:

[Mont. Code Ann. § 20-5-201](#) (1)(d) A pupil is subject to the control and authority of the teachers, principal, and district superintendent while the pupil is in school or on school premises, on the way to and from school, or during intermission or recess.

(2) A pupil who ... harms or threatens to harm another person ... is subject to ... suspension, or expulsion under the provisions of this title.

[Mont. Code Ann. § 20-5-202](#) (1) ... The trustees of the district shall adopt a policy defining the authority and procedure to be used by a teacher, superintendent, or principal in the suspension of a pupil and in defining the circumstances and procedures by which the trustees may expel a pupil....

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

A.2. A suspension can last up to 20 school days.

Q&A 2. SOURCES:

[Mont. Code Ann. § 20-5-202](#) (1) ... A pupil may be suspended from school for an initial period not to exceed 10 school days. Upon a finding by a school administrator that the immediate return to school by a pupil would be detrimental to the health, welfare, or safety of others or would be disruptive of the educational process, a pupil may be suspended for one additional period not to exceed 10 school days....

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QUESTIONS AND ANSWERS

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

A.3. An expulsion is more than 20 school days.

Q&A 3. SOURCES:

[Mont. Code Ann. § 20-5-202](#) (1) ... Expulsion is any removal of a pupil for more than 20 school days....

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. Montana school discipline laws 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.

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. School employees must report sexual abuse committed by anyone against a child (younger than 18) to the Department of Public Health and Human Services. If the abuser is 12 or older, the Department must refer the report to the county attorney.

Q&A 6. SOURCES:

Mont. Code Ann. § 41-3-201 (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected by anyone regardless of whether the person suspected of causing the abuse or neglect is a parent or other person responsible for the child's welfare, they shall report the matter promptly to the department [of public health and human services].

(2) Professionals and officials required to report are: ... (d) school teachers, other school officials, and employees who work during regular school hours....

Mont. Code Ann. § 41-3-202 (1)(b)(i) ... [U]pon receipt of a report that includes an allegation of sexual abuse or sexual exploitation when the alleged perpetrator of the sexual abuse or sexual exploitation was 12 years of age or older or if the department determines during any investigation that the circumstances surrounding an allegation of child abuse or neglect include an allegation of sexual abuse or sexual exploitation when the alleged perpetrator of the sexual abuse or sexual exploitation was 12 years of age or older, the department shall immediately report the allegation to the county attorney....

Mont. Code Ann. § 41-3-102 As used in this chapter, the following definitions apply: ...

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect....

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:(i) actual physical or psychological harm to a child....

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