



NEBRASKA

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.

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, or reassignment to another school is permitted (but not required) for sexual assault if:

- (1) it involved violence, force, coercion, threat, or intimidation to a degree that substantially interferes with school purposes; or
- (2) it physically injured the student survivor; or
- (3) a prosecutor files a complaint in court alleging that the offending student has committed sexual assault.

Q&A 1. SOURCES:

[Neb. Rev. Stat. § 79-254](#) Sections [79-254](#) to [79-294](#) shall be known and may be cited as the Student Discipline Act.

[Neb. Rev. Stat. § 79-262](#) (1) The school board or board of education shall establish and promulgate rules and standards concerning student conduct.... Notwithstanding any other provisions contained in the Student Discipline Act, the school board or board of education may by rule specify a particular action as a sanction for particular conduct. Any such action must be otherwise authorized by section ... [79-265](#), or [79-267](#)....

[Neb. Rev. Stat. § 79-265](#) (1) Except as provided in section [79-265.01](#), the principal may deny any student the right to attend school or to take part in any school function for a period of up to five school days [short-term suspension] on the following grounds:

- (a) Conduct constituting grounds for expulsion as set out in the Student Discipline Act; or
- (b) Any other violation of rules and standards of behavior adopted under the act.

[Neb. Rev. Stat. § 79-267](#) Except as provided in section [79-265.01](#), the following student conduct shall constitute grounds for long-term suspension, expulsion, or mandatory reassignment ... when such activity occurs on school grounds, in a vehicle owned, leased, or contracted by a school being used for a school purpose or in a vehicle being driven for a school purpose by a school employee or by his or her designee, or at a school-sponsored activity or athletic event: (1) Use of violence, force, coercion, threat, intimidation, or similar conduct in a manner that constitutes a substantial interference with school purposes; ... (3) Causing or attempting to cause personal injury to ... any student....

QUESTIONS AND ANSWERS

Q&A 1. SOURCES:

.... (9) Sexually assaulting or attempting to sexually assault any person if a complaint has been filed by a prosecutor in a court of competent jurisdiction alleging that the student has sexually assaulted or attempted to sexually assault any person.... For purposes of this subdivision, sexual assault means sexual assault in the first degree as defined in section [28-319](#), sexual assault in the second degree as defined in section [28-320](#), sexual assault of a child in the second or third degree as defined in section [28-320.01](#), or sexual assault of a child in the first degree as defined in section [28-319.01](#), as such sections now provide or may hereafter from time to time be amended....

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

A.2. A suspension can last up to 19 school days.

Q&A 2. SOURCES:

[Neb. Rev. Stat. § 79-256](#) (1) Long-term suspension means the exclusion of a student from attendance in all schools within the system for a period exceeding five school days but less than twenty school days; ...

(4) Short-term suspension means the exclusion of a student from attendance in all schools within the system for a period not to exceed five school days.

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

A.3. An expulsion can last up to one semester, or in the case of causing personal injury by force an expulsion can last the remainder of the school year.

QUESTIONS AND ANSWERS

Q&A 3. SOURCES:

[Neb. Rev. Stat. § 79-283](#) (2) Except as provided in subsection (3) ... of this section, the expulsion of a student shall be for a period not to exceed the remainder of the semester in which it took effect unless the misconduct occurred (a) within ten school days prior to the end of the first semester, in which case the expulsion shall remain in effect through the second semester, or (b) within ten school days prior to the end of the second semester, in which case the expulsion shall remain in effect for summer school and the first semester of the following school year....

(3) The expulsion of a student for (a) the knowing and intentional use of force in causing or attempting to cause personal injury to a ... student ... shall be for a period not to exceed the remainder of the school year in which it took effect if the misconduct occurs during the first semester. If the expulsion takes place during the second semester, the expulsion shall remain in effect for summer school and may remain in effect for the first semester of the following 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, expulsion, or school reassignment is permitted (but not required) for sexual assault that did not occur on school property or at an off-campus school-sponsored activity if a prosecutor files a complaint in court alleging that the offending student has committed sexual assault.

Q&A 4. SOURCES:

[Neb. Rev. Stat. § 79-267](#) ... [T]he following student conduct shall constitute grounds for long-term suspension, expulsion, or mandatory reassignment ... : ... (9) Sexually assaulting or attempting to sexually assault any person if a complaint has been filed by a prosecutor in a court of competent jurisdiction alleging that the student has sexually assaulted or attempted to sexually assault any person, including sexual assaults or attempted sexual assaults which occur off school grounds not at a school function, activity, or event.

QUESTIONS AND ANSWERS

Q&A 4. SOURCES:

For purposes of this subdivision, sexual assault means sexual assault in the first degree as defined in section [28-319](#), sexual assault in the second degree as defined in section [28-320](#), sexual assault of a child in the second or third degree as defined in section [28-320.01](#), or sexual assault of a child in the first degree as defined in section [28-319.01](#), as such sections now provide or may hereafter from time to time be amended;

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 Nebraska law, all students in second grade and below are exempt from suspension and expulsion.

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)

[Neb. Rev. Stat. § 79-265.01](#) (1) ... [A]n elementary school shall not suspend a student in pre-kindergarten through second grade....

QUESTIONS AND ANSWERS

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

A.6. A school principal must report - to law enforcement - criminal acts (including sexual assault) that occur on school property or at off-campus school-sponsored activities.

Any school employee must report – to law enforcement or the Department of Health and Human Services (DHHS) – sexual abuse of a child (regardless of where it occurs). If DHHS receives a report, it must notify law enforcement.

Some school employees (school psychologist, school nurse, or developmental disability professional) must report – to law enforcement or DHHS - sexual assault (regardless of where it occurs) of an adult (18 or older) with a substantial mental or physical disability who is unable to live independently or take care of themselves. If DHHS receives a report, it must notify law enforcement.

Q&A 6. SOURCES:

[Neb. Rev. Stat. § 79-293](#) (1) The principal of a school or the principal's designee shall notify as soon as possible the appropriate law enforcement authorities ... of any act of the student as provided in subsection (1) of section [79-262](#) which the principal or designee knows or suspects is a violation of the Nebraska Criminal Code.

[Neb. Rev. Stat. § 79-262](#) (1) ... [A]ll school boards shall annually review in collaboration with the county attorney ... the provisions of section [79-267](#) to define conduct which the principal or designee is required to report to law enforcement under section [79-293](#).

[Neb. Rev. Stat. § 28-711](#) (1) When any ... school employee ... has reasonable cause to believe that a child has been subjected to child abuse ... or observes such child being subjected to conditions or circumstances which reasonably would result in child abuse ..., he or she shall report such incident or cause a report of child abuse or neglect to be made to the proper law enforcement agency or to the department [of health and human services]....

(2) ... Reports of child abuse ... not previously made to or by a law enforcement agency shall be made immediately to such agency by the department.

QUESTIONS AND ANSWERS

Q&A 6. SOURCES:

[Neb. Rev. Stat. § 28-710](#) (b) Child abuse ... means knowingly, intentionally, or negligently causing or permitting a minor child to be: ... (v) Placed in a situation to be sexually abused....

(o) School employee means a person nineteen years of age or older who is employed by a public, private, denominational, or parochial school approved or accredited by the State Department of Education....

[Neb. Rev. Stat. § 28-372](#) (1) When any ... psychologist, ... nurse, ... developmental disability, or mental health professional, ... has reasonable cause to believe that a vulnerable adult has been subjected to abuse ... or observes such adult being subjected to conditions or circumstances which reasonably would result in abuse ... he or she shall report the incident or cause a report to be made to the appropriate law enforcement agency or to the department....

(4) A report of abuse ... made to the department which was not previously made to or by a law enforcement agency shall be communicated to the appropriate law enforcement agency by the department....

[Neb. Rev. Stat. § 28-351](#) Abuse means any knowing or intentional act on the part of a caregiver or any other person which results in ... sexual abuse ... of a vulnerable adult.

[Neb. Rev. Stat. § 28-367](#) Sexual abuse shall include sexual assault as described in section [28-319](#) or [28-320](#)....

[Neb. Rev. Stat. § 28-371](#) Vulnerable adult means any person eighteen years of age or older who has a substantial mental or functional impairment or for whom a guardian or conservator has been appointed under the Nebraska Probate Code.

[Neb. Rev. Stat. §28-369](#) Substantial mental impairment shall mean a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, or ability to live independently or provide self-care as revealed by observation, diagnosis, investigation, or evaluation.

[Neb. Rev. Stat. § 28-368](#) Substantial functional impairment shall mean a substantial incapability, because of physical limitations, of living independently or providing self-care as determined through observation, diagnosis, investigation, or evaluation.

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

QUESTIONS AND ANSWERS

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

CONDUCT	SUSPENSION OR EXPULSION?	SOURCES
Bullying (including cyberbullying)	Suspension, expulsion, or reassignment to another school is permitted, but not required.	Neb. Rev. Stat. § 79-265 (1)(a); Neb. Rev. Stat. § 79-267 (8)
Public Indecency (including genital exposure and fondling)	Suspension, expulsion, or reassignment to another school is permitted, but not required.	Neb. Rev. Stat. § 79-265 (1)(a); Neb. Rev. Stat. § 79-267 (7)

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