

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



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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, expulsion, or transfer to a different school is permitted (but not required) if a student, while on school property or at a school-sponsored activity, poses a continuing danger to others or an ongoing threat of academic disruption. Sexual assault could arguably qualify as a “continuing danger” or an “ongoing academic disruption”; however, the statute does not define these terms. 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.

However, if the offending student is adjudicated delinquent by a court for a sexual offense or sexually motivated unlawful act, the school district is required to prohibit the offending student from attending the same school as the survivor student, unless the court approves a plan for supervision or an alternative attendance schedule for the offending student.

Q&A 1. SOURCES:

[NRS § 392.466](#) 5. Except as otherwise provided in this section, any pupil, including, without limitation, a pupil with a disability, who poses a continuing danger to persons ... or an ongoing threat of disrupting the academic process ... while on the premises of any public school, at an activity sponsored by a public school or on any school bus may be removed from the public school immediately ... pending proceedings ... for his or her suspension, expulsion or permanent expulsion, except that:

(a) A pupil who is less than 11 years of age may not be expelled or permanently expelled pursuant to this subsection.

7. If a school is unable to retain a pupil in the school pursuant to subsections 1 to 6, inclusive, for the safety of any person or because doing so would not be in the best interest of the pupil, the pupil may be suspended, expelled or placed in another school....

QUESTIONS AND ANSWERS

Q&A 1. SOURCES:

[NRS § 392.467](#) 1. Except as otherwise provided in subsection ... 6 and [NRS 392.466](#), the board of trustees of a school district or the governing body of a charter school or university school for profoundly gifted pupils, as applicable, or its designee may authorize the suspension or expulsion of any pupil who is at least 11 years of age from a public school....

3. Except as otherwise provided in subsection 6, ... a pupil who: (a) Poses a continuing danger to persons or; ... (b) Is an ongoing threat of disrupting the academic process ... may be removed from the school immediately ... pending proceedings ... for the pupil's suspension or expulsion.

6. A pupil with a disability may, ... only after an administrative review of the circumstances and a determination that the action is in compliance with the Individuals with Disabilities Education Act, ... be:

- (a) Suspended from school pursuant to this section for not more than 10 days for each occurrence of proscribed conduct.
- (b) Expelled from school pursuant to this section.
- (c) Permanently expelled from school pursuant to this section.

[NRS § 392.254](#) “Notification” means a notification which indicates that a child has been adjudicated delinquent for a sexual offense or a sexually motivated act and which is provided by a probation officer or parole officer pursuant to [NRS 62F.120](#).

[NRS § 392.2583](#) “Sexual offense” has the meaning ascribed to it in [NRS 62F.100](#) [includes sexual assault].

[NRS § 392.2587](#) “Sexually motivated act” has the meaning ascribed to it in [NRS 62A.320](#).

[NRS § 392.264](#) 1. If a superintendent of a school district receives notification and a victim identified in the notification is a pupil in the school district, the superintendent shall not permit an offender who is subject to the provisions of [NRS 62F.100](#) to [62F.150](#), inclusive, to enroll in or attend a public school that a victim is enrolled in or attending unless:

- (a) An alternative plan of supervision is approved by the court pursuant to [NRS 62F.130](#); or
- (b) An alternative plan of attendance is approved by the court pursuant to [NRS 62F.140](#).

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

A.2. A suspension can last up to one semester.

QUESTIONS AND ANSWERS

Q&A 2. SOURCES:

[NRS § 392.4607](#) “Suspend” or “suspension” means the disciplinary removal of a pupil from the school in which the pupil is currently enrolled for not more than one school semester.

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

A.3. An expulsion is longer than one semester and can be permanent.

Q&A 3. SOURCES:

[NRS § 392.4603](#) “Expel” or “expulsion” means the disciplinary removal of a pupil from the school in which the pupil is currently enrolled for more than one school semester....

[NRS § 392.467](#) 8.(c) “Permanently expelled” means the disciplinary removal of a pupil from the school in which the pupil is currently enrolled:

- (1) ... without the possibility of returning to the school in which the pupil is currently enrolled or another public school within the school district; and
- (2) With the possibility of enrolling in a program or public school for alternative education for pupils who are expelled or permanently expelled after being permanently expelled.

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. If the offending student is adjudicated delinquent by a court for a sexual offense or sexually motivated unlawful act (regardless of where it occurred), the school district is required to prohibit the offending student from attending the same school as the survivor student, unless the court approves a plan for supervision or an alternative attendance schedule for the offending student.

QUESTIONS AND ANSWERS

Q&A 4. SOURCES:

[NRS § 392.254](#) “Notification” means a notification which indicates that a child has been adjudicated delinquent for a sexual offense or a sexually motivated act and which is provided by a probation officer or parole officer pursuant to [NRS 62F.120](#).

[NRS § 392.2583](#) “Sexual offense” has the meaning ascribed to it in [NRS 62F.100](#) [includes sexual assault].

[NRS § 392.2587](#) “Sexually motivated act” has the meaning ascribed to it in [NRS 62A.320](#).

[NRS § 392.264](#) 1. If a superintendent of a school district receives notification and a victim identified in the notification is a pupil in the school district, the superintendent shall not permit an offender who is subject to the provisions of [NRS 62F.100](#) to [62F.150](#), inclusive, to enroll in or attend a public school that a victim is enrolled in or attending unless:

- (a) An alternative plan of supervision is approved by the court pursuant to [NRS 62F.130](#); or
- (b) An alternative plan of attendance is approved by the court pursuant to [NRS 62F.140](#).

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 Nevada law, students under 11 years old are exempt from expulsion except in extraordinary circumstances.

QUESTIONS AND ANSWERS

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)

[NRS § 392.467](#) 1. ... Except as otherwise provided in this subsection and subsections 5 and 6 of [NRS 392.466](#), a pupil who is at least 6 years of age but less than 11 years of age must not be expelled or permanently expelled from school. In extraordinary circumstances, a school may request an exception to the prohibition set forth in this subsection against expelling or permanently expelling a pupil who is less than 11 years of age from school from the board of trustees of the school district or the governing body of the charter school or university school, as applicable.

2. A pupil who is less than 6 years of age must not be permanently expelled from school.

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

A.6. All school employees and volunteers must report - to law enforcement and child welfare services – sexual abuse or exploitation of any child (someone younger than 18 or still in primary or secondary school) if committed or facilitated by a school employee or volunteer or a person responsible for the child's welfare.

Q&A 6. SOURCES:

[NRS § 432B.220](#) 1. Any person who is described in subsection 4 and who, in his or her professional or occupational capacity, knows or has reasonable cause to believe that a child has been abused or neglected shall: (a) Except as otherwise provided in subsection 2, report the abuse or neglect of the child to an agency which provides child welfare services or to a law enforcement agency....

4. A report must be made pursuant to subsection 1 by the following persons: ... (e) A person employed by a public school or private school and any person who serves as a volunteer at such a school.

QUESTIONS AND ANSWERS

Q&A 6. SOURCES:

[NRS § 392.303](#) 1. In addition to the reporting required by [NRS 432B.220](#), if, in his or her capacity as an employee of or volunteer for a public school or private school, such an employee or volunteer knows or has reasonable cause to believe that a child has been subjected to:

(a) Abuse or neglect, sexual conduct in violation of [NRS 201.540](#), luring in violation of [NRS 201.560](#) by another employee of or volunteer for a public school or private school or a violation of [NRS 201.553](#) by another employee of or volunteer for a public or private school, the employee or volunteer who has such knowledge or reasonable cause to believe shall report the abuse or neglect, sexual conduct, luring or other violation to the agency which provides child welfare services in the county in which the school is located and a law enforcement agency.

[NRS § 432B.260](#) 9. An agency which provides child welfare services and a law enforcement agency shall cooperate in the investigation, if any, of a report of abuse or neglect of a child.

[NRS § 432B.020](#) 1.(b) “Abuse or neglect of a child” means ... sexual abuse or sexual exploitation of a child caused or allowed by a person responsible for the welfare of the child under circumstances which indicate that the child’s health or welfare is harmed or threatened with harm.

[NRS § 392.281](#) “Abuse or neglect of a child” has the meaning ascribed to it in [NRS 432B.020](#), but includes abuse or neglect caused by a person who is an employee of or volunteer for a public school or private school and who is not responsible for the welfare of the child....

[NRS § 432B.040](#) “Child” means a person under the age of 18 years or, if in school, until graduation from high school.

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