



NEW HAMPSHIRE

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 is permitted (but not required) for sexual assault if it is harmful to the health, safety, or wellbeing of others at school. Expulsion is permitted (but not required) for sexual assault if it poses an ongoing threat to the safety of others at school.

Q&A 1. SOURCES:

[RSA 193:13](#) I. (a) A superintendent or chartered public school director, or a representative designated in writing by the superintendent or chartered public school director, may suspend pupils from school for a period not to exceed 10 consecutive school days for: (1) Behavior that is detrimental to the health, safety, or welfare of pupils or school personnel... (b) The school board or chartered public school board of trustees, or a representative designated in writing may, following a hearing, extend the suspension of a pupil up to 10 additional consecutive school days for an act that constitutes an act of ... violence as defined in **[RSA 193-D](#)** [includes sexual assault]....

[RSA 193:13](#) II. Any pupil may be expelled from school by the local school board or board of trustees for an act that poses an ongoing threat to the safety of students or school personnel and that constitutes: ...

- (b) Any act of physical or sexual assault that would be a felony if committed by an adult;
- (c) Any act of violence pursuant to **[RSA 651:5](#)**, XII [includes felony sexual assault]....

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

A.2. Suspension for sexual assault can last up to 20 school days in a row.

Q&A 2. SOURCES:

[RSA 193:13](#) I. (a) A superintendent or chartered public school director, or a representative designated in writing by the superintendent or chartered public school director, may suspend pupils from school for a period not to exceed 10 consecutive school days for: (1) Behavior that is detrimental to the health, safety, or welfare of pupils or school personnel...

QUESTIONS AND ANSWERS

Q&A 2. SOURCES:

(b) The school board or chartered public school board of trustees, or a representative designated in writing may, following a hearing, extend the suspension of a pupil up to 10 additional consecutive school days for an act that constitutes an act of ... violence as defined in RSA 193-D [includes sexual assault]....

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

A.3. New Hampshire school discipline laws do not answer this question.

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. New Hampshire 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.

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

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)

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

A.6. Yes. School employees must report a sexual assault that occurs on school property or at a school-sponsored activity to a supervisor. The supervisor then must report to the school principal, who must report the sexual assault to law enforcement.

Also, any person, including school employees, must report – to law enforcement or the Department of Health and Human Services (DHHS) – sexual abuse of a child (younger than 18) (regardless of where it occurs). If DHHS receives such a report, it must notify law enforcement.

In addition, any person, including school employees, must report – to the Bureau of Adult & Aging Care Services (BAACS) - sexual assault (regardless of where it occurs) of an adult who is unable to take care of themselves or unable to assign that responsibility to a caregiver. If BAACS receives such a report, it must notify law enforcement.

Q&A 6. SOURCES:

[RSA 193-D:4](#) I. (a) Any public or private school employee who has witnessed or who has information from the victim of an act of ... violence in a safe school zone shall report such act in writing immediately to a supervisor. A supervisor receiving such report shall immediately forward such information to the school principal who shall file it with the local law enforcement authority....

[RSA 193-D:1](#) In this chapter:

I. "Act of ... violence" means an act set forth in the following statutes regardless of the age of the perpetrator: (a) Any of the offenses enumerated in [RSA 189:13-a](#), V [includes sexual assault]....

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Q&A 6. SOURCES:

II. "Safe school zone" means an area inclusive of any school property or school buses.

III. "School" means any public or private elementary, secondary, or secondary vocational-technical school in New Hampshire. It shall not include home schools under RSA 193-A.

IV. "School employee" means any school administrator, teacher, or other employee of any public or private school, school district, school department, or school administrative unit, or any person providing or performing continuing contract services for any public or private school, school district, school department, or school administrative unit.

V. "School property" means all real property, physical plant and equipment used for school purposes, including but not limited to school playgrounds and buses, whether public or private.

VI. "School purposes" means school-sponsored programs, including but not limited to educational or extra-curricular activities.

[RSA 169-C:29](#) Any ... teacher, school official, school nurse, school counselor, social worker, ... any other child or foster care worker, ... or any other person having reason to suspect that a child has been abused ... shall report the same in accordance with this chapter.

[RSA 169-C:30](#) An oral report shall be made immediately by telephone or otherwise, and followed within 48 hours by a report in writing, if so requested, to the department [Department of Health and Human Services].

[RSA 169-C:38](#) I. The department shall immediately ... refer all cases in which there is reason to believe that any person under the age of 18 years has been: (a) sexually molested; (b) sexually exploited; ... or (e) a victim of a crime, to the local law enforcement agency...

[RSA 169-C:3](#) II. "Abused child" means any child who has been: (a) Sexually abused....

V. "Child" means any person who has not reached his eighteenth birthday....

XXVII-b. "Sexual abuse" means the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct or any simulation of such conduct for the purpose of producing any visual depiction of such conduct; or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children. With respect to the definition of sexual abuse, the term "child" or "children" means any individual who is under the age of 18 years.

[RSA 161-F:46](#) Any person ... suspecting or believing in good faith that any adult who is or who is suspected to be vulnerable, at the time of the incident, has been subjected to abuse ... or exploitation ... shall report or cause a report to be made as follows:

I. An oral report ... shall be made immediately ... to the commissioner or his authorized representative.

QUESTIONS AND ANSWERS

Q&A 6. SOURCES:

[RSA 161-F:51](#) II. The commissioner or his or her authorized representative shall refer all cases of serious bodily injury to a vulnerable adult known or suspected to be the result of abuse, neglect, or exploitation to local law enforcement, the department of justice or to the county attorney for possible criminal prosecution. The commissioner or his or her authorized representative shall also report other cases of abuse, neglect, or exploitation to local law enforcement, the department of justice, or the office of the county attorney for possible criminal prosecution if there is reason to believe a crime has been committed.

[RSA 161-F:43](#) II. "Abuse" means any one of the following: ... (c) "Sexual abuse" means contact or interaction of a sexual nature involving a vulnerable adult without his or her informed consent...

VII. "Vulnerable" means that the physical, mental, or emotional ability of a person is such that he or she is unable to manage personal, home, or financial affairs in his or her own best interest, or he or she is unable to act or unable to delegate responsibility to a responsible caretaker or caregiver.

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

QUESTIONS AND ANSWERS

Q.7. How do New Hampshire 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 cyber-bullying)	Suspension is permitted (but not required). Expulsion is permitted (but not required) for repeated bullying that poses an ongoing threat to the safety of others at school.	RSA 193-F:3 RSA 193-F:4 RSA 193:13 I(a) and (b)

This project was supported by Grant No. 15JOVW-23-GK-05167-MUMU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Justice.