



NEW MEXICO

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. New Mexico school discipline law gives each local school district the authority to decide what conduct is grounds for suspension and/or expulsion. 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 to find out what disciplinary actions are possible for sexual assault occurring on school property or at a school sponsored activity.

Q&A 1. SOURCES:

[NMSA 22-5-4.3](#). B. Each school district discipline policy shall establish rules of conduct governing areas of student and school activity, detail specific prohibited acts and activities and enumerate possible disciplinary sanctions, which sanctions may include ... suspension or expulsion....

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

A.2. A temporary suspension is for a specific length lasting 10 school days or less. A long-term suspension is for a specific length, which can last longer than 10 school days.

Q&A 2. SOURCES:

[NMAC 6.11.2.7](#) O. "Long-term suspension" means the removal of a student from school for a specified time exceeding either 10 school days or a locally established shorter period....
DD. "Temporary suspension" means the removal of a student from school for a specified period of 10 or fewer school days after a rudimentary hearing.

QUESTIONS AND ANSWERS

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

A.3. Expulsion is longer than 10 school days and can last indefinitely or permanently.

Q&A 3. SOURCES:

NMAC 6.11.2.7 H. "Expulsion" means the removal of a student from school either permanently or for an indefinite time exceeding 10 school days or a locally established shorter period.

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 or expulsion is permitted (but not required) for sexual assault of another student that did not occur on school property or at an off-campus school-sponsored activity if the sexual assault has a direct and immediate effect on school discipline or the general safety and welfare of the school. Because New Mexico school discipline law gives local school boards the authority to regulate in this area, 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 to find out what disciplinary actions are possible for sexual assault not occurring on school property or at a school sponsored activity.

Q&A 4. SOURCES:

NMAC 6.11.2.9 B. Activities subject to local school board regulation within legal limits include: ... (9) the discipline of students for out-of-school conduct having a direct and immediate effect on school discipline or the general safety and welfare of the school.

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. School employees must report sexual abuse of a child (younger than 18) committed by the child's parent, guardian, or custodian to law enforcement or the Department of Children, Youth and Families (DCYF). If DCYF receives the report, it must notify law enforcement.

Also, anyone, including school employees, must report – to the Department of Aging and Long-Term Services - sexual abuse committed by anyone against an adult (18 or older) with a disability who is unable to take care of or protect themselves.

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

QUESTIONS AND ANSWERS

Q&A 6. SOURCES:

[NMSA 32A-4-3](#) A. Every person, including ... a school employee ... who knows or has a reasonable suspicion that a child is an abused or a neglected child shall report the matter immediately to:

- (1) a local law enforcement agency;
- (2) the [children, youth and families] department; or
- (3) a tribal law enforcement or social services agency for any Indian child residing in Indian country.

B. ...The department shall immediately transmit the facts of the report ... to a local law enforcement agency....

[NMSA 32A-4-2](#) B. "abused child" means a child: ... (3) who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian or custodian

K. "sexual abuse" includes criminal sexual contact, incest or criminal sexual penetration, as those acts are defined by state law

[NMSA 32A-1-4](#) C. "child" means a person who is less than eighteen years old

[NMSA 27-7-30](#) A. Any person ... having reasonable cause to believe that an incapacitated adult is being abused, neglected or exploited shall immediately report that information to the [aging and long-term services] department.

[NMSA 27-7-16](#) B. "abuse" means: ... (3) sexual abuse, including criminal sexual contact, incest and criminal sexual penetration

C. "adult" means a person eighteen years of age or older ...

L. "incapacitated adult" means any adult with a mental, physical or developmental condition that substantially impairs the adult's ability to provide adequately for the adult's own care or protection

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