



NORTH DAKOTA

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 or expulsion is permitted (but not required) for “insubordination, habitual indolence, or disorderly conduct”. North Dakota school discipline laws do not define these terms. One or more of these terms arguably could include sexual assault. However, 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:

- [N.D. Cent. Code 15.1-19-09.](#)** 1. The board of a school district shall adopt rules regarding the suspension and expulsion of a student....
2. A school district may suspend a student for up to ten days for insubordination, habitual indolence, disorderly conduct....
4. A school district may expel a student ... for insubordination, habitual indolence, or disorderly conduct....

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

A.2. A suspension can last up to 10 days.

Q&A 2. SOURCES:

- [N.D. Cent. Code 15.1-19-09.](#)** 2. A school district may suspend a student for up to ten days....

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

A.3. An expulsion can last up to 12 months.

QUESTIONS AND ANSWERS

Q&A 3. SOURCES:

[N.D. Cent. Code 15.1-19-09](#). 4. A school district may expel a student ... for up to twelve months....

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. North Dakota 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)

QUESTIONS AND ANSWERS

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

A.6. Most school employees must report sexual assault of a child (younger than 18) to the Department of Health and Human Services (DHHS). DHHS must then notify law enforcement.

Also, any caregiver, which may include some school employees, must report sexual assault of an adult with a substantial disability to DHHS or law enforcement. If DHHS receives the report, it must then notify law enforcement.

Q&A 6. SOURCES:

[N.D. Cent. Code 50-25.1-03](#) 1. Any ... schoolteacher or administrator, school counselor, child care worker ... having knowledge of or reasonable cause to suspect a child is abused or neglected ... shall report the circumstances to the department [of health and human services] or authorized agent if the knowledge or suspicion is derived from information received by that individual in that individual's official or professional capacity.

[N.D. Cent. Code 50-25.1-05.3](#) 1. Upon determination by the department or authorized agent that a report made under this chapter implicates a person other than a person responsible for a child's welfare, the department or authorized agent shall refer the report to an appropriate law enforcement agency for investigation and disposition.

[N.D. Cent. Code 50-25.1-02](#) 2. "Abused child" means an individual under the age of eighteen years ... and includes a sexually abused child who is suffering from or was subjected to any act in violation of sections 12.1-20-01 through 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.3, or chapter 12.1-27.2 [sex offenses including sexual assault].

[N.D. Cent. Code 50-25.2-03](#) 1. Any ... caregiver having knowledge a vulnerable adult has been subjected to abuse or neglect, or who observes a vulnerable adult being subjected to conditions or circumstances that reasonably would result in abuse or neglect, shall report the information to the department [of health and human services], or the department's designee, or to an appropriate law enforcement agency if the knowledge is derived from information received by that individual in that individual's official or professional capacity.

[N.D. Cent. Code 50-25.2-05](#) 2. If a report alleges, or circumstances surrounding the report indicate, a violation of a criminal statute or an imminent danger of serious physical injury or death of the vulnerable adult, the department or the department's designee shall notify the appropriate law enforcement agency....

QUESTIONS AND ANSWERS

Q&A 6. SOURCES:

[N.D. Cent. Code 50-25.2-01](#) 1. "Abuse" means any willful act or omission ... which results in ... sexual abuse or exploitation ... of a vulnerable adult....

4. "Caregiver" means any person who has assumed the legal responsibility or a contractual obligation for the care of a vulnerable adult or has voluntarily assumed responsibility for the care of a vulnerable adult. The term includes a facility operated by any public or private agency, organization, or institution which provides services to, and has assumed responsibility for the care of, a vulnerable adult....

14. "Sexual abuse or exploitation" includes those sex offenses defined in sections 12.1-20-02, 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, and 12.1-20-11 [including sexual assault]....

17. "Vulnerable adult" means an adult who has a substantial mental or functional impairment.

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