Session 5

School-to-Prison Pipeline

Do’s and Don’ts of School Discipline

Overview

Discipline for Regular Education and Special Education Students
Discipline

Exclusionary

• Prevents neediest youth from attending school
• Disproportionately affects youth of color and those with disabilities
• Youth more likely to drop out and to be involved in criminal behavior
School-to-Prison Pipeline

Source: The Advancement Project
Exclusionary Discipline

Facts in Connecticut

• Black female students 5 times more likely than white counterparts to be suspended or expelled
• Black males 3.4 times more likely
• Hispanic males 2.5 times more likely
• Hispanic females 3.8 times more likely

Based on data from the Ct State Dept. of Ed., June 5, 2013 Presentation
Discipline and School Authority

Broad authority to impose discipline
- “Seriously disruptive to the education process” is catchall
- Authority over conduct off school grounds
  - Criminal behavior
  - Online activity that can impact school
  - Behavior at school-sponsored activity that violates school discipline code

Parents’ Right: School must provide parent notice of discipline code at least once a year
Most Disciplinary Exclusion is for Minor Offenses

- School Policy Violations: 66%
- Fighting / Battery: 11%
- Other (includes Drugs/Alcohol/Tobacco, Property Damage, Sexually Related Behavior, Theft Behaviors, Violent Crimes, and Weapons): 8%
- Personally Threatening Behavior: 6%
- Physical Verbal Confrontation: 9%
Types of disciplinary removals

**Removal:** No more than 90 minutes from class (within teacher discretion)

**In-School Suspension (ISS):** Removal from class activity, not school, up to 10 consecutive days (must be performed by administration)

**Out-of-School Suspension (OSS):** Removal from school, may include suspension of transportation, up to 10 consecutive days (must be performed by administration)

**Expulsion:** Removal for more than 10 consecutive days up to 1 calendar year (must be performed by administration)

*Conn. Gen. Stat. 10-233a*
ISS: The Law

- For first time offenses
- Encourages ISS over OSS for most discipline
- Student given opportunity to explain situation (informal hearing before suspension occurs)
- Student to receive work and exams missed during suspension period
- Parent must get notice in 24 hours
- Expunged from record upon graduation

Conn. Gen. Stat. 10-233c
OSS: The Law

- Student given opportunity to explain situation (informal hearing before suspension occurs)
- Last resort, after other interventions unsuccessful
- Occurs only if child poses danger to person or property or if causing severe disruption to educational process
- Student to receive work and exams missed during suspension period
- Parent must get notice in 24 hours
- Expunged from record upon graduation

Conn. Gen. Stat. 10-223c
Expulsion: The Law

Offenses that require school to pursue expulsion:

- Possession of dangerous weapon on school grounds or at school sponsored activity
- Possession of firearm on or off school grounds
- Sale or distribution of controlled substance on or off school grounds

Students can be expelled for almost any offense considered seriously disruptive of educational process

Police required to notify school when student is arrested for Class A misdemeanor or felony. School can proceed to expulsion.

Conn. Gen. Stat. 10-233d
Expulsion: What Happens?

• May be up to 180 school days

• Student can apply for early re-admission

• Expulsion record expunged upon graduation (unless firearm or deadly weapon)

• Expulsion must be honored by another public school district (student cannot escape expulsion by moving)

• Expulsion time must run concurrent with any time in detention/lock up

Conn. Gen. Stat. 10-233d
Expulsion: Due Process Rights

- Right to counsel
- Right to inspect review relevant materials, records
- Right to cross examination
- Right to present evidence and argument
Expulsion Hearing Process

• Expulsion Hearing notice must include:
  – Statement of time and place of hearing
  – Right to counsel and availability of free/low cost legal services
  – Short plain statement of matters asserted
  – Statement of legal authority under which hearing is being held
  – Reference to any relevant statutes or regulations

• Heard before
  Board of at least 3 members OR appointed hearing officer

• Two parts – adjudicatory and dispositive; can be unified or bifurcated

• No automatic right to appeal. Must have constitutional issue arise to claim an appeal
Is Expelled Student Entitled to AEO?

It depends.

• Students under 16 are entitled to AEO (Alternative Education Opportunity (could be minimum of 10 hours tutoring per week)

• Students between 16-18 expelled for the first time are entitled to AEO (could be adult ed)

• Students between 16-18 expelled for weapons or drugs are NOT entitled to AEO

School has discretion to provide AEO even if not obligated.
Tyrrell*

- Age 16
- Arrested during summer, at home, for allegedly threatening step-sister with knife
- Police notified school
- School decided to proceed with expulsion

Can Tyrrell be expelled?
Is he entitled to AEO?
Discipline for Special Ed Students

Special education students have significant protections from discipline

- If student’s disability contributes to behavioral problems that might result in discipline, **student’s IEP needs to address this behavior**

- **Functional Behavioral Assessment (FBA)** should be performed to identify target behaviors

- **Behavior Intervention Plan (BIP)** is developed
Protections for Special Ed Students

• Removal from school or AEO for **more than 10 days** considered change in placement
  (days can be consecutive OR pattern of removal

• Anticipated removal triggers PPT to perform **Manifestation Determination Review**

• Also triggers **Stay Put** (emergency circumstances)
Special Ed Students Protected from Patterns of Removal

- October 2013
- November 2013

- Incident
- Out of School Suspension
- Inside School Suspension
Manifestation Determination Review

• Must occur within 10 days of change of placement

• PPT review
  1. conduct was manifestation of child’s disability?
  2. failure to implement the IEP?

• If yes to 1. or 2. above, child must be returned to school

• Team must update BIP or FBA to prevent conduct from re-occurring
Manifestation Determination Review

- Child may be removed from school only if entire team, including parent, agrees that action was NOT a manifestation of the child’s disability

- Parent can pursue due process over disagreement
  - Triggers Stay Put

- Child benefits from Stay Put and can remain in school (unless parties agree to alternative setting)
Protections for Students Not Yet Identified for Special Education

May be able to assert protections when school considered to have knowledge of disability:

1. Parent previously expressed concern to supervisory personnel that child might need Special Ed

2. Child’s teacher or other school personnel expressed concern to administrative personnel that child might need Special Ed
Emergency Exceptions

Even if behavior is considered manifestation, student can be moved to alternative setting for up to 45 days if:

- Student brought a weapon to school
- Student possessed/distributed illegal/controlled substance
- Student inflicted serious bodily injury upon another person at school
Student Must Receive FAPE

No matter where student attends school, must still receive FAPE

- Alternate setting must meet student’s needs
- Student entitled to education, even if a regular education student in that situation might not be
Revisiting Tyrrell*

Same facts, but special ed student identified as learning disabled. Does not have BIP.

Can he be expelled? Not with good advocacy!

- Pursue Manifestation Determination
- Argue manifestation of emotional disturbance which should have been detected
- Agree to expedited evaluation to look at emotional issues
- Evaluation underscores behavior was a manifestation
- PPT team agrees behavior was a manifestation
- Tyrrell not expelled and new behavior plan developed for his placement
Kendra*

- Not Special Ed
- ADHD but Kendra and mother prefer not to medicate
- Impulsivity gets her in trouble
- Threatened by group of boys
- Brings knife to school to protect herself
- Approached by one of the boys, pulls out knife
- Security guard observes
- Knife confiscated and expulsion pursued

Months before, Kendra’s mom had approached principal about testing to see if Kendra had other learning issues. Principal agreed but never followed up.

**Can Kendra be expelled?**
**It depends on the advocacy she receives!**
Tips for Advocacy

Do

• explore special ed if any history of behavior problems
• ensure FBAs and BIPs are put in place
• fight against any expulsion for off-grounds conduct
• make sure client is represented at expulsion hearing

Don’t

• let pattern of removals occur without MDR
• let client go without any education if possible
• assume that Regular Ed child doesn’t have Special Ed protections