

## Students and School Districts Will Benefit When Expelled Students Receive an Appropriate Education

Connecticut State Board of Education Meeting  
December 6, 2017

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My name is Marisa Halm, and I am attorney with the Center for Children's Advocacy who directs the TeamChild Project in our Hartford office. I am also one of the attorneys representing the plaintiffs in *Alicia B. v. Dannel Malloy, et. al*, a lawsuit which concerns the quality of education received by Connecticut's expelled students who are Black. I am here today to share with you the experience that my clients, overwhelmingly youth of color, have had with expulsion, and to urge you to ensure that appropriate standards for the education received by these youth are put in place as soon as possible in accordance with Public Act 17-220.<sup>1</sup>

The Center for Children's Advocacy is a non-profit organization that provides holistic legal services for Connecticut's poorest and most vulnerable children through both individual representation and systemic advocacy. My colleagues and I regularly represent youth whose educational needs are not being met or whose educational rights are being violated.

Over the past five years, I have represented well over a hundred youth, mostly teenagers, concerning their education. A vast number of these youth have either experienced expulsion prior to my involvement or were facing expulsion and seeking my assistance with the expulsion process. Many of these youth have had identified disabilities.<sup>2</sup> However, just as many of these youth have disabilities not yet identified by their schools. This identification would have entitled them to special protections from expulsion. Unfortunately, without access to legal counsel, many youth and their parents are simply not aware of these rights and entitlements.

That said, as an attorney who specializes in this area of law, I play a crucial role for these youth and their families in ensuring their access to education. My involvement can make the difference between my client being expelled or not; between their receiving an alternative education or not; between their staying in school or dropping out; and, ultimately, between their receiving a high school diploma or not.

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<sup>1</sup> Specifically, Sections 2 and 3 of Public Act 17-220, *An Act Concerning Education Mandate Relief* change the law concerning the education provided to expelled students.

<sup>2</sup> Youth who are entitled to receive special education services based on their disability are also entitled to a host of protections from discipline under the IDEA. See 20 U.S.C. 1412 et. seq. These youth have the benefit of a free and appropriate education (FAPE), and a Planning and Placement Team (PPT) to determine whether or not their behavior was related to their disability before they can be expelled. If they are ultimately expelled, the PPT, not expulsion laws, determine how their education will be provided during their expulsion period.

**Unfortunately, the face of expulsion in Connecticut is generally a youth of color.<sup>3</sup>**  
**Snapshots of Actual Connecticut Youth who Have Faced or Experienced Expulsion**

The youth that I represent are typical teenagers who happen to come from urban, low-income settings. They are all youth of color. They attend school in the Educational Reform Alliance or Alliance districts, the lowest-performing school districts in the state. They are expelled due to what most adolescent professionals would consider typical adolescent behavior.<sup>4</sup> They are also sometimes expelled as the result of police involvement in family crises often prompted by lack of other familial resources.

The following are descriptions of actual youth I have represented who were pending expulsion or already expelled when I began representation.<sup>5</sup>

- **Maria, a 12-year-old Hispanic middle school student:**

Maria was recommended for expulsion for “disrespect” and “assault” after an exchange with a substitute teacher who called her out in front of the class and embarrassed her for speaking Spanish, her native language, something that was permitted by her regular teacher. Her “assault” involved pushing papers the substitute was waving in front of her face away. (Maria’s recommendation for expulsion was reversed because of our involvement.)

- **Carrie, a 16-year-old Hispanic student with an identified disability:**

Carrie, a special education student with a learning disability, experiencing homelessness and family unrest, was expelled for getting into a fight with another peer who was threatening her boyfriend. The school district’s decision to expel her was not based on the fight only, but on a social media video on Snapchat that was fabricated by other students and shared with the administration. Carrie was expelled for 90 days. (She was able to petition for early readmission successfully with our assistance and gain access to credit recovery options.)

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<sup>3</sup> CT State Dept. of Ed., December 6, 2017, p. 11: for example, in 2016-17, while black male students made up only 13 % of the overall population, they comprise 26% of all expulsions; their female counterparts made up 13 % of the overall population, they comprised over 34% of all expulsions. Similarly, during the 2014-15 school year, while black students comprised only 13% of overall school enrollment, they comprised 31% of all students who were expelled. (Data collected from State Department of Education.) Find similar data and figures in the Alicia B. complaint, pp. 30-32: <http://www.kidscounsel.org/wp-content/uploads/2013/04/Exp-Complaint-12-2015.pdf>

<sup>4</sup> The Connecticut expulsion statute identifies a few discrete offenses that are considered mandatory for the purposes of recommending expulsion; the balance of offenses, including the majority of those discussed in these examples, are considered discretionary offenses for the purposes of expulsion. See Conn. Gen. Stat. § 10-233d. In other words, the school district does not have to proceed to expulsion in these situations but instead uses its discretion to recommend expulsion.

<sup>5</sup> Please note that the first names of these youth have been replaced with pseudonymy

- **Julie, a 17-year-old Black high school junior with a suspected disability:**  
Julie, a regular education student who had experienced great trauma and injury as a child, likely suffering from PTSD as a result, was being regularly threatened and made to feel unsafe by another student at school. The school was aware of the threats but did little to help. She was expelled for 180 days for engaging in a fight with this other girl. She successfully petitioned for early readmission after 90 days.
- **Nick, a 16-year-old Black high school sophomore, honor student and star athlete:**  
Nick, who moved here from a different country, was experiencing cultural differences with a fellow student who was consistently harassing him and encouraging him to get into a fight. The administration sided with the other student and did little to protect Nick. With escalating threats and physical aggression, Nick felt he had no choice but to fight the other student to defend himself, which is what he did. Nick was ultimately expelled for 180 days for fighting verbally and physically with this other student. Nick successfully petitioned for early readmission after 90 days.

**I have always advised my clients who are facing expulsion and do not have the protections of special education laws that the best way I can advocate for them is to try to convince the Board of Education to rescind the recommendation to expel them.<sup>6</sup> This is because if expelled, Connecticut's youth have been guaranteed to be provided an abysmal education. These youth have historically been provided a sub-standard educational experience, consisting of "homework only" or less than 10 hours of tutoring a week, with limited coursework access, no progress monitoring and no oversight. In fact, State data from the 2016-17 school year shows that nearly 70 percent of all expelled students were receiving either no education, homework only or tutoring during the period of their expulsion.<sup>7</sup> This is a dismal reality that the passage of Public Act 17-220 works to correct.**

The good news for expelled students in Connecticut is this - the new law requires that they receive an education in accordance with minimum standards set forth by existing alternative education laws and guidance, or in accordance with new standards promulgated by your Board. **Because of these changes, Connecticut's expelled youth, can stay on track to graduate rather than fall through the cracks.**

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<sup>6</sup>The vast majority of expulsion recommendations result in students actually being expelled, even with legal counsel through an expulsion hearing. This is because the evidentiary bar is extremely low in these hearings, and schools have broad discretion for which they can expel.

## **Expulsion is the Gateway to the Juvenile Justice System**

As you will hear from your colleagues at the State Department of Education later this morning and as the research and literature has long shown, the negative impacts of being expelled are countless.<sup>8</sup> Expulsion from school can lead to stunted academic progress, causes students falling behind their peers, and it leads retention, and ultimately, high school drop-out. If these students are not already involved in the juvenile justice system, their chances of becoming so highly increase upon expulsion.

**However, when students who are expelled receive an appropriate education and engage in real learning, access appropriate social and emotional supports and make academic progress rather than fall behind their peers, they are more likely to return as productive members of their school community.** And they are more likely to receive their diploma. This reality rings true with the clients I have represented. I have encountered too many clients languishing in adult education programs, or struggling with tutoring because they are disenfranchised from school and not receiving the instruction they need to stay on track to graduate. Yet, those who have had the benefit of an alternative education opportunity providing sufficient hours and coursework, instruction by certified teachers, as well as access to social and emotional supports, have in fact, excelled and even been able to pursue early readmission based on their progress and good behavior.<sup>9</sup>

**For the reasons stated above, the lack of education provided to this group of students needs to be addressed; the passage of P.A. 17-220 ensures that will be the case.** Connecticut needs to do better for its expelled students. Our Massachusetts neighbors have severely limited the offenses for which a school can expel a student and now require by law that any expelled student be given the opportunity **to make academic progress.** Students expelled in Massachusetts must also be given a service plan, and a variety of options for alternative learning services tools that they need to help ensure that educational progress.<sup>10</sup>

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<sup>7</sup> CT St. Dept. of Ed., December 6, 2017 presentation, pp. 17-19.

<sup>8</sup> Id, pp. 31-34; Fabelo, Tony, et. al. *Breaking Schools' Rules, A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement*, Council of State Governments Justice Center and Public Policy Research Institute, July 19, 201, pp 54-60.

<sup>9</sup> My clients Julie and Nick, described above, are examples of this. Both of them had the benefit of receiving a full time education through the New Visions program in Hartford and worked hard in the program to petition the superintendent to return early from their expulsion. Both will graduate this year.

<sup>10</sup> Massachusetts General Laws c. 76 § 21.

## **The Good News: Connecticut Has the Resources It Needs to Make Progress**

As the data from the State Department of Education shows, Connecticut has already begun to make progress around expulsions. The total number of expulsions across the state has been reduced over the last several years.<sup>11</sup> With the encouragement of the State and with districts focusing on positive school climate efforts, many schools are now engaging in restorative practices and using progressive alternatives to harsh discipline. Moreover, the Commissioner has made it clear that the Department's Five Year Comprehensive Plan encompasses **all** groups of students.

The State's work around alternative education, the passage of alternative education guidelines and the development of robust alternative education programs, provide a springboard and solid foundation for the education that expelled students are now entitled to receive. In accordance with P.A. 17-220, expelled students may be placed in these existing programs in their communities.<sup>12</sup> Alternatively, students may be placed in a setting that meets the standards forthcoming from your Board. We believe these have been readily developed through the lens of existing alternative education laws and with the buy in and guidance of key existing stakeholders.

The Center for Children's Advocacy urges you not to discount Connecticut's nearly 800 expelled students who are overwhelming youth of color. We urge you to work with school districts to further their reductions in expulsion, employ more alternative discipline and, only as a last resort, turn to expulsion. If expulsion is the option that a district ultimately must take, we would hope that you would urge these districts to use the existing alternative education guidance to the extent feasible while leveraging the resources in their communities to provide this vulnerable group of students with the education that they need while expelled, including academic, behavioral and emotional supports, and not just "homework only."

Thank you for your time and consideration.

Sincerely,

/s/

Marisa Mascolo Halm, Esq.  
Director, TeamChild Juvenile Justice Project

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<sup>11</sup> Unfortunately, however, expulsions remain consistently disproportionate as to students of color. See CT State Dept. of Education, December 6, 2017 presentation, p.11. See data and figures in the Alicia B. complaint for more historical figures pp. 30-32: <http://www.kidscounsel.org/wp-content/uploads/2013/04/Exp-Complaint-12-2015.pdf>

<sup>12</sup> There were roughly 70-80 programs throughout the state when last inventoried a few years back; we were not able to confirm the number of existing programs today.