



Defending Your Client from Discipline

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Discipline Defined

- **Classroom Removal**
Exclusion for no more than 90 minutes
- **Suspension/Out of School Suspension**
Exclusion from school or school privileges for no more than 10 consecutive days
- **In School Suspension**
Exclusion from regular classroom activity for no more than 10 consecutive days
- **Expulsion**
Exclusion from school for more than 10 days but no more than one calendar year

Discipline Undercover

- Asking student to “go home” and not come back until Monday
- Suggesting to a student who gets in trouble to “consider” a different school setting
- Suggesting that an older student may be “better served” by adult education
- Asking student to withdraw from school in lieu of expulsion

Discipline Facts

Exclusionary discipline predominantly effects youth of color

- **Black and Latino males are disciplined 2 to 3 more times than their white counterparts**
- **Black and Latino females are disciplined 4 to 6 more times than their white counterparts**

Connecticut State Dept. of Education, March 2015

Discipline Outcomes

Students who experience school discipline are more likely to become disengaged in school, drop out and get involved with the juvenile justice system.



Schools granted broad discretion to discipline

Broad authority to impose discipline

- Catchall: “seriously disruptive of educational process”
- Includes conduct off school grounds
 - Online/social media
 - School sponsored activity
 - Behavior that leads to police involvement/arrest

Discretionary Disciplinary Decisions

Practice points

- What does school code of conduct say?
- Did student and parent receive notice of code of conduct?

Conn. Gen. Stat. 10-233e



In School Suspension (ISS)

- Law says ISS is preferred over OSS
- ISS should be used for most first time offenses
- Before ISS, student should be given opportunity to explain (informal hearing)
- If given ISS, student should get missing classwork, homework, exams, assessments

Conn. Gen. Stat. 10-233c

Out of School Suspension (OSS)

- Last resort, after other interventions have been tried
- Before OSS, student should be given opportunity to explain (informal hearing)
- School can consider previous disciplinary history and other interventions
- If given OSS, student must have opportunity to complete work, homework, assessments missed

Conn. Gen. Stat. 10-233c

Expulsion

Mandatory

- Possession of deadly weapon on school grounds or at school sponsored activity
- Possession of firearm on or off school grounds
- Sale, distribution, intent to sell controlled substance on or off school grounds

Discretionary

- Seriously disruptive of educational process
- Threatening violence to persons or property
- Fighting, threats, harassing statements
- Lower level school policy violations

Conn. Gen. Stat. 10-233d

Mandatory Expulsion

- Expulsion proceedings **must** be held if there is **reason to believe** student committed the mandatory offense
- Arrest is sufficient reason to believe
- If student is recommended for expulsion because of firearm or deadly weapon, mandatory expulsion is 180 days
- If not, Board may shorten or waive expulsion based upon discretion and student participation in Board-specified program

Discretionary Expulsion

- Shorter expulsion can be considered for non-mandatory weapons offenses
- Information considered in determination includes past discipline history, other information student offers as to character and school participation
- Student required to comply with program or conditions specified by school

Important!

Student should not be expelled for offense already confined for. If board wishes to expel, proceedings must begin before confinement. Conn. Gen. Stat. 10-233d (l)

Arrest

Arrest notification statute requires police to notify school if student is arrested for certain offenses (felony or Class A misdemeanor), even if outside of school

Conn. Gen. Stat. 10-233h



Expulsion Process

Legal right to ...

- Formal hearing (emergency exception)
- 5 days notice of scheduled hearing (effective 8/15/17)
- Seek counsel
- Information about free legal services
- Postpone hearing to obtain counsel (effective 8/15/17)
- Inspect/review relevant materials and records before hearing
- See witness list
- Cross examination
- Present evidence
- Alternative education
- Right to petition for early readmission

Conn. Gen. Stat. 10-233d; 4-176e, 4-177

Expulsion Hearing

- Informal process
- Low evidentiary standards – hearsay permissible
- Board panel or hearing officer
- Two parts – adjudicatory and dispositive, unified or bifurcated
- Right to have hearing recorded (not transcribed)
- No automatic right to appeal (must have constitutional issue)
- Decision may be immediate or issued shortly after

Education for Expelled Students

- **Under 16** must always receive alternative education opportunity (AEO), regardless of offense and number of expulsions
- **16-18 first expulsion:** regardless of offense, must receive alternative education
- **16-18 expelled more than once:** not entitled to alternative ed
- School may choose to offer alternative education to student not entitled
- **Important:** Expulsion statute permits student to petition for early readmission. Also students who have met graduation requirements may be able to graduate during expulsion period (Conn. Gen. Stat. 10-221a (f))

Alternative Education Opportunity (AEO)

- Age 17 or older may be placed in adult education
- All expelled students receiving AEO must have Individualized Learning Plan (IEP) (effective 8/15/17)
- AEO must be provided through existing approved alternative education program in conjunction with 10-76j or in accordance with standards adopted by State Board of Education

Case Discussion

Tim

- 17 years old
- Arrested in community for gun possession
- School proceeding to expulsion
- Case pending in juvenile court
- Expelled once before for fighting

Strategy for expulsion hearing?

If Tim is expelled, is he entitled to education?



Protections for Special Education Students

If student has disability that contributes to behavioral problems in school, entitled to protections from school discipline

- IEP must address the behavior
- Behavior intervention plan informed by formal Functional Behavioral Assessment

Expelled students must be provided with FAPE

34 CFR 300.530

Protections for Special Education Students

- Removal for 10+ days triggers Manifestation Determination Review
- Removals can be consecutive or pattern
- Student cannot be recommended for expulsion (emergency exception and firearm exception)



Protections for Special Education Students

Manifestation Determination Review

- Was conduct a manifestation of child's disability or failure of school to fulfill obligations under IEP?
- If yes, student must be returned to school

Note:

If disagreement between school and parent, school cannot remove student. Due Process hearing can be filed to invoke stay put.

Emergency Exceptions

Even if behavior is considered a manifestation, student can be removed for up to 45 days if:

- Student brought weapon to school
- Student possessed/distributed illegal controlled substance
- Student inflicted serious bodily injury on another at school

Remember:

Even if student is removed, they must be provided an education that ensures FAPE.

Protections for Students Not Yet Identified

For student not yet identified for Special Ed, protections available if certain criteria are met:

- Parent previously expressed concern in writing to supervisory personnel or teacher that student might need special education services
- Parent requested his/her child be evaluated OR
- Teacher or other school personnel expressed concern to administration that child might need special education or related evaluation

34 CFR 300.534

Expelled Special Ed Students and FAPE

- Expelled special education student entitled to education regardless of age or offense
- Unlike expelled general education students, special ed decision must be made by PPT
- Alternate setting has to meet student's individual needs and fulfill IEP



Case Discussion

James

- 16 years old
- Special ed. student under OHI for anxiety
- Brought knife to school to allegedly defend himself
- Suspended, recommended for expulsion

What is your strategy?

What are possible solutions?



Case Discussion

Carrie

- 17 years old
- Not currently identified for special education
- History of trauma at early age
- Mom requested special education evaluation, school did not follow through
- Long history of getting into fights and “snapping at school”
- May be facing expulsion for a fight at school

Is Carrie entitled to special ed. protections?

Questions?

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