



Educational Advocacy for Older Youth in CT Juvenile Justice and Child Welfare Systems

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Special Education and the Law

- Individuals with Disabilities Education Improvement Act of 2004 (IDEA)
- Section 504 of the Rehabilitation Act
- Connecticut Statutes and Regulations



Special Education

Includes

- Specialized instruction and related services, individually designed to provide educational benefit to student
- Not limited to students with specific learning disabilities
- Includes students with predominantly emotional or behavioral difficulty
- Includes bright students who require direct instruction in social or coping skills, behavioral regulation, other emotional or behavioral intervention

IDEA vs. 504

Adverse Impact vs. Substantial Limitation

IDEA

- Disability must have **adverse impact** on student's education and student must **require specialized instruction**
- More significant protection and more accountability
- Student who qualifies for 504 may qualify for IDEA
- Student eligible for IDEA must receive services under IDEA

IDEA vs. 504

Adverse Impact vs. Substantial Limitation

504

- Student determined to have physical or mental impairment that **substantially limits one or more major life activities** including learning and behavior;
- Record or regarding as having such impairment
- Ensures that qualified child with disability has equal access to education
- Child may receive appropriate accommodations and modifications tailored to individual needs

FAPE and LRE

Students eligible for special education are entitled to free, appropriate, public education (FAPE) in least restrictive environment (LRE)

LRE

- least restrictive for individual student
- not a specific place
- covers spectrum from regular education classroom to residential placement

What Qualifies as Disability?



Disability Means Child Has One or More

- developmental delay (ages 3-5)
- mental retardation
- hearing impairment
- speech or language impairment
- visual impairment
- emotional disturbance
- orthopedic impairment
- autism
- traumatic brain injury
- other health impairment (including ADHD)
- specific learning disability
- deaf-blindness
- multiple disabilities

Disability and Adverse Impact

- Disability must have adverse impact on child's educational performance
- Child must require special education and related services

Emotional Disturbance and Eligibility for Special Ed

Specific diagnosis not required. Student must demonstrate condition exhibiting one or more over long period and to marked degree that adversely affects educational performance:

- Inability to learn not explained by intellectual, sensory, or health factors
- Inability to build or maintain satisfactory interpersonal relationships with peers and teachers
- Inappropriate behavior or feelings under normal circumstances
- General pervasive mood of unhappiness or depression
- Tendency to develop physical symptoms or fears associated with personal or school problems

Emotional Disturbance and Eligibility for Special Ed

- Emotional disturbance includes schizophrenia (does not apply to children who are socially maladjusted, unless determined emotional disturbance under paragraph (c)(4)(i).
- Students with mental health issues or history of trauma may qualify for special education and related services and may require specialized educational placements.
- For students whose mental health and education are intertwined, residential placement may be warranted.

Unaddressed Disabilities = Devastating Consequences

- More likely to drop out of school
- Emotional and behavioral disorders, learning disabilities and adverse childhood are risk factors for children who end up in **juvenile justice system**
- Significant relationship between childhood maltreatment and poor grades, high rates of absenteeism, misbehavior, retention and involvement in special education

Trauma and Special Education

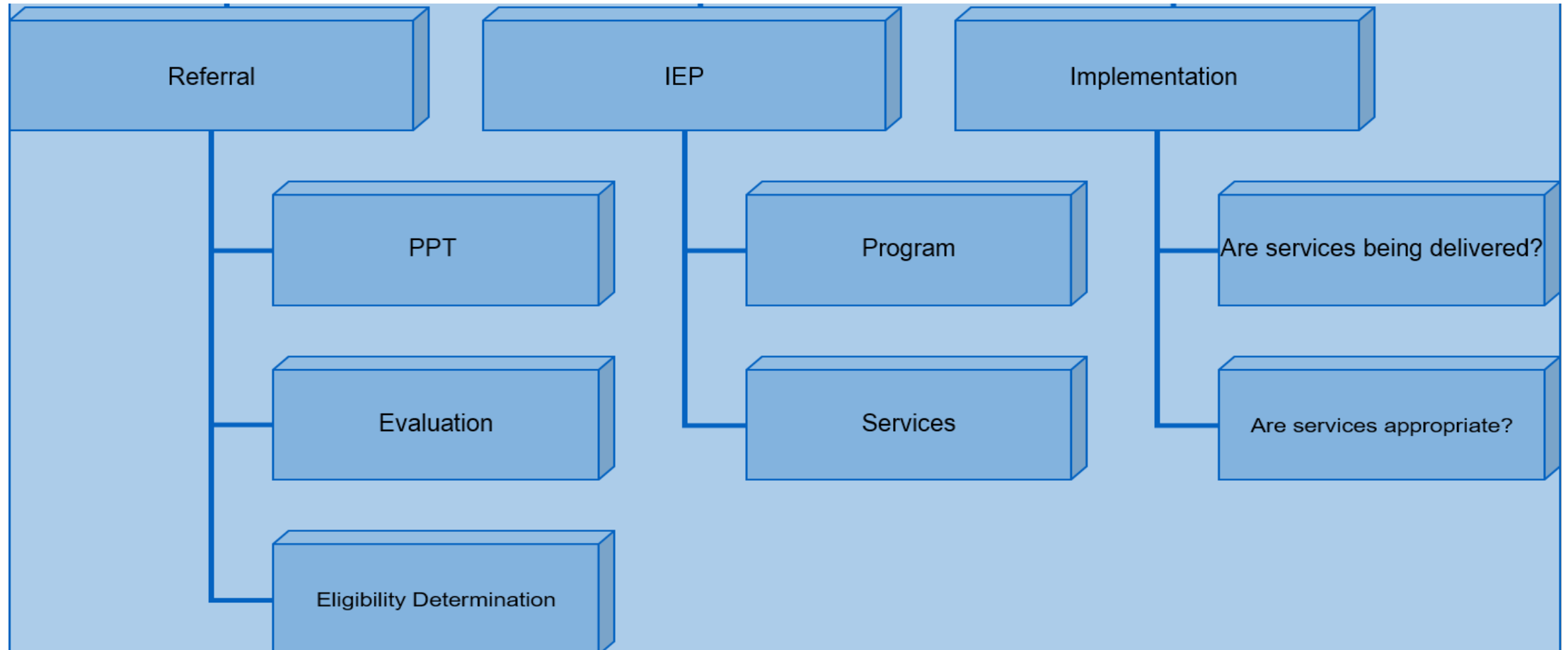
- Many children who are victims of child abuse or experienced significant trauma have special education needs
- Youth in foster care and juvenile justice less likely to receive adequate educational services
- Supportive education services very important for child with disability



Information in Student Records

- School transcripts and credits
- Behavioral and discipline records
- Attendance and truancy
- Poor grades or strong grades but no evidence of skills learned
- Evaluations
- Teacher reports
- CMT/SBAC scores

Special Education Process



Referral Process

- Starts process of special education
- Only requires suspicion of disability
- Must be in writing by parent, guardian, surrogate parent, school, social worker or physician
- If child is 18 or older, referral can be made by child
- Make sure referral is faxed, e-mailed, sent certified mail or delivered in person with signed receipt so there is no question as to when sent

Referral Process

- Prompt referral to planning and placement team (PPT) must be made for all children suspended repeatedly or whose behavior, attendance, truant behavior, or progress in school is considered unsatisfactory or at marginal level of acceptance
- **Child Find:** IDEA places affirmative and ongoing obligation on school districts to identify, locate, and evaluate *all* children with disabilities in need of special education and related services
- School district has 45 *school* days from date of referral to hold PPT, schedule and conduct evaluations, determine eligibility, develop program

PPT Process

Planning and Placement Team

- reviews referrals to special education
- determines if child needs evaluation
- decides which evaluations will be given
- determines whether child is eligible for special education services

PPT Process

Essential Players

- Regular education teacher (if child is or will be in regular education)
- Parent, guardian, or surrogate parent
- Special education teacher
- School administrator
- Someone able to interpret evaluative data, if applicable
- Outside agencies involved

PPT Process: Evaluations

- District must assess ALL suspected areas of disability
- Evaluations must be completed at least every three years
- Can be conducted earlier if further information is needed

PPT Process: Common Evaluations

- Cognitive
- Achievement
- Reading evaluation
- Math evaluation
- Writing evaluation
- Psychiatric or Psychological
- Neuropsychological
- Occupational Therapy
- Sensory
- Physical Therapy
- Speech and language therapy
- Functional behavior assessment
- Assistive Technology Assessment
- Assessment of social skills
- Autism Assessment
- Central Auditory Processing Evaluation

PPT Process: Evaluations

- Child must be evaluated every three years *or* when parent or staff member requests re-evaluation
- Cannot occur more than once per year unless parent and district agree
- Screening of student by teacher or specialist is not considered evaluation for special education

Independent Educational Evaluation

- If parent disagrees with district's evaluation, they can request independent evaluation (IEE) at district expense
- Parent not required to give reason for rejection and has right to use evaluator of choice as long as s/he fits criteria set forth by district
- If school refuses independent evaluation, they must file for due process to defend their evaluation
- District must respond to request within reasonable amount of time
- Decision can be made without PPT

Eligibility

- Evaluations, student performance, teacher reports and other data reviewed to determine if child has disability that adversely impacts education
- Eligibility worksheet should be filled out and eligibility category selected (primary disability that interferes with child's performance)

Eligibility Categories

- Autism
- Deaf-Blindness
- Developmental Delay (ages 3-5 only)
- Emotional disturbance
- Hearing impairment
- Intellectual disability
- Multiple disabilities
- Orthopedic impairment
- Specific learning disabilities
- Specific learning disabilities/dyslexia
- Speech or language impaired
- Traumatic brain injury
- Visual impairment
- Other health impairment
- OHI-ADD/ADHD

After Eligibility: IEP

Individualized Education Plan uniquely tailored to meet child's needs

IEP team must:

- Determine areas of strength and weakness
- Draft goals and objectives to address areas of weakness
- Determine who, what, when, and where for services to be provided
- Determine accommodations and modifications
- Make placement decisions

Parent must receive copy of IEP within 5 school days after PPT meeting held to develop or revise IEP. IEP in effect 15 days after PPT.

Transition Planning

All students with disabilities are entitled to transition planning

- PPT must begin to consider transition needs of student at age 16 or earlier, if deemed appropriate
- Transition planning must be results-oriented process with focus on improving academic and functional achievement to move toward post-secondary education, employment and independent living
- When student ages out of system or graduates, school district must provide summary of performance, including recommendations on how to assist student in meeting post-secondary goals

Transition Planning

All students with disabilities are entitled to transition planning

- Rights under IDEA transfer to student upon turning 18, unless parent obtains guardianship or conservatorship
- If child is vocation-bound, be sure planning starts early. Job inventories and placements should be done by junior year.
- If child is college bound, be sure s/he is aware of requirements (SAT, ACT, application process, financial aid, DCF support). Start early!
- Look into all state agencies that can support child as s/he ages out or transition out of system: BRS, DHMAS, DDS, Social Security, etc.

Transition Planning

Some students entitled to education until age 21

Transition planning can include

- access to college courses
- access to vocational programming

Beware:

Once a student accepts a diploma, all entitlement to education, including special education terminates permanently.

School Discipline



School Discipline Types

- **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

School Discipline: “Off the Record”

- 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

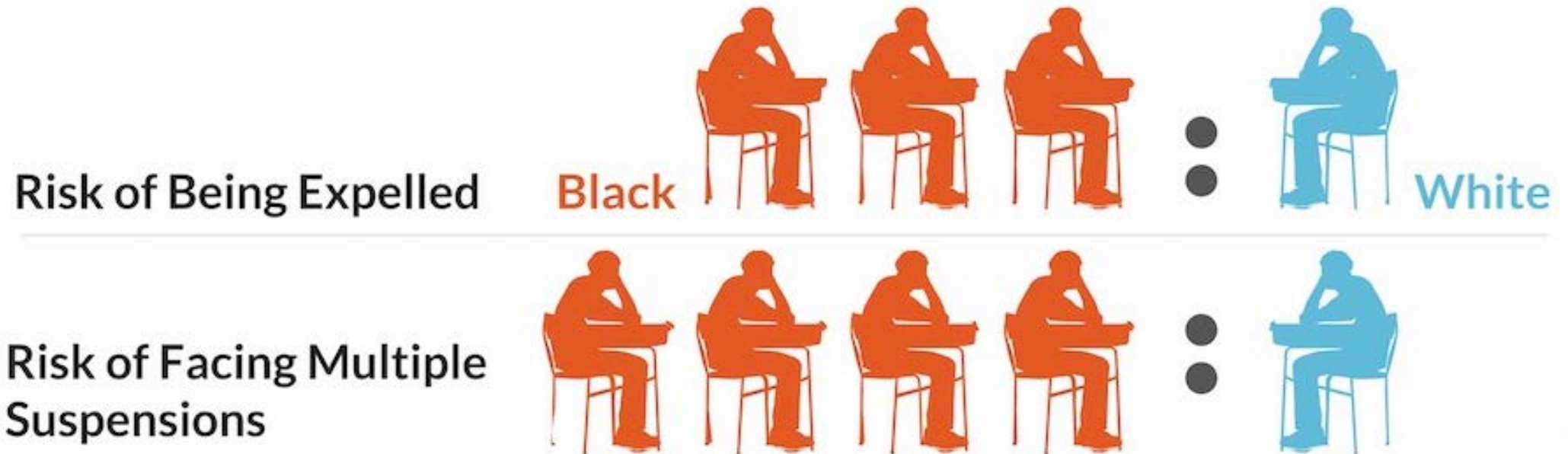
School Discipline: Facts

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

School Discipline: Facts



Source: U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2009-10

School Discipline: Outcomes

Students who experience school discipline more likely to:

- become disengaged in school
- get involved with the juvenile justice system
- drop out



School Discipline

Schools have broad authority to impose discipline

- Includes conduct both in school and off school grounds
- Key criteria: “Serious disruption of educational process”
 - Online/social media behavior
 - Misbehavior at school sponsored activity
 - Behavior that leads to police involvement/arrest at school or in community

Serious Disruption of Educational Process

- Occurred within close proximity of a school
- Other students from school were involved or gang involvement
- Conduct involved violence, threats of violence, or unlawful use of weapon and whether injuries occurred
- Conduct involved use of alcohol

School Board can consider other factors

School Discipline: Student Protections

Unless referred to principal or designee and granted informal hearing, students:

- Cannot be removed more than **6 times** in any school year
- Cannot be removed more than **2 times** in one week

Teacher must send student to designated area and inform principal of reason.

School Discipline: Student Protections

In-School and Out-of-School Suspension

- Informal hearing: student informed of reasons for disciplinary action and given opportunity to explain
- No student can be suspended more than **10 times** or total of **50 days** in one school year, whichever results in fewer days of exclusion, unless granted formal hearing
- Student can complete classwork, including exams, from suspension period

Discretionary Discipline: Code of Conduct

- What does school code of conduct say?
- Does penalty exceed that provided?
- Did student and parent receive notice of code of conduct?

Conn. Gen. Stat. 10-233e



Suspensions

Student may be suspended for campus misconduct or misconduct at a school sponsored activity if conduct:

- violates publicized board policy
- seriously disruptive of educational process
- endangers person or property

Suspensions

Student may be suspended for off-campus misconduct if conduct:

- violates publicized board policy
- seriously disruptive of the educational process

In-School Suspension

Suspensions should be served in school unless administration determines that student poses:

- “Such a danger” to persons or property
- “Such a disruption” that out-of-school suspension is warranted

Expulsion

Expulsion is any exclusion from school privileges for more than 10 days

Student facing expulsion has certain **due process rights**:

- Right to a hearing
- Written notice of the hearing, including time and place, and legal authority for referring the child to expulsion
- Right to be represented by an attorney

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

Expulsion: Mandatory

Expulsion hearing must be held if:

On school grounds

- Student possessed firearm, deadly weapon, dangerous instrument
- Engaged in distribution of narcotics

Off school grounds

- Illegally possessed firearm
- Possessed firearm, deadly weapon, dangerous instrument in commission of crime
- Engaged in distribution of narcotics

Expulsion: Mandatory

Expulsion proceedings must be held if 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 on discretion and student participation in Board-specified program

Expulsion: Discretionary

A school district, in its discretion, may hold an expulsion hearing in the following situations

On school grounds

- Violated publicized Board policy
- Seriously disruptive to educational process
- Endangers persons or property

Off school grounds

- Violates publicized Board policy **and**
- Seriously disruptive of educational process

Discretionary Expulsion

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)

Expulsion Process: Legal Rights

- Formal hearing – 5 days notice of scheduled hearing
- School district must inform parent of ability to seek counsel
- Information about free legal services
- Legal right to postpone hearing to obtain counsel, inspect/review relevant materials and records before hearing
- See witness list
- Cross examination of witnesses
- 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

Expulsion

Even if decision is made to expel student, there are several key points of advocacy:

Length of expulsion can be from 11 days to 180 days

- Board or its hearing officer may consider evidence including history of disciplinary problems.
- For non-weapon or drug distribution offenses, can cite positive behavior or lack of prior discipline history to request shorter period of expulsion

Expulsion

If student is expelled, there are several key points of advocacy:

Right to apply for early readmission

- Important to demand conditions set and included in Individualized Learning Plan (IEP) for student to meet and earn early readmission
- Expungement - record of expulsion expunged if student graduates
- If graduation requirements are met, student may be able to graduate during expulsion period Conn. Gen. Stat. 10-221a (f)

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 AEO
- **16-18 expelled more than once:** not entitled to AEO
- **17 or older:** may be placed in adult education
- School may choose to offer AEO to student not entitled

Alternative Education Opportunity (AEO)

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

AEO Guiding Principles

- address personal, social, emotional, intellectual, work skills, safety, security, academic content (including Connecticut Core Standards)
- full time, comprehensive learning comparable to experience in regular school
- instruction based on curriculum aligned to Connecticut Core Standards unless modified by IEP
- high expectations consistent with LEA goals and state standards, including belief that all students can be successful regardless of discipline history
- research/evidence-based practices for student success, including engagement of parents/guardians, families, community partners, as appropriate

Principles unlikely to be satisfied by assignment to homebound instruction.

AEO and Individualized Learning Plan (ILP)

All expelled students receiving AEO must have ILP that:

- addresses academic and behavioral needs and appropriate academic and behavioral goals and interventions.
- includes core classes and current placement/progress in curriculum so student has opportunity to progress in LEA's academic program and earn graduation credits, if applicable
- includes benchmarks to measure progress towards goals and graduation

AEO and Progress Review

- Monitoring and review includes attendance, work completion, progress toward meeting relevant academic standards for coursework (progressing toward graduation, if applicable)
- Progress must be communicated to parent/guardian or student with same frequency as progress for students in regular school environment
- Provision for timely transfer of student records from student's school to AEO provider and from AEO provider to student's school
- Possibility of early readmission to school from which student was expelled (early readmission criteria)

School Discipline – Students with Disabilities

Before significant incident occurs

- If disability contributes to behavior problems, IEP must include Functional Behavior Assessment (FBA)
- FBA leads to creation of Behavior Intervention Plan (BIP), part of IEP
- BIP defines steps taken when behaviors arise

School Discipline – Students with Disabilities

After significant incident occurs

- Determine whether discipline was change in placement
 - child moved to other educational setting, inside or outside school, **and** removal was for 10 consecutive days; **or**
 - child subjected to series of shorter removals that constitutes **pattern** and amounts to more than 10 days during a school year

If yes, the school must hold Manifestation Determination

School Discipline – Students with Disabilities

Manifestation Determination

- Special PPT must occur within 10 days of change in placement
- PPT determines whether conduct for which discipline imposed is
 - result of student's disability, or
 - direct result of failure to implement IEP

If yes, district must return child to former educational placement

Exception: 45 day interim AEO for behavior involving weapons, drugs, serious bodily injury

If no, district can discipline, but child must still be educated

School Discipline – Students with Disabilities

Manifestation Determination

If disagreement between school and parent over whether there is a manifestation, school cannot remove student if Due Process hearing filed

If removed, student must be provided with education that ensures FAPE

Expelled Special Ed Students and FAPE

- Expelled special education students 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



School Discipline: Students Not Yet Identified

Manifestation Determination

- Child not in special education can access protection if district had knowledge that the child had disability
- District considered to have knowledge if
 - parent expressed concern in writing to administrator or teacher that child was in need of special education and related services; or
 - teacher of child, or other personnel, expressed specific concerns directly to Director of Special Education or other supervisory personnel about demonstrated pattern of behavior

Arrest and Notification

Requires police to notify school if student arrested for certain offenses (felony or Class A misdemeanor), even if outside of school

Conn. Gen. Stat. 10-233h



Bullying

- Repeated use by one or more students of written, oral or electronic communication directed at, or referring to, another student
- A physical act or gesture by one or more students repeatedly directed at another student in the same school district, that:
 - Causes physical or emotional harm to student or damages student's property
 - Places student in reasonable fear of harm to him/herself, or of damage to his/her property
 - Creates hostile environment at school
 - Infringes on rights of student at school
 - Substantially disrupts education process or orderly operation of school

Bullying

- Includes a written, oral or electronic communication or physical act or gesture based on any actual or perceived differentiating characteristic: race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity or expression, socioeconomic status, academic status, physical appearance, or mental, physical, developmental or sensory disability, or by association with an individual or group who has or is perceived to have one or more of such characteristics.

CGS § 10-222d

Cyberbullying

Any act of bullying through the Internet, interactive and digital technologies, cellular mobile telephone or other mobile electronic devices or any electronic communications

CGS § 10-222d(2)

Bullying and Cyberbullying

**If youth is target of bullying or cyberbullying,
without adequate school response:**

- truancy, poor academic performance, or dropout
- client overwhelmed and retaliates in a way that can lead to school discipline or arrest
- trigger special education requirements

**If youth engages in bullying or cyberbullying behavior,
without adequate school response:**

- at risk for significant school disciplinary consequences or arrest

Bullying and Cyberbullying Students with Disabilities

- Under IDEA, bullying of student with disability (whether related to disability or not) that results in student not receiving meaningful educational benefit constitutes denial of FAPE and must be remedied
- States and school districts are responsible under IDEA, 20 USC § 1400, et seq, to ensure that FAPE in least restrictive environment (LRE) is made available to eligible students with disabilities.
- For student to receive FAPE, student's IEP must be reasonably calculated to provide meaningful educational benefit

See US Department of Education, Office of Special Education and Rehabilitative Services, August 20, 2013, Dear Colleague Letter on Bullying of Students with Disabilities

Bullying and Cyberbullying Students with Disabilities

- School should, as part of appropriate response to bullying, convene IEP Team to determine whether, as result of effects of bullying, student's needs have changed such that IEP is no longer designed to provide meaningful educational benefit
- If IEP no longer designed to provide meaningful educational benefit to student, IEP Team must determine to what extent additional or different special education or related services are needed to address student's individual needs; and revise IEP accordingly

See US Department of Education, Office of Special Education and Rehabilitative Services, August 20, 2013, Dear Colleague Letter on Bullying of Students with Disabilities

Bullying and Cyberbullying

CGS §10-222d(b) requires schools to develop and implement safe school climate plan to address bullying and teen dating violence that:

- Prohibits bullying
 - on school grounds, at school-sponsored or school-related activity, function or program whether on or off school grounds, at school bus stop, on school bus, or through use of electronic device or electronic mobile device owned, leased or used by school
 - outside of school setting if bullying creates hostile environment at school for student against whom bullying was directed, or infringes on rights of student against whom bullying was directed at school, or substantially disrupts education process or orderly operation of school

Bullying and Cyberbullying

- Enables students to anonymously report bullying to employees and requires students and parents notified at beginning of each school year of report process
- Enables parents/guardians to file written reports of suspected bullying
- **Requires employees who witness or receive notice of acts of bullying to orally notify safe school climate specialist or other school administrator not later than one school day after, and to file written report not later than two school days after making oral report**
- Requires safe school climate specialist to investigate or supervise investigation of reports and ensure investigation completed promptly after receipt of written report
- Parents of student who committed bullying and parents of victim must receive prompt notice that investigation has commenced

Bullying and Cyberbullying

- Requires safe school climate specialist to review anonymous reports (no disciplinary action taken solely on basis of anonymous report)
- Includes prevention and intervention strategy for school employees to deal with bullying and teen dating violence
- Provides that language concerning bullying be included in student codes of conduct
- Requires school to notify parents of students who commit verified acts of bullying and parents of students against whom acts were directed not later than forty-eight hours after investigation completed
- Requires school to invite parents of student against whom act was directed to meeting to discuss measures taken by school to ensure student's safety, and policies and procedures in place to prevent further bullying

Bullying & Cyberbullying

- Requires school to invite parents of student who commits verified act of bullying to meeting, separate and distinct from meeting with student target of bullying, to discuss specific interventions undertaken by school to prevent further bullying
- Establishes procedure for each school to document and maintain records relating to reports and investigations of bullying and maintain list of verified acts of bullying in school and make list available for public inspection, and annually report number of incidents to CT Dept of Education
- Directs development of case-by-case interventions for addressing repeated incidents of bullying against single individual or recurrently perpetrated bullying incidents by same individual that may include both counseling and discipline
- Prohibits discrimination and retaliation against individual who reports or assists in investigation of act of bullying
- Directs development of student safety support plans for students against whom act of bullying was directed that address safety measures school will take to protect against further bullying

Bullying and Cyberbullying

- Requires principal of school, or designee, to notify police when they believe that acts of bullying constitute criminal conduct
- Requires, at beginning of each school year, school to provide all school employees with written or electronic copy of district's safe school climate plan
- Requires all school employees to annually complete training designed to address school violence prevention, conflict resolution, prevention of and response to youth suicide and identification and prevention of and response to bullying

Credits and Educational Re-Entry

Older students in juvenile justice and child welfare often 2 – 3 grade levels behind on credits needed toward graduation

- Changing placements and educational settings
- Bounce between school settings and records don't always follow
- Feel impossibly behind and discouraged
- Feel unfairly deprived of credit for work done
- More likely to drop out

Essential to ensure that transcripts and education records are appropriately updated when student moves from one placement to another

Credits and Educational Re-Entry

Legal Requirements: Records and Re-Entry

- Prior to child's discharge, local board of education responsible for provision of educational services to children in juvenile detention facility shall conduct assessment of school work completed to determine assignment of academic credit
- Credit assigned shall be credit of local or regional board of education responsible for provision of educational services and shall be accepted in transfer by local or regional board of education for school district in which child continues his/her education after discharge from juvenile detention facility

CT Public Act 18-31

Credits and Educational Re-Entry

Legal Requirements: Records and Re-Entry

Each eligible school district shall designate and maintain at least one employee as liaison to facilitate transition between school district, juvenile and criminal justice systems to ensure

- All persons under age 22 in justice system custody promptly evaluated for eligibility for special education services, pursuant to section 17a-65 and other applicable law
- Students in justice system custody and returning to community are promptly enrolled in school pursuant to this section and section 10-186
- Students in justice system custody and returning to community receive appropriate credit for school work completed in custody, pursuant to this section or section 10-220h
- All relevant school records for students who enter justice system custody and return to community are promptly transferred to appropriate school district or educational service provider, pursuant to section 10-220h

CT Public Act 18-31

Legal Requirements: Records and Re-Entry

- Back up your client!
- Request copies of transcripts, educational records and updated IEPs prior to client's discharge from juvenile justice placement or group home
- Contact school to make sure appropriate information is received and proper credits have been accepted



Center for
Children's Advocacy

Fighting for the legal rights of Connecticut's most vulnerable children

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