

The Essentials of School Expulsion

September 20, 2018 9:00 a.m. – 1:00 p.m.

CBA Law Center New Britain, CT

CT Bar Institute Inc.

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Lawyers' Principles of Professionalism

As a lawyer I must strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, not only will I comply with the letter and spirit of the disciplinary standards applicable to all lawyers, but I will also conduct myself in accordance with the following Principles of Professionalism when dealing with my client, opposing parties, their counsel, the courts and the general public.

Civility and courtesy are the hallmarks of professionalism and should not be equated with weakness;

I will endeavor to be courteous and civil, both in oral and in written communications;

I will not knowingly make statements of fact or of law that are untrue;

I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;

I will refrain from causing unreasonable delays;

I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;

When scheduled hearings or depositions have to be canceled, I will notify opposing counsel, and if appropriate, the court (or other tribunal) as early as possible;

Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;

I will refrain from utilizing litigation or any other course of conduct to harass the opposing party;

I will refrain from engaging in excessive and abusive discovery, and I will comply with all reasonable discovery requests;

In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and refrain from engaging I acts of rudeness or disrespect;

I will not serve motions and pleadings on the other party or counsel at such time or in such manner as will unfairly limit the other party's opportunity to respond;

In business transactions I will not quarrel over matters of form or style, but will concentrate on matters of substance and content;

I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the court, that excessive zeal may be detrimental to my client's interests as well as to the proper functioning of our system of justice;

While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation;

Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

I will withdraw voluntarily claims or defense when it becomes apparent that they do not have merit or are superfluous;

I will not file frivolous motions;

I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;

In civil matters, I will stipulate to facts as to which there is no genuine dispute;

I will endeavor to be punctual in attending court hearings, conferences, meetings and depositions;

I will at all times be candid with the court and its personnel;

I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;

I will endeavor to keep myself current in the areas in which I practice and when necessary, will associate with, or refer my client to, counsel knowledgeable in another field of practice;

I will be mindful of the fact that, as a member of a self-regulating profession, it is incumbent on me to report violations by fellow lawyers as required by the Rules of Professional Conduct;

I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods and content of advertising;

I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance;

I will endeavor to ensure that all persons, regardless of race, age, gender, disability, national origin, religion, sexual orientation, color, or creed receive fair and equal treatment under the law, and will always conduct myself in such a way as to promote equality and justice for all.

It is understood that nothing in these Principles shall be deemed to supersede, supplement or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which lawyer conduct might be judged or become a basis for the imposition of civil liability of any kind.

--Adopted by the Connecticut Bar Association House of Delegates on June 6, 1994

Connecticut Bar Association Essentials of School Expulsion 9:00 a.m. – 1:00 p.m. September 20, 2018

9:00 a.m. – 9:45 a.m.	Overview of School Expulsion Law Speaker: Michelle Laubin
9:45 a.m. – 10:00 a.m.	Break
10:00 a.m. – 11:15 a.m.	Expulsion Data and Guidelines Speakers: Charlene Russell-Tucker, Peter Haberlandt, and Matt VenHorst
11:15 a.m. – 11:30 a.m.	Break
11:30 a.m. – 12:45 p.m.	The Expulsion Hearing Speakers: Erin Shaffer and Amy Dion
12:45 p.m. – 1:00 p.m.	Questions and Answers

Faculty Biographies

Amy Corbett Dion divides her practice between education and employment issues. In the education realm, Amy assists families with students who may be eligible for special education. Her work includes seeking appropriate supports and services and remedies for violations of the law, addressing bullying and discrimination issues, and representing students in expulsion hearings. In her employment practice, Amy represents clients in unemployment hearings, discrimination cases, and wage theft cases. Amy has a B.A. from Boston College and a J.D. from the University of Connecticut School of Law. She has been a member of the bar since 2007.

Peter Haberlandt has served as the Director of Legal Affairs for the Connecticut State Department of Education since 2015. Prior to joining CSDE he practiced primarily in litigation with Cowdery, Ecker & Murphy LLC in Hartford and as an Assistant Attorney General with the Office of the Attorney General for Connecticut. He also served as a law clerk for Judge Jon O. Newman of the U.S. Court of Appeals for the Second Circuit and Judge Eric L. Clay of the U.S. Court of Appeals for the Sixth Circuit. Peter is a graduate of Cornell University and the University of Connecticut School of Law.

Michelle C. Laubin is a senior partner in the Milford office. Her practice focuses on education law, particularly special education law and student matters.

Ms. Laubin has represented school districts in countless student discipline and special education matters, including attending planning and placement team (PPT) meetings, negotiation of settlement and mediation agreements, representation in expulsion and due process hearings, as well as resolution of State Department of Education complaints and federal Office for Civil Rights (OCR) complaints.

In addition, Ms. Laubin is a frequent speaker on education law issues before school districts, the Connecticut Association of Boards of Education (CABE), the Connecticut Council of Administrators of Special Education (ConnCASE), the Connecticut Bar Association, and other state and regional organizations.

Ms. Laubin is a member of the Connecticut Bar Association's Professionalism Section, serving as Secretary and as a member of its Executive Committee. She also is a member of the state bar association's Education Law Section and serves on the section's Executive Committee. She is also a past president of the Connecticut School Attorneys Council.

Ms. Laubin has a Martindale-Hubbell Law Directory AV® Preeminent[™] peer rating, a rating Martindale-Hubbell publishes that is based on peers' evaluation of a lawyer's legal ability and general ethical standards. The basis of this rating is explained at www.Martindale.com/Products and Services/Peer Review Ratings.aspx.

Charlene Russell-Tucker is the Chief Operating Officer for the Connecticut State Department of Education (Department), a role in which she has led priority project management functions to help improve the planning, efficiency, service, and delivery effectiveness of the Department's programs and services. She also serves as the Division Chief for the Department's Office of Student Supports and Organizational Effectiveness. She is a performance-driven and visionary education leader with over 20 years' experience in successfully leveraging the inter-connectedness of the social, emotional, physical and mental health of students and their families as foundations for positive school and life outcomes. She passionately supports family and community

engagement in education and leads school attendance and school discipline initiatives with intensive focus on equity and diversity. She previously served as Associate Commissioner of Education and Bureau Chief within the Department overseeing a portfolio of programs and services that included student health, nutrition and safety, adult education, special education, magnet and charter schools.

Erin Shaffer has been with New Haven Legal Assistance Association Inc. (LAA) since 2004. She currently works in the education unit with students experiencing educational difficulties due to social, emotional, and/or academic concerns. She also represents students at risk of expulsion due to disciplinary action, and students in need of special education and supports. Prior to working at LAA, she worked as a housing attorney at Connecticut Legal Services in the New London office and at the Legal Aid Foundation of Los Angeles in the benefits unit. Erin attended Boston College for her undergraduate degree and got her J.D. at Fordham University School of Law. She's admitted to practice in Connecticut and California and is a member of the New Haven County Bar Association. In her free time, Erin enjoys rollerblading and hiking.

Matthew VenHorst is a staff attorney at Connecticut State Department of Education, a role in which he has served since 2010. Prior to that time, Matt represented boards of education while in private practice at Shipman & Goodwin LLP. Matt received a B.A. in sociology from Middlebury College; an M.Ed. from the Harvard Graduate School of Education; and a J.D., with high honors, from the University of Connecticut School of Law. Matt also served as a law clerk from for Justice Christene Vertefeuille of the Connecticut Supreme Court.

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RELEVANT STATUTES

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REGULATIONS

CONNECTICUT GENERAL STATUTES <u>TITLE 10</u>

CHAPTER 164 EDUCATIONAL OPPORTUNITIES PART V SPECIAL SCHOOLS AND CLASSES

Sec. 10-76a. Definitions.

CHAPTER 168 SCHOOL ATTENDANCE AND EMPLOYMENT OF CHILDREN

Sec. 10-184. Duties of parents. School attendance age requirements.

CHAPTER 170 BOARDS OF EDUCATION

- Sec. 10-220. Duties of boards of education.
- Sec. 10-233a. Definitions.
- Sec. 10-233b. Removal of pupils.
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- Sec. 10-233f. In-school suspension of pupils. Reassignment.
- Sec. 10-233g. Reports of principals to police authority concerning physical assaults upon school employees by students.
- Sec. 10-233h. Arrested students. Reports by police, disclosure, confidentiality. Police testimony at expulsion hearings.
- Sec. 10-233i. Students placed on probation by a court.
- Sec. 10-233j. Student possession and use of telecommunication devices.
- Sec. 10-233k. Notification of school officials of potentially dangerous students. Provision of educational records of children returning to school from detention centers.

§ 10-76a. Definitions.

Connecticut Statutes Title 10. EDUCATION AND CULTURE Chapter 164. EDUCATIONAL OPPORTUNITIES Part V. SPECIAL SCHOOLS AND CLASSES

Current through the 2018 Regular Session

§ 10-76a. Definitions

Whenever used in sections 10-76a to 10-76i, inclusive:

- (1) "Commissioner" means the Commissioner of Education.
- (2) "Child" means any person under twenty-one years of age.
- (3) An "exceptional child" means a child who deviates either intellectually, physically or emotionally so markedly from normally expected growth and development patterns that he or she is or will be unable to progress effectively in a regular school program and needs a special class, special instruction or special services.
- (4) "Special education" means specially designed instruction developed in accordance with the regulations of the commissioner, subject to approval by the State Board of Education offered at no cost to parents or guardians, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings and instruction in physical education and special classes, programs or services, including related services, designed to meet the educational needs of exceptional children.
- (5) "A child requiring special education" means any exceptional child who (A) meets the criteria for eligibility for special education pursuant to the Individuals With Disabilities Education Act, 20 USC 1400, et seq., as amended from time to time, (B) has extraordinary learning ability or outstanding talent in the creative arts, the development of which requires programs or services beyond the level of those ordinarily provided in regular school programs but which may be provided through special education as part of the public school program, or (C) is age three to five, inclusive, and is experiencing developmental delay that causes such child to require special education.
- (6) "Developmental delay" means significant delay in one or more of the following areas:
 - (A) Physical development;
 - (B) communication development;
 - (C) cognitive development;
 - (D) social or emotional development; or
 - (E) adaptive development, as measured by appropriate diagnostic instruments and procedures and demonstrated by scores obtained on an appropriate norm-

referenced standardized diagnostic instrument.

- (7) "Related services" means related services, as defined in the Individuals With Disabilities Education Act, 20 USC 1400 et seq., as amended from time to time.
- (8) "Extraordinary learning ability" and "outstanding creative talent" shall be defined by regulation by the commissioner, subject to the approval of the State Board of Education, after consideration by said commissioner of the opinions of appropriate specialists and of the normal range of ability and rate of progress of children in the Connecticut public schools.

Cite as Conn. Gen. Stat. § 10-76a

Source:

1967, P.A. 627, S. 1; 1969, P.A. 793, S. 1; P.A. 75-567, S. 60, 80; P.A. 77-587, S. 7, 9; 77-614, S. 302, 610; P.A. 78-218, S. 59-61; 78-303, S. 85, 136; P.A. 79-35, S. 1; P.A. 80-136, S. 1, 2; 80-185, S. 1, 2; P.A. 85-613, S. 94, 154; P.A. 91-0277, S. 1, 6; P.A. 92-0262, S. 9, 42; P.A. 96-0146, S. 1, 12; 96-161, S. 8, 13; P.A. 98-0168, S. 1, 26; P.A. 00-0048, S. 2, 12; June 30 Sp. Sess. P.A. 03-0006, S. 2.

Note: 1969 act made technical changes to Subsec. (f); P.A. 75-567 substituted Sec. "10-0076 j" for "10-0076 g", broadening applicability of definitions; P.A. 77-587 changed definitions in Subsec. (f), deleting exclusion of children who require custodial care, who do not have clean bodily habits, responsiveness to directions or means of intelligible communication from definition of "mentally retarded child", redefining "trainable" mentally retarded child by replacing description of such child as one who can walk, has clean bodily habits and is responsive to simple direction with description of child as one who can be expected to function at a level greater than that of a four-year-old and added definition of "severely or profoundly" mentally retarded child; P.A. 77-614 and P.A. 78-303 substituted commissioner of education for secretary of the state board of education, effective January 1, 1979; P.A. 78-218 made technical changes; P.A. 79-35 deleted definitions of "educable", "trainable" and "severely or profoundly" mentally retarded child in Subsec. (f); P.A. 80-136 inserted a new Subsec. (j) defining child with "identifiable learning disability", deleted "learning disabilities" from former Subsec. (j) and redesignated the subsection as Subsec. (k); P.A. 80-185 redefined "special education" to include related services, defined "related services" in new Subsec. (h) and relettered former Subsec. (h) and remaining subsections accordingly; P.A. 85-613 made technical changes, deleting reference to Sec. 10-94a; P.A. 91-0277 redefined "children requiring special education" to include autistic and traumatically brain injured children; P.A. 92-0262 redefined "special education", added counseling services to the definition of "related services" and added definition of "transition services"; P.A. 96-0146 changed the Subdiv. designations from letters to numbers, added a definition of "seriously emotionally disturbed", deleted a definition of "socially and emotionally maladjusted", amended Subdiv. (6) to define "child with mental retardation" based on the federal law and made technical changes, effective July 1, 1996; P.A. 96-0161 amended introductory language re applicability to omit reference to Sec. 10-76j, repealed by the same act, effective July 1, 1996; P.A. 98-0168 added Subdiv. (5)(C) re children age 3 to 5, inclusive, and new Subdiv. (6) defining "developmental delay", renumbering the remaining Subdivs. and redefined "identifiable learning disability" to exclude certain learning problems, effective July 1, 1998; P.A. 00-0048 amended Subdiv. (9) to replace the existing definition of "related services" with the federal definition under the Individuals With Disabilities Education Act, effective July 1, 2000; June 30 Sp. Sess. P.A. 03-0006 amended Subdiv. (5) by redefining "children requiring special education" as "a child requiring special education", making technical and conforming changes re

federal Individuals With Disabilities Education Act, deleted Subdivs. (7) and (8) defining "child with mental retardation" and "child with a physical handicap", renumbered Subdiv. (9) as Subdiv. (7), deleted Subdivs. (10) to (13), inclusive, defining "child with a neurological impairment", "seriously emotionally disturbed", "school age children" and "identifiable learning disability", renumbered Subdiv. (14) as Subdiv. (8) and deleted Subdiv. (15) defining "transition services", effective August 20, 2003.

Case Notes:

Cited. 172 C. 615; 179 C. 694; 228 C. 699; 229 C. 1.

Violates Art. I, Sec. 20 and Art. VIII, Sec. 1 of Connecticut Constitution. 31 CS 379. Cited. 34 CS 257; Id., 277; 35 CS 501; 44 CS 527; 45 CS 57.

Cross References:

See Sec. 10-184a re exemption of local or regional boards of education or State Board of Education from providing special education for children being educated at home or in private school.

Connecticut Statutes

Title 10. EDUCATION AND CULTURE

Chapter 168. SCHOOL ATTENDANCE AND EMPLOYMENT OF CHILDREN

Current through the 2018 Regular Session

§ 10-184. Duties of parents. School attendance age requirements

All parents and those who have the care of children shall bring them up in some lawful and honest employment and instruct them or cause them to be instructed in reading, writing, spelling, English grammar, geography, arithmetic and United States history and in citizenship, including a study of the town, state and federal governments. Subject to the provisions of this section and section 10-15c, each parent or other person having control of a child five years of age and over and under eighteen years of age shall cause such child to attend a public school regularly during the hours and terms the public school in the district in which such child resides is in session, unless such child is a high school graduate or the parent or person having control of such child is able to show that the child is elsewhere receiving equivalent instruction in the studies taught in the public schools. For the school year commencing July 1, 2011, and each school year thereafter, the parent or person having control of a child seventeen years of age may consent, as provided in this section, to such child's withdrawal from school. Such parent or person shall personally appear at the school district office and sign a withdrawal form. Such withdrawal form shall include an attestation from a guidance counselor, school counselor or school administrator of the school that such school district has provided such parent or person with information on the educational options available in the school system and in the community. The parent or person having control of a child five years of age shall have the option of not sending the child to school until the child is six years of age and the parent or person having control of a child six years of age shall have the option of not sending the child to school until the child is seven years of age. The parent or person shall exercise such option by personally appearing at the school district office and signing an option form. The school district shall provide the parent or person with information on the educational opportunities available in the school system.

Cite as Conn. Gen. Stat. § 10-184

Source:

1949 Rev., S. 1445; 1959, P.A. 198, S. 1; P.A. 78-218, S. 116; P.A. 86-333, S. 8, 32; P.A. 98-0243, S. 16, 25; June Sp. Sess. P.A. 98-0001, S. 114, 121; P.A. 00-0157, S. 1, 8; Sept. Sp. Sess. P.A. 09-0006, S. 53.

History. Amended by P.A. 18-0015,S. 4 of the Connecticut Acts of the 2018 Regular Session, eff. 7/1/2018. Amended by P.A. 09-0006, S. 53 of the Sept. 2009 Sp. Sess., eff. 10/5/2009.

Note: 1959 act deleted requirement that private instruction be given during hours and terms of public school sessions; P.A. 78-218 substituted "seven years of age and over" for "over seven"; P.A. 86-333 deleted exception for employed children over 14 years of age; P.A. 98-0243 changed age requirement for school attendance from age 7 to age 5 and added provisions relating to parent option to send children to school at a later age, effective July 1, 1998; June Sp. Sess. P.A. 98-0001 made a technical change, effective July 1, 1998; P.A. 00-0157 changed the mandatory attendance age from 16 to 18 and added provisions for parental consent for the withdrawal of children 16 and 17 years of age, effective July 1, 2001; Sept. Sp. Sess. P.A. 09-0006 added provision changing age at which child may withdraw from school with parental consent from 16 to 17 applicable to school year commencing July 1, 2011, and each school year thereafter, added provision re attestation requirement for withdrawal form and made conforming changes, effective October 5, 2009.

Case Notes:

Words "those who have the care of children" equivalent to parents or guardians. 59 C. 489. Statute to receive a liberal construction. Id., 492. State can compel school attendance but cannot compel public school attendance for those who choose to seek, and can find, equivalent elsewhere. 147 C. 374. Cited. 148 C. 238; 149 C. 720. Education made compulsory because it is so important. 172 C. 615. Cited. 193 C. 93; 218 C. 1; 228 C. 640; 238 C. 1. Cited. 34 CA 567.

Statute widely applied, no denial of equal protection. 29 CS 397. Cited. 36 CS 357.

Cross References:

See Sec. 10-185 re penalty for noncompliance with provisions of this section.

§ 10-220. Duties of boards of education.
Connecticut Statutes
Title 10. EDUCATION AND CULTURE
Chapter 170. BOARDS OF EDUCATION
Current through the 2018 Regular Session
§ 10-220. Duties of boards of education

(a) Each local or regional board of education shall maintain good public elementary and secondary schools, implement the educational interests of the state, as defined in section 10-4a, and provide such other educational activities as in its judgment will best serve the interests of the school district; provided any board of education may secure such opportunities in another school district in accordance with provisions of the general statutes and shall give all the children of the school district, including children receiving alternative education, as defined in section 10-74j, as nearly equal advantages as may be practicable; shall provide an appropriate learning environment for all its students which includes (1) adequate instructional books, supplies, materials, equipment, staffing, facilities and technology, (2) equitable allocation of resources among its schools, (3) proper maintenance of facilities, and (4) a safe school setting; shall, in accordance with the provisions of subsection (f) of this section, maintain records of allegations, investigations and reports that a child has been abused or neglected by a school employee, as defined in section 53a-65, employed by the local or regional board of education; shall have charge of the schools of its respective school district; shall make a continuing study of the need for school facilities and of a long-term school building program and from time to time make recommendations based on such study to the town; shall adopt and implement an indoor air quality program that provides for ongoing maintenance and facility reviews necessary for the maintenance and improvement of the indoor air quality of its facilities; shall adopt and implement a green cleaning program, pursuant to section 10-231g, that provides for the procurement and use of environmentally preferable cleaning products in school buildings and facilities; on and after July 1, 2021, and every five years thereafter, shall report to the Commissioner of Administrative Services on the condition of its facilities and the action taken to implement its long-term school building program, indoor air quality program and green cleaning program, which report the Commissioner of Administrative Services shall use to prepare a report every five years that said commissioner shall submit in accordance with section 11-4a to the joint standing committee of the General Assembly having cognizance of matters relating to education; shall advise the Commissioner of Administrative Services of the relationship between any individual school building project pursuant to chapter 173 and such long-term school building program; shall have the care, maintenance and operation of buildings, lands, apparatus and other property used for school purposes and at all times shall insure all such buildings and all capital equipment contained therein against loss in an amount not less than eighty per cent of replacement cost; shall determine the number, age and qualifications of the pupils to be admitted into each school; shall develop and implement a written plan for minority educator recruitment for purposes of subdivision (3) of section 104a; shall employ and dismiss the teachers of the schools of such district subject to the provisions of sections 10-151 and 10-158a ; shall designate the schools which shall be attended by the various children within the school district; shall make such provisions as will enable each child of school age residing in the district to attend some public day school for the period required by law and provide for the transportation of children wherever transportation is reasonable and desirable, and for such purpose may make contracts covering periods of not more than five years; may provide alternative education, in accordance with the provisions of section 10-74j, or place in another suitable educational program a pupil enrolling in school who is nineteen years of age or older and cannot acquire a sufficient number of credits for graduation by age twenty-one; may arrange with the board of education of an adjacent town for the instruction therein of such children as can attend school in such adjacent town more conveniently; shall cause each child five years of age and over and under eighteen years of age who is not a high school graduate and is living in the school district to attend school in accordance with the provisions of section 10-184, and shall perform all acts required of it by the town or necessary to carry into effect the powers and duties imposed by law.

- (b) The board of education of each local or regional school district shall, with the participation of parents, students, school administrators, teachers, citizens, local elected officials and any other individuals or groups such board shall deem appropriate, prepare a statement of educational goals for such local or regional school district. The statement of goals shall be consistent with state-wide goals pursuant to subsection (c) of section 10-4. Each local or regional board of education shall annually establish student objectives for the school year which relate directly to the statement of educational goals prepared pursuant to this subsection and which identify specific expectations for students in terms of skills, knowledge and competence.
- (C) Annually, each local and regional board of education shall submit to the Commissioner of Education a strategic school profile report for each school and school or program of alternative education, as defined in section 10-74j, under its jurisdiction and for the school district as a whole. The superintendent of each local and regional school district shall present the profile report at the next regularly scheduled public meeting of the board of education after each November first. The profile report shall provide information on measures of (1) student needs, (2) school resources, including technological resources and utilization of such resources and infrastructure, (3) student and school performance, including in-school suspensions, out-of-school suspensions and expulsions, the number of truants, as defined in section 10-198a, and chronically absent children, as defined in section 10-198c, (4) the number of students enrolled in an adult high school credit diploma program, pursuant to section 10-69, operated by a local or regional board of education or a regional educational service center, (5) equitable allocation of resources among its schools, (6) reduction of racial, ethnic and economic isolation, (7) special education, and (8) school-based arrests, as defined in section 10-233n. For purposes of this subsection, measures of special education include (A) special education identification rates by

disability, (B) rates at which special education students are exempted from mastery testing pursuant to section 10-14q, (C) expenditures for special education, including such expenditures as a percentage of total expenditures, (D) achievement data for special education students, (E) rates at which students identified as requiring special education are no longer identified as requiring special education, (F) the availability of supplemental educational services for students lacking basic educational skills, (G) the amount of special education student instructional time with nondisabled peers, (H) the number of students placed out-of-district, and (I) the actions taken by the school district to improve special education programs, as indicated by analyses of the local data provided in subparagraphs (A) to (H), inclusive, of this subdivision. The superintendent shall include in the narrative portion of the report information about parental involvement and any measures the district has taken to improve parental involvement, including, but not limited to, employment of methods to engage parents in the planning and improvement of school programs and methods to increase support to parents working at home with their children on learning activities. For purposes of this subsection, measures of truancy include the type of data that is required to be collected by the Department of Education regarding attendance and unexcused absences in order for the department to comply with federal reporting requirements and the actions taken by the local or regional board of education to reduce truancy in the school district. Such truancy data shall be considered a public record, as defined in section 1-200.

- (d) Prior to January 1, 2008, and every five years thereafter, for every school building that is or has been constructed, extended, renovated or replaced on or after January 1, 2003, a local or regional board of education shall provide for a uniform inspection and evaluation program of the indoor air quality within such buildings, such as the Environmental Protection Agency's Indoor Air Quality Tools for Schools Program. The inspection and evaluation program shall include, but not be limited to, a review, inspection or evaluation of the following:
 - (1) The heating, ventilation and air conditioning systems;
 - (2) radon levels in the air;
 - (3) potential for exposure to microbiological airborne particles, including, but not limited to, fungi, mold and bacteria;
 - (4) chemical compounds of concern to indoor air quality including, but not limited to, volatile organic compounds;
 - (5) the degree of pest infestation, including, but not limited to, insects and rodents;
 - (6) the degree of pesticide usage;
 - (7) the presence of and the plans for removal of any hazardous substances that are contained on the list prepared pursuant to Section 302 of the federal Emergency

Planning and Community Right-to-Know Act, 42 USC 9601 et seq.;

- (8) ventilation systems;
- (9) plumbing, including water distribution systems, drainage systems and fixtures;
- (10) moisture incursion;
- (11) the overall cleanliness of the facilities;
- (12) building structural elements, including, but not limited to, roofing, basements or slabs;
- (13) the use of space, particularly areas that were designed to be unoccupied; and
- (14) the provision of indoor air quality maintenance training for building staff. Local and regional boards of education conducting evaluations pursuant to this subsection shall make available for public inspection the results of the inspection and evaluation at a regularly scheduled board of education meeting and on the board's or each individual school's web site.
- (e) Each local and regional board of education shall establish a school district curriculum committee. The committee shall recommend, develop, review and approve all curriculum for the local or regional school district.
- (f) Each local and regional board of education shall maintain in a central location all records of allegations, investigations and reports that a child has been abused or neglected by a school employee, as defined in section 53a-65, employed by the local or regional board of education, conducted pursuant to sections 17a-101a to 17a-101d, inclusive, and section 17a-103. Such records shall include any reports made to the Department of Children and Families. The Department of Education shall have access to such records.

Cite as Conn. Gen. Stat. § 10-220

Source:

1949 Rev., S. 1501; 1949, 1953, 1955, S. 957d; February, 1965, P.A. 574, S. 11; 1969, P.A. 690, S. 4; P.A. 78-218, S. 143; P.A. 79-128, S. 11, 36; P.A. 80-166, S. 1; P.A. 84-460, S. 3, 16; P.A. 85-377, S. 5, 13; P.A. 86-333, S. 11, 32; P.A. 90-324, S. 4, 13; P.A. 93-0353, S. 28, 31, 52; P.A. 94-0245, S. 9, 46; P.A. 95-0182, S. 6, 11; P.A. 96-0026, S. 2, 4; 96-244, S. 17, 63; 96-270, S. 1, 11; P.A. 97-0290, S. 21, 29; P.A. 98-0168, S. 8, 26; 98-243, S. 19, 25; 98-252, S. 13, 38, 80; June Sp. Sess. P.A. 98-0001, S. 115, 121; P.A. 00-0157, S. 3, 8; P.A. 01-0173, S. 19, 67; P.A. 03-0220, S. 1, 2; P.A. 04-0026, S. 4; P.A. 06-0158, S. 5; 06-167, S. 1; P.A. 08-0153, S. 6; P A. 09-0081, S. 2; 09-0143, S. 1; 09-0220, S. 6; Sept. Sp. Sess. P.A. 09-0006, S. 54; P.A. 10-0071, S. 4; P.A. 11-0085, S. 6; 11-0093, S. 6; 11-0136, S. 10, 17; P.A. 12-0120, S. 4; P.A. 13-0247, S. 200; P.A. 15-0133, S. 3, 4; 15-168, S. 3; 15-225, S. 4. History. Amended by P.A. 18-0034,S. 7 of the Connecticut Acts of the 2018 Regular Session, eff. 7/1/2018. Amended by P.A. 17-0002, S. 84 of the Connecticut Acts of the 2017 Special Session, eff. 10/31/2017. Amended by P.A. 15-0168, S. 3 of the Connecticut Acts of the 2015 Regular Session, eff. 7/1/2015. Amended by P.A. 15-0225, S. 4 of the Connecticut Acts of the 2015 Regular Session, eff. 7/1/2015. Amended by P.A. 15-0133, S. 4 of the Connecticut Acts of the 2015 Regular Session, eff. 7/1/2015. Amended by P.A. 15-0133, S. 3 of the Connecticut Acts of the 2015 Regular Session, eff. 7/1/2015. Amended by P.A. 12-0120, S. 4 of the the 2012 Regular Session, eff. 6/15/2012. Amended by P.A. 11-0136, S. 17 of the the 2011 Regular Session, eff. 7/1/2011. Amended by P.A. 11-0136, S. 10 of the the 2011 Regular Session, eff. 7/1/2011. Amended by P.A. 11-0093, S. 6 of the the 2011 Regular Session, eff. 7/1/2011. Amended by P.A. 11-0085, S. 6 of the the 2011 Regular Session, eff. 7/1/2011. Amended by P.A. 10-0071, S. 4 of the February 2010 Regular Session, eff. 5/18/2010. Amended by P.A. 09-0006, S. 54 of the Sept. 2009 Sp. Sess., eff. 10/5/2009. Amended by P.A. 09-0220, S. 6 of the the 2009 Regular Session, eff. 10/1/2009. Amended by P.A. 09-0143, S. 1 of the the 2009 Regular Session, eff. 7/1/2009. Amended by P.A. 09-0081, S. 2 of the the 2009 Regular Session, eff. 10/1/2009. Note: 1965 act substituted Sec. 10-158a for repealed Sec. 10-158; 1969 act added requirement that boards of education "implement the educational interests of the state as defined in section 10-0004 a"; P.A. 78-218 substituted "school district" for "town" throughout, specified applicability of provisions to local and regional, rather than town, boards and required attendance of children "seven years of age and over and under sixteen" rather than "between the ages of seven and sixteen"; P.A. 79-128 added Subsec. (b) re statement of goals by local and regional boards; P.A. 80-166 amended Subsec. (b) to require first attestation that programs are based on state goals "on September 1, 1982" rather than "in 1981"; P.A. 84-460 amended Subsec. (a) requiring that boards insure all buildings and all capital equipment against loss in an amount not less than 80% of replacement cost; P.A. 85-377 substituted commissioner of education for state board; P.A. 86-333 amended Subsec. (b) to extend from July 1, 1986, to July 1, 1987, the date when boards of education are to begin reviewing and updating the statement of goals; P.A. 90-324 added Subsec. (c) re strategic school profile reports; P.A. 93-0353 provisions requiring local or regional board to submit the statement of goals to the state board of education, state board to review the statement and approve the statement as it pertains to the state-wide goals, local or regional board to review and if necessary update the statement of goals every five years and submit such statement to the state board and state board to review and approve the statement as it pertains to the state-wide goals, and removed obsolete language and added Subsec. (d) concerning a report to the state board of education on educational goals and student objectives and the development of a comprehensive professional development plan, effective July 1, 1993; P.A. 94-0245 amended Subsec. (c)(1) to change the dates from May first to November first, effective June 2, 1994; P.A. 95-0182 amended Subsec. (a) to remove a requirement that local and regional boards of education attest to the Commissioner of Education that program offerings and instruction are based on educational goals and student objectives and deleted Subsec. (d) re reports concerning the statement of educational goals and student objectives and the development and implementation of professional development plans, effective June 28, 1995; P.A. 96-0026 amended Subsec. (a) to authorize placement of certain older pupils in alternative school programs or other suitable educational programs, effective July 1, 1996; P.A. 96-0244 amended Subsec. (c) to delete obsolete language of Subdiv. (2), deleted Subdiv. (1) designation and replaced Subparas. with Subdivs., effective July 1, 1996; P.A. 96-0270 amended Subsec. (a) to add the requirement to advise the Commissioner of Education of the relationship between any individual school building project and the long-term school building program, effective July 1, 1996; P.A. 97-0290 amended Subsec. (a) to add provisions re an appropriate learning environment, report on the condition of facilities and action taken to implement the long-term building

program and the annual report by the commissioner to the General Assembly, and added Subsec, (c)(4) and (5) re equitable allocation of resources and re reduction of racial, ethnic and economic isolation, effective July 1, 1997; P.A. 98-0168 amended Subsec. (c) to add provisions re special education, effective July 1, 1998; P.A. 98-0243 amended Subsec. (a) to lower the age requirement for school attendance from 7 to 5, effective July 1, 1998; P.A. 98-0252 amended Subsec. (a) to add requirement for a written plan for minority staff recruitment and to make a technical change and amended Subsec. (c) to remove November date for report and in Subdiv. (2) specified technological resources and utilization of such resources and infrastructure, effective July 1, 1998; June Sp. Sess. P.A. 98-0001 made a technical change in Subsec. (a), effective July 1, 1998; P.A. 00-0157 amended Subsec. (a) to change the reference to the school attendance age from "sixteen years of age" to "eighteen years of age who is not a high school graduate", effective July 1, 2001; P.A. 01-0173 amended Subsec. (a) to make a technical change for the purposes of gender neutrality, effective July 1, 2001; P.A. 03-0220 amended Subsec. (a) by adding provisions re maintenance of facilities and indoor air quality and making technical changes and added Subsec. (d) re indoor air quality inspection and evaluation program, effective July 1, 2003; P.A. 04-0026 made a technical change in Subsec. (d)(5), effective April 28, 2004; P.A. 06-0158 amended Subsec. (a) by changing annual reporting on facility conditions to biennial reporting, effective July 1, 2006; P.A. 06-0167 amended Subsec. (c) by adding language re parental involvement, effective July 1, 2006; P.A. 08-0153 added Subsec. (e) re establishment of curriculum committee, effective July 1, 2008; P.A. 09-0081 amended Subsec. (a) by adding language re green cleaning program and amended Subsec. (d) by adding language requiring inspection results to be posted on the board's or individual school's web site; P.A. 09-0143 amended Subsec. (c) by adding language re truancy data, effective July 1, 2009; P.A. 09-0220 amended Subsec. (d)(2) by deleting requirement that inspection and evaluation program include evaluation of radon levels in the water; Sept. Sp. Sess. P.A. 09-0006 amended Subsec. (c) by adding new Subdiv. (4) re number of students enrolled in adult high school credit diploma program and redesignating existing Subdivs. (4) to (6) as Subdivs. (5) to (7), effective October 5, 2009; P.A. 10-0071 made a technical change in Subsec. (a), effective May 18, 2010; P.A. 11-0085 amended Subsec. (b) by replacing "develop" with "annually establish" and adding "for the school year" re student objectives and expectations, effective July 1, 2011; P.A. 11-0093 inserted provision in Subsec. (a) and added Subsec. (f) re maintenance of records of allegations, investigations and reports of child abuse and neglect by a school employee, effective July 1, 2011; P.A. 11-0136 amended Subsec. (a) by replacing references to biennial with references to triennial re report on long-term school building program, indoor air quality program and green cleaning program and amended Subsec. (c) by adding provision re actions taken by board of education to reduce truancy in district, effective July 1, 2011; P.A. 12-0120 amended Subsec. (a) by replacing "Commissioner of Education" with "Commissioner of Construction Services" and making a technical change, effective June 15, 2012; pursuant to P.A. 13-0247, "Commissioner of Construction Services" was changed editorially by the Revisors to "Commissioner of Administrative Services" in Subsec. (a), effective July 1, 2013; P.A. 15-0133 amended Subsec. (a) by adding provisions re alternative education, replacing reference to alternative school program with reference to alternative education and making conforming changes, and amended Subsec. (c) by adding provision re submission of strategic school profile report for each school or program of alternative education, effective July 1, 2015; P.A. 15-0168 amended Subsec. (c) by adding "in-school suspensions, out-of-school suspensions and expulsions" in Subdiv. (3), adding Subdiv. (8) re school-based arrests, replacing "for purposes of chapter 14" with "as defined in section 1-200", and making a technical change, effective July 1, 2015; P.A. 15-0225 amended Subsec. (c)(3) by replacing "truancy" with "the number of truants, as defined in section 10-0198 a, and chronically absent children, as defined in section 10-0198 c", effective July 1, 2015.

Case Notes:

Powers conferred and duties imposed by former statute construed. 65 C. 183. Former statute cited. 77 C. 195. Town may defend action brought against committee for official acts under former statute; duties as to moral fitness of teachers. 79 C. 240. Former statute held not to repeal provision in city charter. 82 C. 124. Control of town over committee under former statute. Id., 566. Former "school committee" was agent of law and not of the town. 99 C. 695. Cited. 129 C. 191; 134 C. 616; 143 C. 488. Actions of board, within confines of its powers, not subject to control of city common council or officers; if land devoted to school purposes, held city could not condemn it for a highway without approval of school committee. 147 C. 478. Section must be read with Sec. 10-186 re furnishing of transportation for school children, and it comprehends not only distance but safety factors. 148 C. 238. Number of teaching positions, need of curriculum coordinator and maintenance of school properties were matters within discretion of school board. 151 C. 1. Cited. 152 C. 148-150. Ability of board to perform its statutory duties not destroyed by requirement of town charter that it select nonprofessional employees under civil service requirements. Id., 568. Cited. 153 C. 283; 162 C. 568. Town boards of education, in matters not involving strictly budgetary concerns, act as agents of the state; under powers to "employ and dismiss" teachers, town boards of education can determine contested cases. 167 C. 368. Town, by referendum, could delegate its power of eminent domain to board of education which had authority to exercise it. 168 C. 135. Cited. 170 C. 38; Id., 318; 174 C. 522; 180 C. 96; 182 C. 93; Id., 253; 187 C. 187; 193 C. 93; 195 C. 24; 205 C. 116; 217 C. 110; 228 C. 640; Id., 699; 237 C. 169; 238 C. 1.

Cited. 6 CA 212; 44 CA 179. There is no statutorily mandated exception to residency requirement for displacement due to natural disaster, however board has discretion to interpret this section and Sec. 10-186 in such manner. 138 CA 677.

Elements justifying indemnification of a board member. 9 CS 442. Cited. 15 CS 370. Boards of education may discontinue or unite schools; history of section reviewed. 16 CS 339. Board as agent of the state. 19 CS 158. Boards of education may accord problem of racial imbalance relevance in making decisions. 26 CS 124. Cited. 27 CS 339. Extension of a "project concern" contract made by board of education of Milford with board of New Haven is an administrative decision to be made by board as agency of the state under its authority set out in Secs. 10-0220 to 10-0239 and board of aldermen was enjoined from holding an advisory referendum of voters as this would be an unlawful expenditure of city funds. 28 CS 207. School boards are agents of the state, not subject to recall under a municipal charter. 29 CS 201. Cited. 30 CS 63. The Connecticut education system violates Art. I, Sec. 20 and Art. VIII, Sec. 1 of the Connecticut Constitution. 31 CS 379. Relationship between boards of education and municipal budget authorities; extent of municipal obligation to finance education. 32 CS 132. Cited. 34 CS 115; 35 CS 55; 36 CS 293. Local board of education is not acting as agent of the state and not entitled to sovereign immunity when acting to recover damages arising from construction of school building. 40 CS 141. Cited. 44 CS 527.

Subsec. (a):

Town charter that allows for separate referenda for town's operating budget and education budget and that allows voters to reject the budgets three times does not rise to the level of a veto and does not violate state statute and policy concerning education. 268 C. 295.

Context of community orientation of family discussed in determining place of residence for purposes of school attendance. 34 CA 567.

Cross References:

See Sec. 10-4b re complaint procedure where failure or inability of board of education to implement educational interests of state is alleged.

§ 10-233a. Definitions.

Connecticut Statutes Title 10. EDUCATION AND CULTURE

Chapter 170. BOARDS OF EDUCATION

Current through the 2018 Regular Session

§ 10-233a. Definitions

Whenever used in sections 10-233a to 10-233g, inclusive:

- (a) "Exclusion" means any denial of public school privileges to a pupil for disciplinary purposes.
- (b) "Removal" means an exclusion from a classroom for all or part of a single class period, provided such exclusion shall not extend beyond ninety minutes.
- (c) "In-school suspension" means an exclusion from regular classroom activity for no more than ten consecutive school days, but not exclusion from school, provided such exclusion shall not extend beyond the end of the school year in which such in-school suspension was imposed.
- (d) "Suspension" means an exclusion from school privileges or from transportation services only for no more than ten consecutive school days, provided such exclusion shall not extend beyond the end of the school year in which such suspension was imposed.
- (e) "Expulsion" means an exclusion from school privileges for more than ten consecutive school days and shall be deemed to include, but not be limited to, exclusion from the school to which such pupil was assigned at the time such disciplinary action was taken, provided such exclusion shall not extend beyond a period of one calendar year.
- (f) "Emergency" means a situation under which the continued presence of the pupil in school poses such a danger to persons or property or such a disruption of the educational process that a hearing may be delayed until a time as soon after the exclusion of such pupil as possible.
- (g) "School" means any school under the direction of a local or regional board of education or any school for which one or more such boards of education pays eighty per cent or more of the tuition costs for students enrolled in such school.
- (h) "School-sponsored activity" means any activity sponsored, recognized or authorized by a board of education and includes activities conducted on or off school property.

Cite as Conn. Gen. Stat. § 10-233a Source:

P.A. 75-609, S. 1; P.A. 78-218, S. 162; P.A. 79-136, S. 1, 2; 79-236, S. 1; P.A. 80-483, S. 42, 186; P.A. 83-119, S. 1, 8; P.A. 86-398, S. 1; P.A. 95-0304, S. 4, 9; P.A. 07-0066, S. 1; P.A. 08-0160, S. 1.

Note: P.A. 78-218 specified local or regional boards in Subsec. (f) and replaced "school boards" with "boards of education"; P.A. 79-136 redefined "expulsion" to replace requirement that exclusion from school not extend beyond

school year in which imposed with provision that exclusion may carry over but may not be for more than 180 consecutive school days; P.A. 79-236 inserted definition of "in-school suspension" as Subsec. (c) and relettered remaining Subsecs. accordingly; P.A. 80-483 extended applicability of definitions by substituting " 10-0233 g" for " 10-0233 e"; P.A. 83-119 redefined "suspension" to include exclusion from transportation services only; P.A. 86-398 added Subdiv. (h) defining "school-sponsored activity"; P.A. 95-0304 amended Subsec. (e) to base time limitation on expulsions on calendar year rather than school year, effective July 1, 1995; P.A. 07-0066 amended Subdiv. (c) defining "in-school suspension" to increase maximum consecutive days from 5 to 10, effective July 1, 2008; P.A. 08-0160 changed effective date of P.A. 07-0066, S. 1, from July 1, 2008, to July 1, 2009, effective June 12, 2008. **Case Notes:**

Cited. 193 C. 93.

§ 10-233b. Removal of pupils from class.

Connecticut Statutes Title 10. EDUCATION AND CULTURE Chapter 170. BOARDS OF EDUCATION Current through the 2018 Regular Session § 10-233b. Removal of pupils from class

- (a) Any local or regional board of education may authorize teachers in its employ to remove a pupil from class when such pupil deliberately causes a serious disruption of the educational process within the classroom, provided no pupil shall be removed from class more than six times in any school year nor more than twice in one week unless such pupil is referred to the building principal or such principal's designee and granted an informal hearing in accordance with the provisions of section 10-233c.
- (b) Whenever any teacher removes a pupil from the classroom, such teacher shall send such pupil to a designated area and shall immediately inform the building principal or such principal's designee as to the name of the pupil against whom such disciplinary action was taken and the reason therefor.

Cite as Conn. Gen. Stat. § 10-233b

Source:

P.A. 75-609, S. 2; P.A. 78-218, S. 163; P.A. 84-255, S. 11, 21.

Note: P.A. 78-218 substituted "local" for "town" boards of education, deleted references to school boards and school districts and replaced masculine personal pronouns with appropriate nouns; P.A. 84-255 amended Subsec. (a) to clarify that removal of a pupil from the classroom may only occur six times per "school" year.

Case Notes:

Cited. 193 C. 93.

- (a) Any local or regional board of education may authorize the administration of the schools under its direction to suspend from school privileges a pupil whose conduct on school grounds or at a school sponsored activity is violative of a publicized policy of such board or is seriously disruptive of the educational process or endangers persons or property or whose conduct off school grounds is violative of such policy and is seriously disruptive of the educational process. In making a determination as to whether conduct is seriously disruptive of the educational process, the administration may consider, but such consideration shall not be limited to:
 - (1) Whether the incident occurred within close proximity of a school;
 - (2) whether other students from the school were involved or whether there was any gang involvement;
 - (3) whether the conduct involved violence, threats of violence or the unlawful use of a weapon, as defined in section 29-38, and whether any injuries occurred; and
 - (4) whether the conduct involved the use of alcohol. Any such board may authorize the administration to suspend transportation services for a pupil whose conduct while awaiting or receiving transportation to and from school endangers persons or property or is violative of a publicized policy of such board. Unless an emergency exists, no pupil shall be suspended without an informal hearing by the administration, at which such pupil shall be informed of the reasons for the disciplinary action and given an opportunity to explain the situation, provided nothing herein shall be construed to prevent a more formal hearing from being held if the circumstances surrounding the incident so require, and further provided no pupil shall be suspended more than ten times or a total of fifty days in one school year, whichever results in fewer days of exclusion, unless such pupil is granted a formal hearing pursuant to sections 4-176e to 4-180a, inclusive, and section 4-181a. If an emergency situation exists, such hearing shall be held as soon after the suspension as possible.
- (b) In determining the length of a suspension period, the administration may receive and consider evidence of past disciplinary problems which have led to removal from a classroom, suspension or expulsion of such pupil.
- (c) Whenever any administration suspends a pupil, such administration shall not later than twenty-four hours after the suspension notify the superintendent or such superintendent's

designee as to the name of the pupil against whom such disciplinary action was taken and the reason therefor.

- (d) Any pupil who is suspended shall be given an opportunity to complete any classwork including, but not limited to, examinations which such pupil missed during the period of suspension.
- (e) For any pupil who is suspended for the first time pursuant to this section and who has never been expelled pursuant to section 10-233d, the administration may shorten the length of or waive the suspension period if the pupil successfully completes an administration-specified program and meets any other conditions required by the administration. Such administration-specified program shall not require the pupil or the parent or guardian of the pupil to pay for participation in the program.
- (f) Whenever a pupil is suspended pursuant to the provisions of this section, notice of the suspension and the conduct for which the pupil was suspended shall be included on the pupil's cumulative educational record. Such notice shall be expunged from the cumulative educational record by the local or regional board of education if a pupil graduates from high school, or in the case of a suspension of a pupil for which the length of the suspension period is shortened or the suspension period is waived pursuant to subsection (e) of this section, such notice shall be expunged from the cumulative educational record by the local or regional board of education (1) if the pupil graduates from high school, or (2) if the administration so chooses, at the time the pupil completes the administration such notice shall be explicitly the administration pursuant to subsection (e), whichever is earlier.
- (g) On and after July 1, 2015, all suspensions pursuant to this section shall be in-school suspensions, except a local or regional board of education may authorize the administration of schools under its direction to impose an out-of-school suspension on any pupil in (1) grades three to twelve, inclusive, if, during the hearing held pursuant to subsection (a) of this section, (A) the administration determines that the pupil being suspended poses such a danger to persons or property or such a disruption of the educational process that the pupil shall be excluded from school during the period of suspension, or (B) the administration determines that an out-of-school suspension is appropriate for such pupil based on evidence of (i) previous disciplinary problems that have led to suspensions or expulsion of such pupil, and (ii) efforts by the administration to address such disciplinary problems through means other than out-of-school suspension or expulsion, including positive behavioral support strategies, or (2) grades preschool to two, inclusive, if during the hearing held pursuant to subsection (a) of this section, the administration determines that an out-of-school suspension is appropriate for such pupil based on evidence that such pupil's conduct on school grounds is of a violent or sexual nature that endangers persons. An in-school suspension may be served in the school that the pupil attends, or in any school building under the jurisdiction of the local or regional board of education, as determined by such board. Nothing in this section shall limit a Page 26 of 405

person's duty as a mandated reporter pursuant to section 17-101a to report suspected child abuse or neglect.

Cite as Conn. Gen. Stat. § 10-233c

Source:

P.A. 75-609, S. 3; P.A. 78-218, S. 164; P.A. 79-115, S. 1, 3; P.A. 83-119, S. 2, 8; P.A. 84-546, S. 24, 173; P.A. 88-317, S. 56, 107; P.A. 94-0221, S. 3; P.A. 96-0244, S. 18, 63; P.A. 97-0247, S. 16, 27; P.A. 98-0139, S. 1, 3; P.A. 07-0066, S. 2; 07-122, S. 1; P.A. 08-0160, S. 2; Sept. Sp. Sess. P.A. 09-0006, S. 56; P.A. 10-0111, S. 20; P.A. 15-0096, S. 1, 2.

History. Amended by P.A. 15-0096, S. 2 of the Connecticut Acts of the 2015 Regular Session, eff. 7/1/2015. Amended by P.A. 15-0096, S. 1 of the Connecticut Acts of the 2015 Regular Session, eff. 7/1/2015.

Amended by P.A. 10-0111, S. 20 of the February 2010 Regular Session, eff. 5/26/2010.

Amended by P.A. 09-0006, S. 56 of the Sept. 2009 Sp. Sess., eff. 10/5/2009.

Note: P.A. 78-218 specified local boards of education rather than town boards, deleted reference to school districts and substituted "such principal's" for "his" in Subsec. (a); P.A. 79-115 inserted new Subsec. (b) re consideration of past disciplinary problems in determining length of suspension and relettered former Subsecs. (b) and (c) as (c) and (d); P.A. 83-119 authorized boards of education to suspend transportation services from any pupil whose conduct while waiting for or receiving transportation endangers person or property or violates published policy of the board, and changed references from "building principal" or his designee to "administration"; P.A. 84-546 made technical changes in Subsec. (a); P.A. 88-317 amended reference to Secs. 4-177 to 4-180 in Subsec. (a) to include new sections added to Ch. 54, effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date; P.A. 94-0221 added Subsec. (e) re inclusion of notice of suspension in the cumulative educational record; P.A. 96-0244 amended Subsec. (a) to add provisions relating to where the conduct took place and establishing distinct criteria for suspension for conduct on school grounds or at a school sponsored activity and off school grounds, effective July 1, 1996; P.A. 97-0247 amended Subsec. (e) to eliminate a requirement to expunge the notice if a pupil is not expelled or suspended again during the two-year period commencing on the date of his return to school from the suspension, effective July 1, 1997; P.A. 98-0139 amended Subsec. (a) to add criteria for consideration in determining whether conduct is seriously disruptive of the educational process, effective June 4, 1998; P.A. 07-0066 added new subsection, designated as Subsec. (g), re requirement that suspensions be in-school, effective July 1, 2008, P.A. 07-122 made technical changes in Subsec. (c), added new Subsec. (e) re program for first time suspensions, redesignated existing Subsec. (e) as Subsec. (f) and added provision therein re shortened or waived suspension period, effective July 1, 2007; P.A. 08-0160 amended Subsec. (g) to apply provisions to suspensions occurring on and after July 1, 2009, and to specify in-school suspensions may be served in any school building under board's jurisdiction, effective July 1, 2008; Sept. Sp. Sess. P.A. 09-0006 amended Subsec. (g) to apply provisions to suspensions occurring on and after July 1, 2010, effective October 5, 2009; P.A. 10-0111 amended Subsec. (g) by designating existing provision re determination of danger or disruption as Subdiv. (1) and adding Subdiv. (2) re determination by administration of appropriateness of out-of-school suspension based on certain evidence, effective May 26, 2010; P.A. 15-0096 amended Subsec. (a) by replacing references to "any pupil" with references to "a pupil" and amended Subsec. (g) by applying provisions to suspensions occurring on and after July 1, 2015, adding exception re authorization of out-of-school suspensions, designating existing provision re out-of-school suspensions as Subdiv. (1) and making that provision applicable to pupils in grades 3 to 12, redesignating existing Subdivs. (1) and (2) as Subparas. (A) and (B), redesignating existing Subparas. (A) and (B) as clauses (i) and (ii), adding new Subdiv.

(2) re out-of-school suspensions for pupils in grades preschool to 2, adding provision re duty as mandated reporter,

and making conforming changes, effective July 1, 2015.

Case Notes:

Cited. 193 C. 93; 238 C. 1. Cited. 36 CS 357.

- (a) (1) Any local or regional board of education, at a meeting at which three or more members of such board are present, or the impartial hearing board established pursuant to subsection (b) of this section, may expel, subject to the provisions of this subsection, any pupil in grades three to twelve, inclusive, whose conduct on school grounds or at a school-sponsored activity is violative of a publicized policy of such board or is seriously disruptive of the educational process or endangers persons or property or whose conduct off school grounds is violative of such policy and is seriously disruptive of the educational process, provided a majority of the board members sitting in the expulsion hearing vote to expel and that at least three affirmative votes for expulsion are cast. In making a determination as to whether conduct is seriously disruptive of the educational process, the board of education or impartial hearing board may consider, but such consideration shall not be limited to:
 - (A) Whether the incident occurred within close proximity of a school;
 - (B) whether other students from the school were involved or whether there was any gang involvement;
 - (C) whether the conduct involved violence, threats of violence or the unlawful use of a weapon, as defined in section 29-38, and whether any injuries occurred; and
 - (D) whether the conduct involved the use of alcohol.
 - (2) Expulsion proceedings pursuant to this section, except as provided in subsection (i) of this section, shall be required for any pupil in grades kindergarten to twelve, inclusive, whenever there is reason to believe that any pupil (A) on school grounds or at a school-sponsored activity, was in possession of a firearm, as defined in 18 USC 921, as amended from time to time, or deadly weapon, dangerous instrument or martial arts weapon, as defined in section 53a-3, (B) off school grounds, did possess such a firearm in violation of section 29-35 or did possess and use such a firearm, instrument or weapon in the commission of a crime under chapter 952, or (C) on or off school grounds, offered for sale or distribution a controlled substance, as defined in subdivision (9) of section 21a-240, whose manufacture, distribution, sale, prescription, dispensing, transporting or possessing with intent to sell or dispense, offering, or administering is subject to criminal penalties under sections

21a-277 and 21a-278. Such a pupil shall be expelled for one calendar year if the local or regional board of education or impartial hearing board finds that the pupil did so possess or so possess and use, as appropriate, such a firearm, instrument or weapon or did so offer for sale or distribution such a controlled substance, provided the board of education or the hearing board may modify the period of expulsion for a pupil on a case-by-case basis, and as provided for in subdivision (2) of subsection (c) of this section.

- (3) Unless an emergency exists, no pupil shall be expelled without a formal hearing held pursuant to sections 4-176e to 4-180a, inclusive, and section 4-181a, provided whenever such pupil is a minor, the notice required by section 4-177 and section 4-180 shall also be given to the parents or guardian of the pupil at least five business days before such hearing. If an emergency exists, such hearing shall be held as soon after the expulsion as possible. The notice shall include information concerning the parent's or guardian's and the pupil's legal rights and concerning legal services provided free of charge or at a reduced rate that are available locally and how to access such services. An attorney or other advocate may represent any pupil subject to expulsion proceedings. The parent or guardian of the pupil shall have the right to have the expulsion hearing postponed for up to one week to allow time to obtain representation, except that if an emergency exists, such hearing shall be held as soon after the expulsion as possible.
- (b) For purposes of conducting expulsion hearings as required by subsection (a) of this section, any local or regional board of education or any two or more of such boards in cooperation may establish an impartial hearing board of one or more persons. No member of any such board or boards shall be a member of the hearing board. The hearing board shall have the authority to conduct the expulsion hearing and render a final decision in accordance with the provisions of sections 4-176e to 4-180a, inclusive, and section 4-181a.
- (c) (1) In determining the length of an expulsion and the nature of the alternative educational opportunity to be offered under subsection (d) of this section, the local or regional board of education, or the impartial hearing board established pursuant to subsection (b) of this section, may receive and consider evidence of past disciplinary problems that have led to removal from a classroom, suspension or expulsion of such pupil.
 - (2) For any pupil expelled for the first time pursuant to this section and who has never been suspended pursuant to section 10-233c, except for a pupil who has been expelled based on possession of a firearm or deadly weapon as described in subsection (a) of this section, the local or regional board of education may shorten the length of or waive the expulsion period if the pupil successfully completes a board-specified program and meets any other conditions required by the board.

Such board-specified program shall not require the pupil or the parent or guardian of the pupil to pay for participation in the program.

- (d) No local or regional board of education is required to offer an alternative educational opportunity, except in accordance with this section. Any pupil under sixteen years of age who is expelled shall be offered an alternative educational opportunity, which shall be (1) alternative education, as defined by section 10-74j, with an individualized learning plan, if such board provides such alternative education, or (2) in accordance with the standards adopted by the State Board of Education, pursuant to section 10-2330, during the period of expulsion, provided any parent or guardian of such pupil who does not choose to have his or her child enrolled in an alternative educational opportunity shall not be subject to the provisions of section 10-184. Any pupil expelled for the first time who is between the ages of sixteen and eighteen and who wishes to continue his or her education shall be offered such an alternative educational opportunity if he or she complies with conditions established by his or her local or regional board of education. Such alternative educational opportunity may include, but shall not be limited to, the placement of a pupil who is at least seventeen years of age in an adult education program pursuant to section 10-69. Any pupil participating in any such adult education program during a period of expulsion shall not be required to withdraw from school under section 10-184. A local or regional board of education shall count the expulsion of a pupil when he was under sixteen years of age for purposes of determining whether an alternative educational opportunity is required for such pupil when he is between the ages of sixteen and eighteen. A local or regional board of education may offer an alternative educational opportunity to a pupil for whom such alternative educational opportunity is not required pursuant to this section.
- (e) If a pupil is expelled pursuant to this section for possession of a firearm, as defined in 18 USC 921, as amended from time to time, or deadly weapon, dangerous instrument or martial arts weapon, as defined in section 53a-3, the board of education shall report the violation to the local police department or in the case of a student enrolled in a technical education and career school to the state police. If a pupil is expelled pursuant to this section for the sale or distribution of a controlled substance, as defined in subdivision (9) of section 21a-240, whose manufacture, distribution, sale, prescription, dispensing, transporting or possessing with the intent to sell or dispense, offering, or administration is subject to criminal penalties under sections 21a-277 and 21a-278, the board of education shall refer the pupil to an appropriate state or local agency for rehabilitation, intervention or job training, or any combination thereof, and inform the agency of its action.
- (f) Whenever a pupil is expelled pursuant to the provisions of this section, notice of the expulsion and the conduct for which the pupil was expelled shall be included on the pupil's cumulative educational record. Such notice, except for notice of an expulsion of a pupil in grades nine to twelve, inclusive, based on possession of a firearm or deadly weapon as described in subsection (a) of this section, (1) shall be expunged from the cumulative educational record by the local or regional board of education if a pupil graduates from Page 31 of 405

high school, or (2) may be expunged from the cumulative educational record by the local or regional board of education before a pupil graduates from high school if (A) in the case of a pupil for which the length of the expulsion period is shortened or the expulsion period is waived pursuant to subdivision (2) of subsection (c) of this section, such board determines that an expungement is warranted at the time such pupil completes the boardspecified program and meets any other conditions required by such board pursuant to subdivision (2) of subsection (c) of this section, or (B) such pupil has demonstrated to such board that the conduct and behavior of such pupil in the years following such expulsion warrants an expungement. A local or regional board of education, in determining whether to expunge such notice under subparagraph (B) of this subdivision, may receive and consider evidence of any subsequent disciplinary problems that have led to removal from a classroom, suspension or expulsion of such pupil.

- (g) A local or regional board of education may adopt the decision of a pupil expulsion hearing conducted by another school district provided such local or regional board of education or impartial hearing board shall hold a hearing pursuant to the provisions of subsection (a) of this section which shall be limited to a determination of whether the conduct which was the basis for the expulsion would also warrant expulsion under the policies of such board. The pupil shall be excluded from school pending such hearing. The excluded student shall be offered an alternative educational opportunity in accordance with the provisions of subsections (d) and (e) of this section.
- (h) Whenever a pupil against whom an expulsion hearing is pending withdraws from school after notification of such hearing but before the hearing is completed and a decision rendered pursuant to this section, (1) notice of the pending expulsion hearing shall be included on the pupil's cumulative educational record, and (2) the local or regional board of education or impartial hearing board shall complete the expulsion hearing and render a decision. If such pupil enrolls in school in another school district, such pupil shall not be excluded from school in the other district pending completion of the expulsion hearing pursuant to this subsection unless an emergency exists, provided nothing in this subsection shall limit the authority of the local or regional board of education for such district to suspend the pupil or to conduct its own expulsion hearing in accordance with this section.
- (i) Prior to conducting an expulsion hearing for a child requiring special education and related services described in subparagraph (A) of subdivision (5) of section 10-76a, a planning and placement team shall convene to determine whether the misconduct was caused by the child's disability. If it is determined that the misconduct was caused by the child's disability, the child shall not be expelled. The planning and placement team shall reevaluate the child for the purpose of modifying the child's individualized education program to address the misconduct and to ensure the safety of other children and staff in the school. If it is determined that the misconduct was not caused by the child's disability, the child is address the misconduct and to ensure the safety of other child's disability, the child is determined that the misconduct was not caused by the child's disability, the child may be expelled in accordance with the provisions of this section applicable to

children who do not require special education and related services. Notwithstanding the provisions of subsections (d) and (e) of this section, whenever a child requiring such special education and related services is expelled, an alternative educational opportunity, consistent with such child's educational needs shall be provided during the period of expulsion.

- (j) An expelled pupil may apply for early readmission to school. Except as provided in this subsection, such readmission shall be at the discretion of the local or regional board of education. The board of education may delegate authority for readmission decisions to the superintendent of schools for the school district. If the board delegates such authority, readmission shall be at the discretion of the superintendent. Readmission decisions shall not be subject to appeal to Superior Court. The board or superintendent, as appropriate, may condition such readmission on specified criteria.
- (k) Local and regional boards of education shall submit to the Commissioner of Education such information on expulsions for the possession of weapons as required for purposes of the Gun-Free Schools Act of 1994, 20 USC 8921 et seq., as amended from time to time.
- (I) (1) Any student who commits an expellable offense and is subsequently placed in a juvenile detention center or any other residential placement for such offense may be expelled by a local or regional board of education in accordance with the provisions of this section. The period of expulsion shall run concurrently with the period of placement in a juvenile detention center or other residential placement.
 - (2) If a student who committed an expellable offense seeks to return to a school district after participating in a diversionary program or having been placed in a juvenile detention center or any other residential placement and such student has not been expelled by the local or regional board of education for such offense under subdivision (1) of this subsection, the local or regional board of education for the school district to which the student is returning shall allow such student to return and may not expel the student for additional time for such offense.

Cite as Conn. Gen. Stat. § 10-233d Source:

Source:

P.A. 75-609, S. 4; P.A. 78-218, S. 165; P.A. 79-115, S. 2, 3; 79-369, S. 1, 2; P.A. 81-215, S. 1, 3; P.A. 82-118, S. 1, 2; P.A. 83-218, S. 1, 2; 83-587, S. 70, 96; P.A. 84-546, S. 25, 173; P.A. 86-398, S. 2; P.A. 88-317, S. 57, 107; P.A. 92-0037, S. 1, 2; P.A. 93-0035, S. 1 -3; P.A. 94-0221, S. 2; P.A. 95-0304, S. 5, 9; P.A. 96-0146, S. 9, 12; 96-244, S. 19-21, 63; P.A. 98-0139, S. 2, 3; P.A. 00-0157, S. 4, 8; P.A. 07-0122, S. 2; 07-217, S. 45; June Sp. Sess. P.A. 07-0003, S. 49; P.A. 09-0082, S. 1; P.A. 11-0115, S. 3; 11-0126, S. 1; P.A. 12-0116, S. 87; 12-0120, S. 28; P.A. 14-0229, S. 1, 2; P.A. 15-0096, S. 3; P.A. 16-0147, S. 12

History. Amended by P.A. 18-0031,S. 12 of the Connecticut Acts of the 2018 Regular Session, eff. 7/1/2018. Amended by P.A. 17-0237, S. 76 of the Connecticut Acts of the 2017 Regular Session, eff. 8/15/2017. Amended by P.A. 17-0220, S. 2 of the Connecticut Acts of the 2017 Regular Session, eff. 8/15/2017. Amended by P.A. 16-0147, S. 12 of the Connecticut Acts of the 2016 Regular Session, eff. 8/15/2017. Amended by P.A. 17-0237, S. 75 of the Connecticut Acts of the 2017 Regular Session, eff. 7/1/2017. Amended by P.A. 15-0096, S. 3 of the Connecticut Acts of the 2015 Regular Session, eff. 7/1/2015. Amended by P.A. 14-0229, S. 2 of the Connecticut Acts of the 2014 Regular Session, eff. 7/1/2014. Amended by P.A. 14-0229, S. 1 of the Connecticut Acts of the 2014 Regular Session, eff. 7/1/2014. Amended by P.A. 12-0120, S. 28 of the the 2012 Regular Session, eff. 6/15/2012. Amended by P.A. 11-0126, S. 1 of the the 2011 Regular Session, eff. 7/1/2011. Amended by P.A. 11-0115, S. 3 of the the 2011 Regular Session, eff. 7/1/2011. Amended by P.A. 09-0082, S. 1 of the the 2009 Regular Session, eff. 7/1/2009. Note: P.A. 78-218 substituted "local" for "town" boards of education, deleted reference to school districts and included feminine personal pronoun in Subsec. (c); P.A. 79-115 inserted new Subsec. (b) re consideration of past disciplinary problems in determining length of expulsion and alternative educational opportunity to be offered and relettered former Subsecs. (b) and (c) as (c) and (d); P.A. 79-369 required presence of at least three members at meeting for expulsion and required majority vote, with at least three votes in favor of expulsion, for expulsion to be effected in Subsec. (a) and made technical change in Subsec. (b); P.A. 81-215 inserted new Subsec. (b) authorizing boards of education to establish impartial hearing boards for the purpose of conducting expulsion hearings, relettering remaining Subsecs. accordingly and amended Subsec. (e) to limit the mandatory provision of an alternative educational opportunity to pupils under 18 years of age, but specified that age limitation shall not apply to special education pupils; P.A. 82-118 repealed Subsec. (d) which required notification be sent to state board of education of any student against whom disciplinary action was taken, relettering Subsec. (e) accordingly, reduced age limitation on offering of alternative educational opportunities to expelled students from 18 to 16 and made offering of such programs to 16 to 18-year-olds made conditional on students' acceptance of board of education requirements in newly relettered Subsec. (d); P.A. 83-218 added Subsec. (e) limiting requirement that boards of education offer alternative educational opportunities to expelled students between the ages of 16 and 18; P.A. 83-587 made technical change in Subsec. (e); P.A. 84-546 made technical change, substituting references to pupils for references to students in Subsecs. (d) and (e); P.A. 86-398 amended Subsec. (e) by restructuring it and by not requiring boards of education to offer alternative educational opportunities to students expelled for offering controlled substances for sale or distribution and by imposing certain duties on boards of education; P.A. 88-317 amended references to Secs. 4-177 to 4-180 in Subsecs. (a) and (b) to include new sections added to Ch. 54, effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date; P.A. 92-0037 added Subsecs. (f) and (g) concerning the notice on the cumulative educational record and the adoption of the decision of another school district, respectively; P.A. 93-0035 amended Subsec. (g) to limit the scope of the hearing and added Subsec. (h) concerning procedure when pupil who faces expulsion hearing withdraws from school, effective July 1, 1993; P.A. 94-0221 amended Subsec. (a) to provide for mandatory expulsion proceedings whenever there is reason to believe that a pupil was in possession of a weapon on school grounds and to provide for mandatory expulsion if it is determined as a result of the proceedings that the pupil did so possess the weapon and expanded Subsec. (e)(1) to include firearms and deadly weapons, to apply the provisions to schoolsponsored activities and to provide for the referral to a planning and placement team of special education students; P.A. 95-0304 amended Subsec. (a) to provide for expulsions for conduct off school grounds, to change the provisions concerning possession of a weapon and to provide for case by case modification of the period of expulsion, amended Subsec. (d) to limit the requirement for the provision of an alternative educational opportunity for pupils between 16 and 18 years of age to such pupils "expelled for the first time", to add provision on the counting of expulsions prior to

16 years of age, to remove language concerning special education students and language specifying that an alternative educational placement may include placement in a regular classroom program in another school and to add language on placement in an adult education program, amended Subsec. (e) to add requirement for report to the police in specified cases, to delete requirement for the board to report to the Commissioner of Education referrals based on the sale or distribution of controlled substances and to delete provisions concerning special education students, amended Subsec. (f) to add exception for possession of a firearm or deadly weapon, added Subsec. (i) re special education students and Subsec. (j) re information on expulsions for the possession of weapons and made technical corrections, effective July 1, 1995; P.A. 96-0146 made technical change in Subsec. (i), effective July 1, 1996; P.A. 96-0244 amended Subsec. (a) to rewrite the criteria for expulsion for conduct based on where the conduct took place, to insert Subdiv. and Subpara. designations, to make the existing language Subpara. (A) and to apply it to conduct on school grounds or at a school sponsored activity, in Subpara. (A) to delete requirement that the possession be in violation of Secs. 29-35 or 53a-3, to add the cite to federal law for the definition of "firearm", to add "dangerous instrument or martial arts weapon", to add Subpara. (B) re conduct off school grounds and Subpara. (C) re controlled substances, amended Subsec. (e) to apply the federal definition for "firearm", to add "martial arts weapon" and to make technical changes and amended Subsec. (f) to delete provision requiring removal of the notice of expulsion from the cumulative record if the pupil is not expelled again or suspended one or more times during the 2year period commencing on the date of return to school from the expulsion, effective July 1, 1996; P.A. 98-0139 amended Subsec. (a)(1) to add criteria for consideration in determining whether conduct is seriously disruptive of the educational process, added new Subsec. (j) re readmission and redesignated existing Subsec. (j) as Subsec. (k), effective June 4, 1998 (Revisor's note: In Subsec. (a)(1)(D) the word "in" in the phrase "whether the conduct involved in the use of alcohol" was deleted editorially by the Revisors for grammatical accuracy); P.A. 00-0157 amended Subsec. (d) to specify that boards of education are only required to offer an alternative educational opportunity in accordance with this section, effective July 1, 2001; P.A. 07-0122 made a technical change in Subsec. (a)(2), amended Subsec. (c) to designate existing language as Subdiv. (1) and add Subdiv. (2) re program for first time expulsions, and amended Subsec. (f) to designate existing language as Subdiv. (1), make a technical change therein and add Subdiv. (2) re shortened or waived expulsion period, effective July 1, 2007; P.A. 07-0217 made a technical change in Subsec. (c), effective July 12, 2007; June Sp. Sess. P.A. 07-0003 amended Subsec. (a)(3) to add language re legal services information, effective July 1, 2007; P.A. 09-0082 made a technical change in Subsecs. (f)(2) and (h) and added Subsec. (I) re prohibition against expulsion of students who return to school district after serving in a residential placement, effective July 1, 2009; P.A. 11-0115 amended Subsec. (I) by designating existing provisions as Subdiv. (2) and amending same to delete "for one year or more, the" and add language re student who has not been expelled by board of education, and by adding Subdiv. (1) re expulsion of student to run concurrently with period of commitment, effective July 1, 2011; P.A. 11-0126 amended Subsec. (d) by adding provision re pupils participating in adult education program during period of expulsion shall not be required to withdraw from school and making technical changes, effective July 1, 2011; pursuant to P.A. 12-0116, "regional vocational-technical school" was changed editorially by the Revisors to "technical high school" in Subsec. (e), effective July 1, 2012; P.A. 12-0120 amended Subsec. (d) by replacing "sixteen" with "seventeen" re placement of pupil in adult education program, effective June 15, 2012; P.A. 14-0229 amended Subsec. (c) by making a technical change in Subdiv. (1) and adding provision re exception for a pupil who has been expelled based on possession of a firearm or deadly weapon in Subdiv. (2), and amended Subsec. (f) by deleting existing Subdiv. (1) designator, making exception re expulsion based on possession of firearm or deadly weapon applicable to only pupils in grades nine to twelve, designating

existing provision re expungement if pupil graduates from high school as new Subdiv. (1), adding new Subdiv. (2) re expungement before a pupil graduates from high school and deleting former Subdiv. (2), effective July 1, 2014; P.A. 15-0096 amended Subsec. (a) by making provisions of Subdiv. (1) applicable to pupils in grades 3 to 12, making provisions of Subdiv. (2) applicable to pupils in grades kindergarten to 12 and making a technical change, effective July 1, 2015; P.A. 16-0147 amended Subsec. (a)(3) by adding provision re notice to be given at least 5 business days before hearing and to include information re legal rights and adding provision re representation of pupil and right to postpone hearing in order to obtain representation, amended Subsec. (d) by deleting provision notwithstanding Sec. 10-220(a), by adding provision equating alternative educational opportunity with alternative education with an individualized learning plan, amended Subsec. (e) by deleting provisions re boards of education not required to provide alternative educational opportunity to pupils between ages of 16 and 18 who are expelled for certain conduct endangering persons and by adding provision re controlled substance, amended Subsec. (I)(2) by adding provision re diversionary program, and made technical and conforming changes, effective August 15, 2017.

Case Notes:

Cited. 193 C. 93; 238 C. 1.

Cited. 36 CS 357.

Subsec. (a):

Subdiv. (1): Conduct that is "seriously disruptive of the educational process" means conduct that markedly interrupts or severely impedes day-to-day operation of a school; statute void for vagueness since it did not provide student with constitutionally adequate notice that having marijuana in the trunk of a car off school grounds after school hours was seriously disruptive of educational process and would subject him to expulsion. 246 C. 89.
§ 10-233e. Notice as to disciplinary policies and action.

Connecticut Statutes

Title 10. EDUCATION AND CULTURE

Chapter 170. BOARDS OF EDUCATION

Current through the 2018 Regular Session

§ 10-233e. Notice as to disciplinary policies and action

Each local or regional board of education shall inform all pupils within its jurisdiction and their parents, guardians and surrogate parents, if appointed pursuant to section 10-94g, at least annually, of the board policies governing student conduct and school discipline. Each board shall further provide an effective means of notifying the parents, guardian or surrogate parent, if appointed, of any minor pupil against whom the disciplinary action authorized by the provisions of this section and sections 10-233a to 10-233d, inclusive, has been taken. Such notice shall be given within twenty-four hours of the time such pupil has been excluded.

Cite as Conn. Gen. Stat. § 10-233e

Source:

P.A. 75-609, S. 5; P.A. 78-218, S. 166; P.A. 94-0221, S. 6; P.A. 00-0048, S. 8, 12.

Note: P.A. 78-218 substituted "local" for "town" board of education; P.A. 94-0221 required that parents and guardians as well as students be informed of school policies on conduct and expanded the matters to be covered to include school discipline; P.A. 00-0048 added provisions re surrogate parents, effective July 1, 2000.

Case Notes:

Cited. 193 C. 93.

§ 10-233f. In-school suspension of pupils. Reassignment.

Connecticut Statutes Title 10. EDUCATION AND CULTURE Chapter 170. BOARDS OF EDUCATION

Current through the 2018 Regular Session

§ 10-233f. In-school suspension of pupils. Reassignment

- (a) Any local or regional board of education may authorize the administration of schools under its direction to impose an in-school suspension on any pupil whose conduct endangers persons or property or is seriously disruptive of the educational process, or is violative of a publicized policy of such board. No pupil shall be placed in in-school suspension without an informal hearing before the building principal or such principal's designee at which such pupil shall be informed of the reasons for the disciplinary action and given an opportunity to explain the situation, provided no pupil shall be placed in in-school suspension more than fifteen times or a total of fifty days in one school year, whichever results in fewer days of exclusion.
- (b) A local or regional board of education may reassign a pupil to a regular classroom program in a different school in the school district and such reassignment shall not constitute a suspension pursuant to section 10-233c, or an expulsion pursuant to section 10-233d.

Cite as Conn. Gen. Stat. § 10-233f

Source:

P.A. 79-236, S. 2; P.A. 80-233, S. 1, 2; P.A. 84-546, S. 26, 173; P.A. 95-0304, S. 6, 9.

Note: P.A. 80-233 allowed in-school suspensions for conduct which "is violative of a publicized policy" of the board of education as well as for conduct which endangers persons or property or which disrupts the educational process as previously provided; P.A. 84-546 made technical change substituting "pupil" for "student"; P.A. 95-0304 added Subsec. (b) re reassignment, effective July 1, 1995.

Case Notes:

Cited. 193 C. 93.

§ 10-233g. Reports of principals to police authority concerning physical assaults upon school employees by students.

Connecticut Statutes

Title 10. EDUCATION AND CULTURE

Chapter 170. BOARDS OF EDUCATION

Current through the 2018 Regular Session

§ 10-233g. Reports of principals to police authority concerning physical assaults upon school employees by students

- (a) Where there is a physical assault made by a student upon a teacher or other school employee on school property or in performance of school duties and such teacher or employee files a written report with the school principal based upon such assault, the school building principal shall report such physical assault to the local police authority.
- (b) No school administrator shall interfere with the right of a teacher or other employee of a board of education to file a complaint with the local police authority in cases of threats of physical violence and in cases of physical assaults by a student against such teacher or employee.

Cite as Conn. Gen. Stat. § 10-233g

Source:

P.A. 79-464; P.A. 83-44, S. 1, 2; P.A. 93-0353, S. 32, 52.

Note: P.A. 83-44 amended Subsec. (a) to require filing of reports annually rather than semiannually; P.A. 93-0353 deleted Subsec. (a) requiring each local or regional board of education to submit an annual report to the state board of education re school violence and Subsec. (d) requiring the state board of education to adopt regulations for such reports, relettering Subsecs. (b) and (c) as (a) and (b), effective July 1, 1993.

§ 10-233h. Arrested students. Reports by police, disclosure, confidentiality. Police testimony at expulsion hearings.

Connecticut Statutes

Title 10. EDUCATION AND CULTURE

Chapter 170. BOARDS OF EDUCATION

Current through the 2018 Regular Session

§ 10-233h. Arrested students. Reports by police, disclosure, confidentiality. Police testimony at expulsion hearings

If any person who is at least seven years of age but less than twenty-one years of age and an enrolled student is arrested for a violation of section 53-206c, a class A misdemeanor or a felony, the municipal police department or Division of State Police within the Department of Emergency Services and Public Protection that made such arrest shall, not later than the end of the weekday following such arrest, orally notify the superintendent of schools of the school district in which such person resides or attends school of the identity of such person and the offense or offenses for which he was arrested and shall, within seventy-two hours of such arrest, provide written notification of such arrest, containing a brief description of the incident, to such superintendent. The superintendent shall maintain such written report in a secure location and the information in such report shall be maintained as confidential in accordance with section 46b-124. The superintendent may disclose such information only to the principal of the school in which such person is a student or to the principal or supervisory agent of any other school in which the superintendent knows such person is a student. The principal or supervisory agent may disclose such information only to special services staff or a consultant, such as a psychiatrist, psychologist or social worker, for the purposes of assessing the risk of danger posed by such person to himself, other students, school employees or school property and effectuating an appropriate modification of such person's educational plan or placement, and for disciplinary purposes. If the arrest occurred during the school year, such assessment shall be completed not later than the end of the next school day. If an expulsion hearing is held pursuant to section 10-233d, a representative of the municipal police department or the Division of State Police, as appropriate, may testify and provide reports and information on the arrest at such hearing, provided such police participation is requested by any of the following: The local or regional board of education, the impartial hearing board, the principal of the school or the student or his parent or quardian. Such information with respect to a child under eighteen years of age shall be confidential in accordance with sections 46b-124 and 54-76l, and shall only be disclosed as provided in this section and shall not be further disclosed.

Cite as Conn. Gen. Stat. § 10-233h

Source:

P.A. 94-0221, S. 10; P.A. 95-0304, S. 7, 9; P.A. 97-0149, S. 1, 2; P.A. 11-0051, S. 134; 11-0157, S. 2.

History. Amended by P.A. 11-0157, S. 2 of the the 2011 Regular Session, eff. 10/1/2011.

Note: P.A. 95-0304 applied provisions of the section to persons arrested for class A misdemeanors, effective July 1, 1995; P.A. 97-0149 deleted language limiting the applicability of the section to arrests during the school year and specified the time frame for assessments applied to arrest during the school year, made the section applicable to

arrests for violations of Sec. 53-206c, changed the time frame for oral notification from the end of the "next school day" to the "weekday" following the arrest, and added provision concerning testimony and the provision of reports and information at expulsion hearings by representatives of the municipal police department and the Division of the State Police, effective July 1, 1997; pursuant to P.A. 11-0051, "Department of Public Safety" was changed editorially by the Revisors to "Department of Emergency Services and Public Protection", effective July 1, 2011; P.A. 11-0157 required notification to superintendent of school district in which person "attends school", changed "sixteen years" to "eighteen years" of age re confidentiality of information, and provided that information be confidential in accordance with Sec. 54-76I.

§ 10-233i. Students placed on probation by a court.

Connecticut Statutes

Title 10. EDUCATION AND CULTURE

Chapter 170. BOARDS OF EDUCATION

Current through the 2018 Regular Session

§ 10-233i. Students placed on probation by a court

A student placed on probation by a court may return to school on a conditional basis, within the limits prescribed by the court, provided the court has requested, from the superintendent of schools of the school district in which the student resides, and considered (1) information on the student's school attendance, adjustment and behavior and (2) any recommendations for conditions for disposition or sentencing. Superintendents of schools shall provide such information to the court in a timely manner.

Cite as Conn. Gen. Stat. § 10-233i

Source:

P.A. 94-0221, S. 11.

§ 10-233j. Student possession and use of telecommunication devices.

Connecticut Statutes

Title 10. EDUCATION AND CULTURE

Chapter 170. BOARDS OF EDUCATION

Current through the 2018 Regular Session

§ 10-233j. Student possession and use of telecommunication devices

- (a) No student in a public school in the state shall possess or use a remotely activated paging device unless such student obtains the written permission of the school principal for such possession and use. The principal shall grant such permission only if the student or his parent or guardian establishes to the satisfaction of the principal that a reasonable basis exists for the possession and use of the device.
- (b) A local or regional board of education may restrict the student possession or use of cellular mobile telephones in the schools under its jurisdiction. In determining whether to restrict such possession or use, the local or regional board of education shall consider the special needs of parents and students.

Cite as Conn. Gen. Stat. § 10-233j

Source:

P.A. 95-0304, S. 8, 9; P.A. 96-0108, S. 1, 3.

Note: P.A. 95-0304 effective July 1, 1995; P.A. 96-0108 designated the existing Sec. Subsec. (a) and added Subsec. (b) re cellular mobile telephones, effective July 1, 1996.

§ 10-233k. Notification of school officials of potentially dangerous students. Provision of educational records of children returning to school from detention centers.

Connecticut Statutes

Title 10. EDUCATION AND CULTURE

Chapter 170. BOARDS OF EDUCATION

Current through the 2018 Regular Session

§ 10-233k. Notification of school officials of potentially dangerous students. Provision of educational records of children returning to school from detention centers

- (a) If the Department of Children and Families believes, in good faith, that there is a risk of imminent personal injury to the person or other individuals from a child in its custody who has been adjudicated a serious juvenile offender, the department shall notify the superintendent of schools for the school district in which such child may be returning to attend school or was attending prior to the adjudication of such determination, prior to the child's return. The superintendent of schools shall notify the principal at the school the child will be attending that the child is potentially dangerous. The principal may disclose such information only to special services staff or a consultant, such as a psychiatrist, psychologist or social worker, for the purpose of assessing the risk of danger posed by such child to himself, other students, school employees or school property and effectuating an appropriate modification of such child's educational plan or placement and for disciplinary reasons.
- (b) The Department of Children and Families and the Judicial Department or the local or regional board of education shall provide to the superintendent of schools any educational records within their custody of a child seeking to enter or return to a school district from a juvenile detention center or any other residential placement prior to the child's entry or return. The agencies shall also require any contracting entity that holds custody of such records to provide them to the superintendent of schools prior to the child's entry or return. Receipt of the educational records shall not delay a child from enrolling in school. The superintendent of schools shall provide such information to the principal at the school the child will be attending. The principal shall disclose such information to appropriate staff as is necessary to the education or care of the child.

Cite as Conn. Gen. Stat. § 10-233k Source:

P.A. 99-0247, S. 4; P.A. 01-0176.

History. Amended by P.A. 18-0031,S. 13 of the Connecticut Acts of the 2018 Regular Session, eff. 7/1/2018. **Note:** P.A. 01-0176 added language requiring the provision of educational records of a child seeking to enter or return to a school district from a juvenile detention center, the Connecticut Juvenile Training School or any other residential placement prior to the child's entry or return (Revisor's note: The language added by P.A. 01-0176 was designated editorially by the Revisors as Subsec. (b), and the existing provisions as Subsec. (a)).

CONNECTICUT GENERAL STATUTES TITLE 4 CHAPTER 54 UNIFORM ADMINISTRATIVE PROCEDURE ACT

- Sec. 4-166. Definitions.
- Sec. 4-176e. Agency Hearings.
- Sec. 4-177. Contested cases. Notice. Record.
- Sec. 4-177a. Contested cases. Party, intervenor status.
- Sec. 4-177b. Contested cases, residing officer. Subpoenas and production of documents.
- Sec. 4-177c. Contested cases. Documents. Evidence. Arguments. Statements.
- Sec. 4-178. Contested cases. Evidence.
- Sec. 4-178a. Contested cases and declaratory ruling proceedings. Review of preliminary procedural or evidentiary rulings.
- Sec. 4-179. Agency proceedings. Proposed final decision.
- Sec. 4-180. Contested cases. Final decision. Application to court upon agency failure.
- Sec. 4-181a. Contested cases. Reconsideration. Modification.

§ 4-166. Definitions. Connecticut Statutes Title 4. MANAGEMENT OF STATE AGENCIES Chapter 54. UNIFORM ADMINISTRATIVE PROCEDURE ACT

Current through the 2018 Regular Session

§ 4-166. Definitions

As used in this chapter:

- (1) "Agency" means each state board, commission, department or officer authorized by law to make regulations or to determine contested cases, but does not include either house or any committee of the General Assembly, the courts, the Council on Probate Judicial Conduct, the Governor, Lieutenant Governor or Attorney General, or town or regional boards of education, or automobile dispute settlement panels established pursuant to section 42-181;
- (2) "Approved regulation" means a regulation submitted to the Secretary of the State in accordance with the provisions of section 4-172 ;
- (3) "Certification date" means the date the Secretary of the State certifies, in writing, that the eRegulations System is technologically sufficient to serve as the official compilation and electronic repository in accordance with section 4-173b;
- (4) "Contested case" means a proceeding, including but not restricted to rate-making, price fixing and licensing, in which the legal rights, duties or privileges of a party are required by state statute or regulation to be determined by an agency after an opportunity for hearing or in which a hearing is in fact held, but does not include proceedings on a petition for a declaratory ruling under section 4-176, hearings referred to in section 4-168 or hearings conducted by the Department of Correction or the Board of Pardons and Paroles;
- (5) "Final decision" means
 - (A) the agency determination in a contested case,
 - (B) a declaratory ruling issued by an agency pursuant to section 4-176, or
 - (C) an agency decision made after reconsideration. The term does not include a preliminary or intermediate ruling or order of an agency, or a ruling of an agency granting or denying a petition for reconsideration;
- (6) "Hearing officer" means an individual appointed by an agency to conduct a hearing in an agency proceeding. Such individual may be a staff employee of the agency;
- (7) "Intervenor" means a person, other than a party, granted status as an intervenor by an agency in accordance with the provisions of subsection (d) of section 4-176 or subsection (b) of section 4-177a;
- (8) "License" includes the whole or part of any agency permit, certificate, approval,

registration, charter or similar form of permission required by law, but does not include a license required solely for revenue purposes;

- (9) "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license;
- (10) "Party" means each person (A) whose legal rights, duties or privileges are required by statute to be determined by an agency proceeding and who is named or admitted as a party, (B) who is required by law to be a party in an agency proceeding, or (C) who is granted status as a party under subsection (a) of section 4-177a;
- (11) "Person" means any individual, partnership, corporation, limited liability company, association, governmental subdivision, agency or public or private organization of any character, but does not include the agency conducting the proceeding;
- (12) "Personal delivery" means delivery directly to the intended recipient or a recipient's designated representative and includes, but is not limited to, delivery by electronic mail to an electronic mail address identified by the recipient as an acceptable means of communication;
- (13) "Presiding officer" means the member of an agency or the hearing officer designated by the head of the agency to preside at the hearing;
- (14) "Proposed final decision" means a final decision proposed by an agency or a presiding officer under section 4-179;
- (15) "Proposed regulation" means a proposal by an agency under the provisions of section 4-168 for a new regulation or for a change in, addition to or repeal of an existing regulation;
- (16) "Regulation" means each agency statement of general applicability, without regard to its designation, that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior regulation, but does not include (A) statements concerning only the internal management of any agency and not affecting private rights or procedures available to the public, (B) declaratory rulings issued pursuant to section 4-176, or (C) intra-agency or interagency memoranda;
- (17) "Regulation-making" means the process for formulation and adoption of a regulation;
- (18) "Regulation-making record" means the documents specified in subsection (b) of section 4-168b and includes any other documents created, received or considered by an agency during the regulation-making process; and
- (19) "Regulations of Connecticut state agencies" means the official compilation of all permanent regulations adopted by all state agencies subsequent to October 27, 1970, organized by title number, subtitle number and section number.

Source:

1971, P.A. 854, S. 1; P.A. 73-620, S. 1-3, 19; P.A. 75-529, S. 2, 4; P.A. 78-379, S. 24, 27; P.A. 80-471, S. 1; P.A. 82-338, S. 7; P.A. 87-522, S. 1, 6; P.A. 88-317, S. 1, 107; P.A. 92-0160, S. 16, 19; P.A. 95-0079, S. 9, 189; P.A. 04-0094, S. 1; 04-234, S. 2; P.A. 14-0187, S. 1; P.A. 15-0061, S. 1.

History. Amended by P.A. 15-0061, S. 1 of the Connecticut Acts of the 2015 Regular Session, eff. 10/1/2015. Amended by P.A. 14-0187, S. 1 of the Connecticut Acts of the 2014 Regular Session, eff. 6/11/2014. **Note:** P.A. 73-620 redefined "agency", specifically excepting the governor, lieutenant governor and attorney general, redefined "contested case", excluding cases involving hearings referred to in Sec. 4-168 and redefined "regulation", specifically excluding interagency memoranda; P.A. 75-529 redefined "agency" to exclude town or regional boards of education; P.A. 78-379 redefined "agency" to exclude judicial review council; P.A. 80-471 redefined "regulation" in Subdiv. (7), changed numbered subdivisions to lettered subdivisions and added Subdiv. (8) defining "proposed regulation"; P.A. 82-338 redefined "agency" to specifically exclude council on probate judicial conduct; P.A. 87-522 redefined "agency" to exclude automobile dispute settlement panels; P.A. 88-317 rephrased definition of "agency" in Subdiv. (1), amended definition of "contested case" in Subdiv. (2) to exclude proceedings on declaratory ruling petition, added new Subdivs. (3), (4) and (5), defining "final decision", "hearing officer" and "intervenor", renumbered former Subdivs. (3) and (4), defining "license" and "licensing", to (6) and (7), renumbered former Subdiv. (5), defining "party", to Subdiv. (8) and substantially amended the definition, renumbered former Subdiv. (6), defining "person", to Subdiv. (9) and excluded "the agency conducting the proceeding" from the definition in lieu of "an agency", added new Subdivs. (10), (11) and (12), defining "presiding officer", "proposed final decision" and "proposed regulation", renumbered former Subdiv. (7), defining "regulation", to Subdiv. (13), repealed former Subdiv. (8) defining "proposed regulation" and added new Subdiv. (14) defining "regulation-making", effective July 1, 1989, and applicable to agency proceedings commenced on or after said date; P.A. 92-0160 amended Subdiv. (1) by deleting reference to judicial review council; P.A. 95-0079 redefined "person" to include a limited liability company, effective May 31, 1995; P.A. 04-0094 amended definition of "contested case" in Subdiv. (2) by replacing "required by statute" with "required by state statute or regulation" and adding exception for hearings conducted by Department of Correction or Board of Parole; P.A. 04-0234 replaced Board of Parole with Board of Pardons and Paroles in Subdiv. (2), effective July 1, 2004; P.A. 14-0187 added new Subdivs. (2) and (3) defining "approved regulation" and "certification date", redesignated existing Subdivs. (2) to (14) as Subdivs. (4) to (16) and added Subdivs. (17) and (18) defining "regulation-making record" and "regulations of Connecticut state agencies", effective June 11, 2014; P.A. 15-0061 added new Subdiv. (12) defining "personal delivery" and redesignated existing Subdivs. (12) to (18) as Subdivs. (13) to (19).

Case Notes:

Cited. 166 C. 337. The term "state board" includes such entities as the Berlin board of education when acting as agent of the state. 167 C. 368. Cited. 168 C. 435; 172 C. 263; 173 C. 462; 176 C. 82; 184 C. 311; 186 C. 153; 191 C. 173; 198 C. 445; 207 C. 346; 211 C. 690; 212 C. 83; 213 C. 184; 214 C. 560; 215 C. 517; 216 C. 228; 220 C. 516; 231 C. 391; 238 C. 361; 239 C. 32. Because Sec. 22a-371 does not require Commissioner of Environmental Protection to conduct hearing to determine whether an application is complete, commissioner's rejection notice for plaintiff's insufficient application did not constitute a final decision in contested case. 263 C. 692. Plaintiff determined to have no statutory right of appeal from decision of Department of Social Services with respect to liens imposed pursuant to Secs. 17b-93 and 17b-94 which provide for reimbursement of Medicaid and public assistance benefits previously paid by state to plaintiff, and therefore hearing is not a "contested case" as defined under Uniform Administrative Procedure Act; trial court judgment reversed and case remanded with direction to dismiss plaintiff's administrative appeal for lack of subject matter jurisdiction. 273 C. 434. Department of Public Works was not under a statutory or regulatory mandate to conduct a hearing regarding alleged violations of bidding process; there was no agency determination in a contested case; plaintiff had no right to judicial review of commissioner's decision because it was not aggrieved by a final decision required to trigger judicial review under Uniform Administrative Procedure Act. 282 C. 764.

Cited. 1 CA 1; 9 CA 622; 19 CA 713; 25 CA 555. Harmless error analysis is available in the administrative context. 57 CA 767. Plaintiff was not aggrieved by final decision because the hearing, which was not required by statute, did not constitute contested case within meaning of statute. 75 CA 215. Plaintiff was not barred from pursuing unpaid wages despite investigation conducted pursuant to Sec. 31-76a because res judicata only applies to a final judgment in a contested case and plaintiff withdrew claim prior to final determination; an administrative tribunal's decision is not entitled to res judicata effect in subsequent proceedings between the parties if the initial decision was not subject to judicial review. 14 1 CA 110.

Question whether personnel policies of state colleges are "regulations" within meaning of chapter. 32 CS 153. Cited. 34 CS 225; 36 CS 1; Id., 18; 38 CS 24; 40 CS 365; 44 CS 21.

Subdiv. (1):

Berlin board of education held authorized by law to determine contested cases. 167 C. 368. Cited. 170 C. 668. Exclusions of governor, lieutenant governor and attorney general from definition of "agency" constitute exemptions from chapter. 172 C. 603. Cited. 176 C. 318; Id., 466. Indian affairs council is an "agency" within the meaning of statute. 180 C. 474. Cited. 181 C. 69; 183 C. 76; 193 C. 379; 195 C. 174; 207 C. 77; Id., 674; 208 C. 709; 217 C. 130; 228 C. 651; 231 C. 308; 235 C. 128. Adoption review board is an "agency". 247 C. 474.

Cited. 3 CA 464; 6 CA 473; 13 CA 1; 17 CA 429; 18 CA 13; 22 CA 181; 35 CA 769.

Cited. 39 CS 443.

Subdiv. (4) (Former Subdiv. (2)):

Hearing under Sec. 10-151(b) is a "contested case". 167 C. 368. Cited. 171 C. 348; Id., 691; 183 C. 76; Id., 128; 191 C. 497; 193 C. 379; 214 C. 726; 221 C. 422; 224 C. 693; 226 C. 105. Court found legislative intent to limit contested case status to proceedings in which agency is required by statute to provide opportunity for hearing determining party's legal rights or privileges. Id., 792. Cited. 231 C. 403; 234 C. 411; 235 C. 128; 239 C. 124. Proceeding of adoption review board constitutes a "contested case". 247 C. 474. Decision, after hearing, terminating authorized vendor from participation in federal Special Supplemental Food Program for Women, Infants and Children (WIC) was not final decision in a contested case since hearing not required by state statute. 262 C. 222. Trial court properly determined that P.A. 04-0094, which amended definition of contested case to include a hearing required by "state" statute "or regulation", did not apply retroactively because that act implements a substantive change in the law. 283 C. 156.

Cited. 2 CA 196; 28 CA 674; 37 CA 653; judgment reversed, see 238 C. 361; Id., 777; 44 CA 143.

Cited. 30 CS 118; 39 CS 202; 42 CS 413; 43 CS 386.

Subdiv. (5) (Former Subdiv. (3)):

Cited. 221 C. 422; 224 C. 693; 227 C. 545; 231 C. 391; 232 C. 181; 234 C. 411; Id., 424; 239 C. 124. Denial of petition to intervene pursuant to Sec. 22a-19 was not a final decision within meaning of statute because it is not the agency determination in a contested case because, in turn, it does not determine the legal rights, duties or privileges of a party and instead, it is more properly considered as a preliminary or intermediate ruling of the agency. 259 C.

131.

Cited. 37 CA 653; judgment reversed, see 238 C. 361; Id., 777; 44 CA 143. Commissioner's decision denying plaintiff's petition for reconsideration is not a final decision. 6 1 CA 137.

Subdiv. (7) (Former Subdiv. (5)):

Cited. 205 C. 324; 207 C. 674; 212 C. 157.

Cited. 3 CA 416; 14 CA 376.

Parties admitted at a Blue Cross rate hearing, need only be served notice of an appeal, not necessarily made parties to the appeals. 31 CS 257.

Subdiv. (8) (Former Subdiv. (6)):

Cited. 226 C. 792; 235 C. 128.

Subdiv. (9) (Former Subdiv. (7)):

Former Sec. 4-41 defined "regulation" as "designed to implement, interpret or prescribe law or to establish the general policy of such department or agency"; not mandatory that such regulations be adopted by motor vehicle department relative to hearings on suspension or revocation of dealers' licenses, but hearings not to violate the fundamentals of natural justice. 165 C. 559. Cited. 177 C. 356; 183 C. 76. Applicability of statute to regulations promulgated under Sec. 14-298 discussed. Id., 313. Cited. 187 C. 458; 191 C. 384; 200 C. 133; Id., 489; 204 C. 287.

Cited. 41 CS 271.

Subdiv. (10) (Former Subdiv. (8)):

Cited. 30 CA 85.

Subdiv. (11) (Former Subdiv. (9)):

Cited. 37 CA 653; judgment reversed, see 238 C. 361.

Subdiv. (16) (Former Subdiv. (15)):

Department's use of "one year frequency tidal flood elevation" in proceeding under Sec. 22a-359 did not constitute a regulation or improper rule making since it is not a rule of general applicability and was applied in addition to other evidence. 308 C. 359.

§ 4-176e. Agency hearings.

Connecticut Statutes

Title 4. MANAGEMENT OF STATE AGENCIES

Chapter 54. UNIFORM ADMINISTRATIVE PROCEDURE ACT

Current through the 2018 Regular Session

§ 4-176e. Agency hearings

Except as otherwise required by the general statutes, a hearing in an agency proceeding may be held before (1) one or more hearing officers, provided no individual who has personally carried out the function of an investigator in a contested case may serve as a hearing officer in that case, or (2) one or more of the members of the agency.

Cite as Conn. Gen. Stat. § 4-176e

Source: P.A. 88-317, S. 11, 107.

Note: P.A. 88-317 effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date.

Case Notes:

Cited. 217 C. 130; 226 C. 105; 239 C. 32.

§ 4-177. Contested cases. Notice. Record.

Connecticut Statutes

Title 4. MANAGEMENT OF STATE AGENCIES

Chapter 54. UNIFORM ADMINISTRATIVE PROCEDURE ACT

Current through the 2018 Regular Session

§ 4-177. Contested cases. Notice. Record

- (a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.
- (b) The notice shall be in writing and shall include:
 - (1) A statement of the time, place, and nature of the hearing;
 - (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
 - (3) a reference to the particular sections of the statutes and regulations involved; and
 - (4) a short and plain statement of the matters asserted. If the agency or party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.
- (c) Unless precluded by law, a contested case may be resolved by stipulation, agreed settlement, or consent order or by the default of a party.
- (d) The record in a contested case shall include:
 - (1) Written notices related to the case;
 - (2) all petitions, pleadings, motions and intermediate rulings;
 - (3) evidence received or considered;
 - (4) questions and offers of proof, objections and rulings thereon;
 - (5) the official transcript, if any, of proceedings relating to the case, or, if not transcribed, any recording or stenographic record of the proceedings;
 - (6) proposed final decisions and exceptions thereto; and
 - (7) the final decision.
- (e) Any recording or stenographic record of the proceedings shall be transcribed on request of any party. The requesting party shall pay the cost of such transcript. Nothing in this section shall relieve an agency of its responsibility under section 4-183 to transcribe the record for an appeal.

Cite as Conn. Gen. Stat. § 4-177

Source:

1971, P.A. 854, S. 12; P.A. 73-620, S. 9, 10, 19; P.A. 88-317, S. 12, 107.

Note: P.A. 73-620 amended Subsec. (e) omitting statement of matters officially noticed, proposed findings and exceptions and staff memoranda or data submitted to hearing officer or agency members from record of contested case and amended Subsec. (f) to require party requesting transcript to pay its cost; P.A. 88-317 amended Subsec. (b) to require notice to be in writing, transferred provisions of former Subsec. (c) re opportunity to parties to respond and present evidence and argument to Sec. 4-177c, relettered former Subsec. (d) to Subsec. (c) and rephrased provisions of the subsection, relettered former Subsec. (e) to Subsec. (d) and amended Subsec. (e) to require notices, petitions, official transcript and proposed final decisions and exceptions and final decisions to be included in contested case record, relettered former Subsec. (f) to Subsec. (e) and amended Subsec. (e) by substituting "Any recording or stenographic record of the proceedings" for "Oral proceedings or any part thereof" and adding provision re agency responsibility to transcribe the record for an appeal, and transferred provisions of former Subsec. (g), which required findings of fact to be based exclusively on the evidence and on matters officially noticed, to Sec. 4-180, effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date.

Case Notes:

Notice of hearing under Sec. 10-151(b) which did not include two of the charges against the teacher held insufficient; findings of fact must be based on matters "officially noticed" as well as on the evidence. 167 C. 368. Cited. 171 C. 691; 172 C. 263; 173 C. 462; 176 C. 82; Id., 191; 177 C. 78; 183 C. 128; 186 C. 153; 188 C. 90; 191 C. 173; 207 C. 77; Id., 296; 208 C. 442; 210 C. 531; 211 C. 508; 213 C. 184; 214 C. 726; 215 C. 474; Id., 616; 223 C. 618; 228 C. 651; 239 C. 32.

Cited. 1 CA 1; 4 CA 117, 121; 9 CA 622; 33 CA 727; 34 CA 123; 37 CA 653; judgment reversed, see 238 C. 361. Notification by letter from complainant that requested information has been received, which was the same manner in which complainant initially notified commission of the contested case, constitutes a formal withdrawal of the complaint and therefore terminates commission's jurisdiction over the issue. 103 CA 571.

Administrative adjudication of no refund, not contested case. 30 CS 118. Cited. Id., 120; 34 CS 225; 39 CS 99; Id., 462; 41 CS 211; 42 CS 1; Id., 599.

Subsec. (b):

Subdiv. (4): Notice which failed to include several charges in "matters asserted" was prejudicial violation of Subsec. 167 C. 368. Cited. 174 C. 366. Subdiv. (2): Notice of hearing deemed legally sufficient where it cited statutory authorities of jurisdiction and under which violations claimed. 177 C. 515. Cited. 200 C. 489; 220 C. 86; 232 C. 57. Cited. 22 CA 181; 41 CA 866.

Cited. 40 CS 226; 43 CS 340.

§ 4-177a. Contested cases. Party, intervenor status.

Connecticut Statutes

Title 4. MANAGEMENT OF STATE AGENCIES

Chapter 54. UNIFORM ADMINISTRATIVE PROCEDURE ACT

Current through the 2018 Regular Session

§ 4-177a. Contested cases. Party, intervenor status

- (a) The presiding officer shall grant a person status as a party in a contested case if that officer finds that:
 - Such person has submitted a written petition to the agency and mailed copies to all parties, at least five days before the date of hearing; and
 - (2) the petition states facts that demonstrate that the petitioner's legal rights, duties or privileges shall be specifically affected by the agency's decision in the contested case.
- (b) The presiding officer may grant any person status as an intervenor in a contested case if that officer finds that:
 - Such person has submitted a written petition to the agency and mailed copies to all parties, at least five days before the date of hearing; and
 - (2) the petition states facts that demonstrate that the petitioner's participation is in the interests of justice and will not impair the orderly conduct of the proceedings.
- (c) The five-day requirement in subsections (a) and (b) of this section may be waived at any time before or after commencement of the hearing by the presiding officer on a showing of good cause.
- (d) If a petition is granted pursuant to subsection (b) of this section, the presiding officer may limit the intervenor's participation to designated issues in which the intervenor has a particular interest as demonstrated by the petition and shall define the intervenor's rights to inspect and copy records, physical evidence, papers and documents, to introduce evidence, and to argue and cross-examine on those issues. The presiding officer may further restrict the participation of an intervenor in the proceedings, including the rights to inspect and copy records, to introduce evidence and to cross-examine, so as to promote the orderly conduct of the proceedings.

Cite as Conn. Gen. Stat. § 4-177a

Source:

P.A. 88-317, S. 20, 107.

Note: P.A. 88-317 effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date.

Case Notes:

Cited. 233 C. 486; 234 C. 624; 239 C. 32.

Cited. 30 CA 85; 35 CA 455; 37 CA 653; judgment reversed, see 238 C. 361.

§ 4-177b. Contested cases. Presiding officer. Subpoenas and production of documents.

Connecticut Statutes

Title 4. MANAGEMENT OF STATE AGENCIES

Chapter 54. UNIFORM ADMINISTRATIVE PROCEDURE ACT

Current through the 2018 Regular Session

§ 4-177b. Contested cases. Presiding officer. Subpoenas and production of documents In a contested case, the presiding officer may administer oaths, take testimony under oath relative to the case, subpoena witnesses and require the production of records, physical evidence, papers and documents to any hearing held in the case. If any person disobeys the subpoena or, having appeared, refuses to answer any question put to him or to produce any records, physical evidence, papers and documents requested by the presiding officer, the agency may apply to the superior court for the judicial district of Hartford or for the judicial district in which the person resides, or to any judge of that court if it is not in session, setting forth the disobedience to the subpoena or refusal to answer or produce, and the court or judge shall cite the person to appear before the court or judge to show cause why the records, physical evidence, papers and documents should not be produced or why a question put to him should not be answered. Nothing in this section shall be construed to limit the authority of the agency or any party as otherwise allowed by law.

Cite as Conn. Gen. Stat. § 4-177b

Source:

P.A. 88-230, S. 1, 12; 88-317, S. 15, 107; P.A. 90-98, S. 1, 2; P.A. 93-0142, S. 4, 7, 8; P.A. 95-0220, S. 4 -6.

Note: P.A. 88-230 required substitution of "judicial district of Hartford" for "judicial district of Hartford-New Britain", effective September 1, 1991; P.A. 88-317 effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date; P.A. 90-98 changed the effective date of P.A. 88-230 from September 1, 1991, to September 1, 1993; P.A. 93-0142 changed the effective date of P.A. 88-230 from September 1, 1993, to September 1, 1996, effective June 14, 1993; P.A. 95-0220 changed the effective date of P.A. 88-230 from September 1, 1996, to September 1, 1998, effective July 1, 1995.

Case Notes:

Cited. 239 C. 32.

Cited. 37 CA 653; judgment reversed, see 238 C. 361.

§ 4-177c. Contested cases. Documents. Evidence. Arguments. Statements.

Connecticut Statutes

Title 4. MANAGEMENT OF STATE AGENCIES

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Current through the 2018 Regular Session

§ 4-177c. Contested cases. Documents. Evidence. Arguments. Statements

- (a) In a contested case, each party and the agency conducting the proceeding shall be afforded the opportunity (1) to inspect and copy relevant and material records, papers and documents not in the possession of the party or such agency, except as otherwise provided by federal law or any other provision of the general statutes, and (2) at a hearing, to respond, to cross-examine other parties, intervenors, and witnesses, and to present evidence and argument on all issues involved.
- (b) Persons not named as parties or intervenors may, in the discretion of the presiding officer, be given an opportunity to present oral or written statements. The presiding officer may require any such statement to be given under oath or affirmation.

Cite as Conn. Gen. Stat. § 4-177c

Source:

P.A. 88-317, S. 13, 107; P.A. 89-174, S. 1, 7.

Note: P.A. 88-317 effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date; P.A. 89-174 divided Subsec. (a) into Subdivs. and, in Subdiv. (1), added "except as otherwise provided by federal law or any other provision of the general statutes" and amended Subsec. (b) to allow, instead of require, presiding officer to require statements under Subsec. (b) to be given under oath or affirmation and to delete sentence re procedure for presiding officer to follow if he proposes to consider such statements as evidence.

Case Notes:

Cited. 223 C. 618; 226 C. 105; 239 C. 32. Cited. 37 CA 653; judgment reversed, see 238 C. 361. Cited. 44 CS 21. § 4-178. Contested cases. Evidence.

Connecticut Statutes

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Chapter 54. UNIFORM ADMINISTRATIVE PROCEDURE ACT

Current through the 2018 Regular Session

§ 4-178. Contested cases. Evidence

In contested cases:

- (1) Any oral or documentary evidence may be received, but the agency shall, as a matter of policy, provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence;
- (2) agencies shall give effect to the rules of privilege recognized by law;
- (3) when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;
- (4) documentary evidence may be received in the form of copies or excerpts, if the original is not readily available, and upon request, parties and the agency conducting the proceeding shall be given an opportunity to compare the copy with the original;
- (5) a party and such agency may conduct cross-examinations required for a full and true disclosure of the facts;
- (6) notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the agency's specialized knowledge;
- (7) parties shall be notified in a timely manner of any material noticed, including any agency memoranda or data, and they shall be afforded an opportunity to contest the material so noticed; and
- (8) the agency's experience, technical competence, and specialized knowledge may be used in the evaluation of the evidence.

Cite as Conn. Gen. Stat. § 4-178

Source:

1971, P.A. 854, S. 13; P.A. 73-620, S. 11, 19; P.A. 88-317, S. 14, 107.

Note: P.A. 73-620 deleted former provisions regarding rules of evidence and objections to evidentiary offers, replacing them with allowance for any oral or documentary evidence; P.A. 88-317 made minor and technical changes and renumbered the subdivisions, effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date.

Case Notes:

Evidence concerning charges not included in notice to teacher re hearing under Sec. 10-151(b) is irrelevant. 167 C. 368. Having decided to proceed without counsel, plaintiff cannot claim he was prejudiced by admission of evidence to which he did not object. 168 C. 94. Cited. Id., 435; 170 C. 141; 171 C. 691; Id., 705; 172 C. 263; 173 C. 462; 177 C. 78; Id., 344; 183 C. 128; 186 C. 153; 191 C. 173; 211 C. 508; 215 C. 474; Id., 616; 216 C. 627; 218 C. 256; 220 C. 86; 223 C. 618; 226 C. 105; 228 C. 651; 231 C. 602; 237 C. 209; 239 C. 32.

Cited. 1 CA 1; 4 CA 307; Id., 359; 9 CA 622; 10 CA 90; 22 CA 181, 189; Id., 193; 24 CA 662; judgment reversed, see 223 C. 618; 27 CA 346; 33 CA 727; 34 CA 123; 37 CA 653; judgment reversed, see 238 C. 361. Subdiv. (8): Although parties are entitled to notice of any nonrecord facts that will constitute proof in a case, the composition of an administrative board, as well as statute, put plaintiff on notice that the board would use its own expertise when determining whether plaintiff's alleged acts conformed to the standard of care. 60 CA 775.

Subdiv. (4): Notice requirements are to protect parties from surprising and unexpected material or evidence; previous findings of Insurance Commissioner in same matter not prejudicial. 32 CS 257. Cited. 34 CS 225; 36 CS 18; 39 CS 99; Id., 462; 42 CS 1; Id., 413; Id., 602; 44 CS 21. Subdiv. (1): Hearsay evidence may be admitted as long as it is reliable and probative. 47 CS 228.

§ 4-178a. Contested cases and declaratory ruling proceedings. Review of preliminary, procedural or evidentiary rulings.

Connecticut Statutes

Title 4. MANAGEMENT OF STATE AGENCIES

Chapter 54. UNIFORM ADMINISTRATIVE PROCEDURE ACT

Current through the 2018 Regular Session

§ 4-178a. Contested cases and declaratory ruling proceedings. Review of preliminary, procedural or evidentiary rulings

If a hearing in a contested case or in a declaratory ruling proceeding is held before a hearing officer or before less than a majority of the members of the agency who are authorized by law to render a final decision, a party, if permitted by regulation and before rendition of the final decision, may request a review by a majority of the members of the agency, of any preliminary, procedural or evidentiary ruling made at the hearing. The majority of the members may make an appropriate order, including the reconvening of the hearing.

Cite as Conn. Gen. Stat. § 4-178a

Source:

P.A. 88-317, S. 22, 107.

Note: P.A. 88-317 effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date. **Case Notes:**

Cited. 217 C. 130; 239 C. 32.

§ 4-179. Agency proceedings. Proposed final decision.

Connecticut Statutes

Title 4. MANAGEMENT OF STATE AGENCIES

Chapter 54. UNIFORM ADMINISTRATIVE PROCEDURE ACT

Current through the 2018 Regular Session

§ 4-179. Agency proceedings. Proposed final decision

- (a) When, in an agency proceeding, a majority of the members of the agency who are to render the final decision have not heard the matter or read the record, the decision, if adverse to a party, shall not be rendered until a proposed final decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the members of the agency who are to render the final decision.
- (b) A proposed final decision made under this section shall be in writing and contain a statement of the reasons for the decision and a finding of facts and conclusion of law on each issue of fact or law necessary to the decision, including the specific provisions of the general statutes or of regulations adopted by the agency upon which the agency bases its findings.
- (c) Except when authorized by law to render a final decision for an agency, a hearing officer shall, after hearing a matter, make a proposed final decision.
- (d) The parties and the agency conducting the proceeding, by written stipulation, may waive compliance with this section.

Cite as Conn. Gen. Stat. § 4-179

Source:

1971, P.A. 854, S. 14; P.A. 88-317, S. 16, 107; P.A. 13-0279, S. 1.

Note: P.A. 88-317 divided former section into Subsecs. (a) and (d), amended Subsec. (a) to apply to agency proceedings instead of contested cases only, to substitute "members" for "officials" and "matter" for "case" and to clarify references to "decision", added Subsec. (b) clarifying and rephrasing former provisions, added Subsec. (c) re proposed final decision by hearing officer, and amended Subsec. (d) by inserting "and the agency conducting the proceeding", effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date; P.A. 13-0279 amended Subsec. (b) by adding ", including the specific provisions of the general statutes or of regulations adopted by the agency upon which the agency bases its findings".

Case Notes:

Cited. 171 C. 691; 172 C. 263; 173 C. 462; 186 C. 153; 191 C. 173; 207 C. 346; 219 C. 168; 220 C. 86; 228 C. 651; 231 C. 308; 233 C. 296; 234 C. 312; 239 C. 32.

Cited. 1 CA 1; 9 CA 622; 15 CA 205; 34 CA 343; 45 CA 476. Plaintiffs' failure to file exceptions or present oral argument pursuant to section was not tantamount to failing to challenge the proposed decision and thus plaintiffs were not barred from raising their claims on appeal. 144 CA 337.

Cited. 42 CS 413; 43 CS 457.

§ 4-180. Contested cases. Final decision. Application to court upon agency failure.

Connecticut Statutes

Title 4. MANAGEMENT OF STATE AGENCIES

Chapter 54. UNIFORM ADMINISTRATIVE PROCEDURE ACT

Current through the 2018 Regular Session

§ 4-180. Contested cases. Final decision. Application to court upon agency failure

- (a) Each agency shall proceed with reasonable dispatch to conclude any matter pending before it and, in all contested cases, shall render a final decision within ninety days following the close of evidence or the due date for the filing of briefs, whichever is later, in such proceedings.
- (b) If any agency fails to comply with the provisions of subsection (a) of this section in any contested case, any party thereto may apply to the superior court for the judicial district of Hartford for an order requiring the agency to render a final decision forthwith. The court, after hearing, shall issue an appropriate order.
- (c) A final decision in a contested case shall be in writing or orally stated on the record and, if adverse to a party, shall include the agency's findings of fact and conclusions of law necessary to its decision, including the specific provisions of the general statutes or of regulations adopted by the agency upon which the agency bases its decision. Findings of fact shall be based exclusively on the evidence in the record and on matters noticed. The agency shall state in the final decision the name of each party and the most recent mailing address, provided to the agency, of the party or his authorized representative. The final decision shall be delivered promptly to each party or his authorized representative, personally or by United States mail, certified or registered, postage prepaid, return receipt requested. The final decision shall be effective when personally delivered or mailed or on a later date specified by the agency.

Cite as Conn. Gen. Stat. § 4-180

Source:

1971, P.A. 854, S. 15; P.A. 73-620, S. 17, 19; P.A. 75-529, S. 3, 4; P.A. 77-452, S. 46, 72; P.A. 78-280, S. 5, 127; P.A. 79-631, S. 23, 111; P.A. 88-230, S. 1, 12; 88-317, S. 17, 107; P.A. 90-98, S. 1, 2; P.A. 93-0142, S. 4, 7, 8; P.A. 95-0220, S. 4 -6; P.A. 13-0279, S. 2.

Note: P.A. 73-620 deleted detailed provisions for contents of final decision or order concerning findings of fact and conclusions of law; P.A. 75-529 added Subsecs. (a) and (b) and made former provisions Subsec. (c); P.A. 77-452 replaced court of common pleas with superior court, effective July 1, 1978; P.A. 78-280 replaced "Hartford county" with "the judicial district of Hartford-New Britain"; P.A. 79-631 made technical changes; P.A. 88-230 replaced "judicial district of Hartford-New Britain" with "judicial district of Hartford", effective September 1, 1991; P.A. 88-317 amended Subsec. (a) by inserting "or the due date for the" and ", whichever is later", amended Subsec. (b) by repealing provisions allowing any interested person to apply to superior court and repealing exception to requirement for court order if agency establishes to satisfaction of the court reasonable cause for failure to comply with Subsec. (a) and substantially amended Subsec. (c) re form, content, basis, delivery and effective date of final decisions in contested cases, effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date; P.A. 90-98

changed the effective date of P.A. 88-230 from September 1, 1991, to September 1, 1993; P.A. 93-0142 changed the effective date of P.A. 88-230 from September 1, 1993, to September 1, 1996, effective June 14, 1993; P.A. 95-0220 changed the effective date of P.A. 88-230 from September 1, 1996, to September 1, 1998, effective July 1, 1995; P.A. 13-0279 amended Subsec. (c) by adding ", including the specific provisions of the general statutes or of regulations adopted by the agency upon which the agency bases its decision".

Case Notes:

Failure to comply with former section requirements in sending plaintiff notice of final decision did not render defendant's action void. 168 C. 94. Cited. 171 C. 691; 172 C. 263; 173 C. 462; 186 C. 153; 191 C. 173; Id., 384; 204 C. 60; 207 C. 683; 210 C. 597; 220 C. 86; 228 C. 651; 232 C. 57; 233 C. 296; 234 C. 312; 239 C. 32.

Cited. 1 CA 1; 2 CA 689; 9 CA 622.

Cited. 43 CS 340; Id., 386; Id., 457; 44 CS 90.

Subsec. (c):

Cited. 205 C. 324. Oral decision of an agency discussed. 232 C. 181. Cited. 237 C. 209; 239 C. 437. Cited. 37 CA 777.

§ 4-181a. Contested cases. Reconsideration. Modification.

Connecticut Statutes

Title 4. MANAGEMENT OF STATE AGENCIES

Chapter 54. UNIFORM ADMINISTRATIVE PROCEDURE ACT

Current through the 2018 Regular Session

§ 4-181a. Contested cases. Reconsideration. Modification

- (a) (1) Unless otherwise provided by law, a party in a contested case may, within fifteen days after the personal delivery or mailing of the final decision, file with the agency a petition for reconsideration of the decision on the ground that:
 - (A) An error of fact or law should be corrected;
 - (B) new evidence has been discovered which materially affects the merits of the case and which for good reasons was not presented in the agency proceeding; or
 - (C) other good cause for reconsideration has been shown. Within twenty-five days of the filing of the petition, the agency shall decide whether to reconsider the final decision. The failure of the agency to make that determination within twenty-five days of such filing shall constitute a denial of the petition.
 - (2) Within forty days of the personal delivery or mailing of the final decision, the agency, regardless of whether a petition for reconsideration has been filed, may decide to reconsider the final decision.
 - (3) If the agency decides to reconsider a final decision, pursuant to subdivision (1) or (2) of this subsection, the agency shall proceed in a reasonable time to conduct such additional proceedings as may be necessary to render a decision modifying, affirming or reversing the final decision, provided such decision made after reconsideration shall be rendered not later than ninety days following the date on which the agency decides to reconsider the final decision. If the agency fails to render such decision made after reconsideration within such ninety-day period, the original final decision shall remain the final decision in the contested case for purposes of any appeal under the provisions of section 4-183.
 - (4) Except as otherwise provided in subdivision (3) of this subsection, an agency decision made after reconsideration pursuant to this subsection shall become the final decision in the contested case in lieu of the original final decision for purposes of any appeal under the provisions of section 4-183, including, but not limited to, an appeal of (A) any issue decided by the agency in its original final decision that was not the subject of any petition for reconsideration or the agency's decision made after reconsideration, (B) any issue as to which reconsideration was requested but not granted, and (C) any issue that was reconsidered but not modified by the

agency from the determination of such issue in the original final decision.

- (b) On a showing of changed conditions, the agency may reverse or modify the final decision, at any time, at the request of any person or on the agency's own motion. The procedure set forth in this chapter for contested cases shall be applicable to any proceeding in which such reversal or modification of any final decision is to be considered. The party or parties who were the subject of the original final decision, or their successors, if known, and intervenors in the original contested case, shall be notified of the proceeding and shall be given the opportunity to participate in the proceeding. Any decision to reverse or modify a final decision shall make provision for the rights or privileges of any person who has been shown to have relied on such final decision.
- (c) The agency may, without further proceedings, modify a final decision to correct any clerical error. A person may appeal that modification under the provisions of section 4-183 or, if an appeal is pending when the modification is made, may amend the appeal.

Cite as Conn. Gen. Stat. § 4-181a

Source:

P.A. 88-317, S. 21, 107; P.A. 89-174, S. 4, 7; P.A. 06-0032, S. 1.

Note: P.A. 88-317 effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date; P.A. 89-174 renumbered Subdivs. in Subsec. (a) to add Subdiv. (2) authorizing agency to reconsider final decision on its own initiative, amended Subsec. (b) by substituting "final decision" for "order" and made minor changes in wording throughout section; P.A. 06-0032 amended Subsec. (a) by inserting provisions in Subdiv. (3) re ninety-day period for rendering a decision made after reconsideration and adding Subdiv. (4) re decision made after reconsideration to become the final decision for purposes of appeal.

Case Notes:

Cited. 232 C. 181; 234 C. 411; 235 C. 128; 238 C. 361; 239 C. 32. Agency decision that is subject to motion for reconsideration is not a final decision from which appeal may be taken even if party appealing decision is not aggrieved by portion of agency decision that is subject of motion for reconsideration. 311 C. 259. Cited. 30 CA 738. Failure to file petition for reconsideration in timely manner resulted in dismissal of plaintiff's appeal for lack of subject matter jurisdiction. 6 1 CA 137.

Subsec. (a):

Cited. 37 CA 653; judgment reversed, see 238 C. 361. Commissioner's decision denying plaintiff's petition for reconsideration does not fit within definition of "contested case" because it is not a final decision. 6 1 CA 137. Subsec. (b):

Cited. 227 C. 545; 236 C. 722. Proceeding on plaintiff's motions under section did not give rise to a contested case within meaning of Uniform Administrative Procedure Act; therefore denial of plaintiff's motions was not appealable to the Superior Court; judgment of Appellate Court in 37 CA 653 reversed. 238 C. 361.

STATE AND FEDERAL CRIMINAL STATUTES

Connecticut General Statutes:

Sec. 29-27	Sec. 29-27. "Pistol" and "revolver" defined.
Sec. 29-38.	Weapons in vehicles.
Sec. 53a-3.	Definitions.
Sec. 53-206c.	Sale, carrying, and brandishing of facsimile firearms prohibited.
Sec. 21a-240.	Definitions.
Sec. 21a-277.	Penalty for illegal manufacture, distribution, sale, prescription,
	dispensing.
Sec. 21a-278.	Penalty for illegal manufacture, distribution, sale, prescription,
	or administration by a non-drug-dependent person.

United States Code:

18 U.S.C. § 921. Definitions.

§ 29-27. "Pistol" and "revolver" defined.

Connecticut Statutes

Title 29. PUBLIC SAFETY AND STATE POLICE

Chapter 529. DIVISION OF STATE POLICE

Current through the 2018 Regular Session

§ 29-27. "Pistol" and "revolver" defined

The term "pistol" and the term "revolver", as used in sections 29-28 to 29-38, inclusive, mean any firearm having a barrel less than twelve inches in length.

Cite as Conn. Gen. Stat. § 29-27

Source:

1949 Rev., S. 4157; July Sp. Sess. P.A. 94-0001, S. 14.

Note: July Sp. Sess. P.A. 94-0001 made no substantive change.

Case Notes:

Cited. 173 C. 254; 205 C. 370; 211 C. 258; 242 C. 318.

Cited. 3 CA 289; 7 CA 367; 9 CA 169; judgment reversed, see 205 C. 370; Id., 330; 11 CA 621; 24 CA 737; 25 CA 433; Id., 578; 30 CA 68; 36 CA 805; 43 CA 252.

§ 29-38. Weapons in vehicles. Penalty. Exceptions.

Connecticut Statutes

Title 29. PUBLIC SAFETY AND STATE POLICE

Chapter 529. DIVISION OF STATE POLICE

Current through the 2018 Regular Session

§ 29-38. Weapons in vehicles. Penalty. Exceptions

- (a) Any person who knowingly has, in any vehicle owned, operated or occupied by such person, any weapon, any pistol or revolver for which a proper permit has not been issued as provided in section 29-28 or any machine gun which has not been registered as required by section 53-202, shall be guilty of a class D felony, and the presence of any such weapon, pistol or revolver, or machine gun in any vehicle shall be prima facie evidence of a violation of this section by the owner, operator and each occupant thereof. The word "weapon", as used in this section, means any BB. gun, any blackjack, any metal or brass knuckles, any police baton or nightstick, any dirk knife or switch knife, any knife having an automatic spring release device by which a blade is released from the handle, having a blade of over one and one-half inches in length, any stiletto, any knife the edged portion of the blade of which is four inches or more in length, any martial arts weapon or electronic defense weapon, as defined in section 53a-3, or any other dangerous or deadly weapon or instrument.
- (b) The provisions of this section shall not apply to:
 - (1) Any officer charged with the preservation of the public peace while engaged in the pursuit of such officer's official duties;
 - (2) any security guard having a baton or nightstick in a vehicle while engaged in the pursuit of such guard's official duties;
 - (3) any person enrolled in and currently attending a martial arts school, with official verification of such enrollment and attendance, or any certified martial arts instructor, having any such martial arts weapon in a vehicle while traveling to or from such school or to or from an authorized event or competition;
 - (4) any person having a BB. gun in a vehicle provided such weapon is unloaded and stored in the trunk of such vehicle or in a locked container other than the glove compartment or console;
 - (5) any person having a knife, the edged portion of the blade of which is four inches or more in length, in a vehicle if such person is (A) any member of the armed forces of the United States, as defined in section 27-103, or any reserve component thereof, or of the armed forces of the state, as defined in section 27-2, when on duty or going to or from duty, (B) any member of any military organization when on parade or when going to or from any place of assembly, (C) any person while transporting such knife as merchandise or for display at an authorized gun or knife

show, (D) any person while lawfully removing such person's household goods or effects from one place to another, or from one residence to another, (E) any person while actually and peaceably engaged in carrying any such knife from such person's place of abode or business to a place or person where or by whom such knife is to be repaired, or while actually and peaceably returning to such person's place of abode or business with such knife after the same has been repaired, (F) any person holding a valid hunting, fishing or trapping license issued pursuant to chapter 490 or any saltwater fisherman while having such knife in a vehicle for lawful hunting, fishing or trapping activities, or (G) any person participating in an authorized historic reenactment; or

(6) any person having a dirk knife or police baton in a vehicle while lawfully moving such person's household goods or effects from one place to another, or from one residence to another.

Cite as Conn. Gen. Stat. § 29-38

Source:

1949 Rev., S. 4169; 1953, S. 2133d; P.A. 86-280, S. 1; P.A. 87-220, S. 2; P.A. 98-0129, S. 11; June Sp. Sess. P.A. 98-0001, S. 120, 121; P.A. 99-0212, S. 14; P.A. 10-0032, S. 98; P.A. 13-0258, S. 94; P.A. 14-0122, S. 46; P.A. 16-0178, S. 1.

History. Amended by P.A. 16-0178, S. 1 of the Connecticut Acts of the 2016 Regular Session, eff. 10/1/2016. Amended by P.A. 14-0122, S. 46 of the Connecticut Acts of the 2014 Regular Session, eff. 10/1/2014. Note: P.A. 86-280 included martial arts weapons in definition of weapon and added exception for persons enrolled in and attending a martial arts school while traveling to and from such school; P.A. 87-220 made technical changes and deleted provision including "nunchaku and chinese stars" within meaning of a martial arts weapon since weapons are already included in referenced definition of Sec. 53a-3; P.A. 98-0129 deleted reference to a permit for a weapon issued pursuant to Sec. 53-206, redefined "weapon" to add BB. gun and electronic defense weapon and exclude sand bag and slung shot and added exception permitting certain individuals to have a knife with a blade of four inches or more in a vehicle; June Sp. Sess. P.A. 98-0001 repealed Sec. 11 of P.A. 98-0129, thereby nullifying the changes in P.A. 98-0129, effective June 24, 1998; P.A. 99-0212 inserted Subsec. indicators, amended Subsec. (a) to delete reference to a permit for a weapon issued pursuant to Sec. 53-206, redefined "weapon" to add BB. gun, police baton or nightstick and electronic defense weapon and delete slung shot and sand bag, rephrased and repositioned provisions and made provisions gender neutral and added new Subsec. (b)(1) and (2) re exceptions for officer charged with preservation of public peace and for security guard having a baton or nightstick in vehicle, designated existing exception for martial arts students as Subdiv. (3) and amended said Subdiv. to include any certified martial arts instructor and include having martial arts weapon in vehicle while traveling to or from an authorized event or competition, and added Subsec. (b)(4) re exceptions for any person having BB. gun that is unloaded and secured in vehicle and for certain persons having knife with a blade of four inches or more in vehicle under certain circumstances; P.A. 10-0032 made technical changes, effective May 10, 2010; P.A. 13-0258 amended Subsec. (a) to change penalty from fine of not more than \$1,000 or imprisonment of not more than 5 years to a class D felony; P.A. 14-0122 made a technical change in Subsec. (b)(5)(F); P.A. 16-0178 amended Subsec. (b) by adding Subdiv. (6) re person having dirk knife or police baton in vehicle.

Case Notes:

After defendant's loaded revolver was removed from his waistband while he was seated in his car after midnight in a high crime area, officer justified in seizure and arrest of defendant under the circumstances of speedy information by informant. 157 C. 114. Search of defendant's car, upon his arrest for breach of the peace, which yielded weapon was incidental to his arrest and properly made. Id., 222. Cited. 163 C. 176. Section has the effect of placing the burden of proof on alleged violators constituting a denial of due process and is therefore invalid. 165 C. 577, 597. Cited. 170 C. 81. State must prove beyond reasonable doubt that proper permit had not been issued, since that is essential element of the crime. Id., 234. Cited. 172 C. 21; Id., 94; 174 C. 22; Id., 405; 178 C. 534; 179 C. 516; 183 C. 148; 188 C. 406; 189 C. 35; 190 C. 259; 193 C. 7; 195 C. 668; 197 C. 358; 201 C. 190; 205 C. 262; Id., 370; 207 C. 565; 209 C. 98; 211 C. 258; 217 C. 73; 222 C. 718; 225 C. 650; 227 C. 363; 233 C. 215; 237 C. 348; 239 C. 56; 240 C. 489. If defendant knowingly has item in a vehicle and intentionally uses that item in a manner capable of causing serious physical injury, the elements of section have been met, regardless of whether he had a prior intent to do so; when item that defendant is charged with having in the vehicle is an otherwise legal item and did not become a dangerous instrument within meaning of section until it was used in self-defense, defendant may raise Sec. 53a-19 as a defense. 271 C. 785. Section concerns unlawful possession of both firearms and weapons, and possession does not necessarily mean "carrying". 298 C. 1. Knife designed primarily for stabbing purposes, rather than for utilitarian purposes, and having a handle guard and two sharpened edges that taper to a point falls within the meaning of a dirk knife for purposes of section; expandable metal baton constitutes a police baton for purposes of section; prohibition on transport of dirk knives and police batons to one's home violates second amendment right to bear arms and therefore section, as applied, is unconstitutional. 315 C. 79.

Cited. 7 CA 95; 9 CA 169; judgment reversed, see 205 C. 370; Id., 330; 10 CA 395; 11 CA 11; Id., 251; Id., 621; 12 CA 268; 13 CA 76; Id., 288; 15 CA 305; 17 CA 243; Id., 556; 19 CA 48; 21 CA 299; 23 CA 602; 25 CA 181; Id., 433; 30 CA 9; Id., 232; 38 CA 434; 45 CA 110. Elements discussed. 47 CA 586. Statute does not require state to prove that defendant possessed the knife in the vehicle; it is sufficient for state to prove beyond a reasonable doubt that defendant knew the knife was in the vehicle. 63 CA 228. Is not a crime to have a hammer in a motor vehicle unless it is intended to be used as a dangerous instrument or for some other illicit purpose. 70 CA 855. State's search of state and city database for evidence of permit to carry pistol was insufficient to meet state's burden of establishing that defendant lacked a valid permit to lawfully carry a pistol on date of incident because state failed to establish that defendant was a resident of the city or had a place of business within the city during the 60-day period immediately preceding the alleged conduct. 156 CA 175.

Separate and distinct crime from the carrying of dangerous weapons on the person. 10 CS 272. Cited. 22 CS 173; Id., 201; 23 CS 82; 35 CS 659.

Cited. 5 Conn. Cir. Ct. 119.

§ 53a-3. Definitions.

Connecticut Statutes

Title 53A. PENAL CODE

Chapter 950. PENAL CODE: GENERAL PROVISIONS

Current through the 2018 Regular Session

§ 53a-3. Definitions

Except where different meanings are expressly specified, the following terms have the following meanings when used in this title:

- "Person" means a human being, and, where appropriate, a public or private corporation, a limited liability company, an unincorporated association, a partnership, a government or a governmental instrumentality;
- (2) "Possess" means to have physical possession or otherwise to exercise dominion or control over tangible property;
- (3) "Physical injury" means impairment of physical condition or pain;
- (4) "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ;
- (5) "Deadly physical force" means physical force which can be reasonably expected to cause death or serious physical injury;
- (6) "Deadly weapon" means any weapon, whether loaded or unloaded, from which a shot may be discharged, or a switchblade knife, gravity knife, billy, blackjack, bludgeon, or metal knuckles. The definition of "deadly weapon" in this subdivision shall be deemed not to apply to section 29-38 or 53-206;
- (7) "Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury, and includes a "vehicle" as that term is defined in this section and includes a dog that has been commanded to attack, except a dog owned by a law enforcement agency of the state or any political subdivision thereof or of the federal government when such dog is in the performance of its duties under the direct supervision, care and control of an assigned law enforcement officer;
- (8) "Vehicle" means a "motor vehicle" as defined in section 14-1, a snowmobile, any aircraft, or any vessel equipped for propulsion by mechanical means or sail;
- (9) "Peace officer" means a member of the Division of State Police within the Department of Emergency Services and Public Protection or an organized local police department, a chief inspector or inspector in the Division of Criminal Justice, a state marshal while exercising authority granted under any provision of the general statutes, a judicial marshal in the performance of the duties of a judicial marshal, a conservation officer or special

conservation officer, as defined in section 26-5, a constable who performs criminal law enforcement duties, a special policeman appointed under section 29-18, 29-18a or 29-19, an adult probation officer, an official of the Department of Correction authorized by the Commissioner of Correction to make arrests in a correctional institution or facility, any investigator in the investigations unit of the office of the State Treasurer, a United States marshal or deputy marshal, any special agent of the federal government authorized to enforce the provisions of Title 21 of the United States Code, or a member of a law enforcement unit of the Mashantucket Pequot Tribe or the Mohegan Tribe of Indians of Connecticut created and governed by a memorandum of agreement under section 47-65c who is certified as a police officer by the Police Officer Standards and Training Council pursuant to sections 7-294a to 7-294e, inclusive;

- (10) "Firefighter" means any agent of a municipality whose duty it is to protect life and property therein as a member of a duly constituted fire department whether professional or volunteer;
- (11) A person acts "intentionally" with respect to a result or to conduct described by a statute defining an offense when his conscious objective is to cause such result or to engage in such conduct;
- (12) A person acts "knowingly" with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such circumstance exists;
- (13) A person acts "recklessly" with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregarding it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation;
- (14) A person acts with "criminal negligence" with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation;
- (15) "Machine gun" means a weapon of any description, irrespective of size, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged from a magazine with one continuous pull of the trigger and includes a submachine gun;
- (16) "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger;

- (17) "Shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger;
- (18) "Pistol" or "revolver" means any firearm having a barrel less than twelve inches;
- (19) "Firearm" means any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded from which a shot may be discharged;
- (20) "Electronic defense weapon" means a weapon which by electronic impulse or current is capable of immobilizing a person temporarily, but is not capable of inflicting death or serious physical injury, including a stun gun or other conductive energy device;
- (21) "Martial arts weapon" means a nunchaku, kama, kasari-fundo, octagon sai, tonfa or chinese star;
- (22) "Employee of an emergency medical service organization" means an ambulance driver, emergency medical technician or paramedic as defined in section 19a-175;
- (23) "Railroad property" means all tangible property owned, leased or operated by a railroad carrier including, but not limited to, a right-of-way, track, roadbed, bridge, yard, shop, station, tunnel, viaduct, trestle, depot, warehouse, terminal or any other structure or appurtenance or equipment owned, leased or used in the operation of a railroad carrier including a train, locomotive, engine, railroad car, signals or safety device or work equipment or rolling stock.

Cite as Conn. Gen. Stat. § 53a-3

Source:

1969, P.A. 828, S. 3; 1971, P.A. 871, S. 1; 1972, P.A. 188, S. 3; P.A. 73-295; 73-639, S. 1; P.A. 74-180; 74-186, S. 8, 129; P.A. 75-283; 75-380, S. 1; P.A. 76-111, S. 9; P.A. 77-604, S. 38, 84; 77-614, S. 486, 610; P.A. 80-308; 80-394, S. 8, 13; P.A. 85-602, S. 3, 4; P.A. 86-280, S. 2; 86-287, S. 2; P.A. 90-157, S. 1; P.A. 91-0171, S. 1; May 25 Sp. Sess. P.A. 94-0001, S. 98, 130; P.A. 95-0079, S. 182, 189; 95-277, S. 13, 19; P.A. 96-0243, S. 7, 16; P.A. 00-0099, S. 5, 154; 00-149, S. 1; P.A. 01-0084, S. 9, 26; P.A. 02-0132, S. 29; P.A. 07-0123, S. 6; P.A. 11-0051, S. 134; P.A. 13-0170, S. 3; P.A. 15-0211, S. 18.

History. Amended by P.A. 15-0211, S. 18 of the Connecticut Acts of the 2015 Regular Session, eff. 6/30/2015. **Note:** 1971 act included snowmobiles in definition of "vehicle" and added definitions of "peace officer" and "fireman"; 1972 act redefined "peace officer" to include special policemen appointed under Sec. 29-18 ; P.A. 73-295 added reference to special policemen appointed under Sec. 29-18a in definition of "peace officer"; P.A. 73-639 specified that weapons "whether loaded or unloaded" are deadly weapons; P.A. 74-180 amended definition of "deadly weapon" to specify its inapplicability to Secs. 29-38 and 53-206 ; P.A. 74-186 replaced county detectives with detectives in division of criminal justice in definition of "peace officer", county government having been abolished; P.A. 75-283 included special policemen appointed under Sec. 29-19 in definition of "peace officer"; P.A. 76-111 substituted chief
inspectors and inspectors for detectives in definition of "peace officer"; P.A. 77-604 made technical grammatical correction in Subdiv. (9); P.A. 77-614 made state police department a division within the department of public safety, effective January 1, 1979, amending Subdiv. (9) accordingly; P.A. 80-308 included adult probation officers appointed under Sec. 54-104 in definition of "peace officer"; P.A. 80-394 included special deputy sheriffs in definition of "peace officer"; P.A. 85-602 redefined "peace officer" to include investigators in the investigations unit of the state treasurer's office; P.A. 86-280 defined "martial arts weapon"; P.A. 86-287 reiterated definition of "martial arts weapon" and defined "electronic defense weapon"; P.A. 90-157 added Subdiv. (22) defining "employee of an emergency medical service organization"; P.A. 91-0171 included special agents of the federal government authorized to enforce the provisions of Title 21 of the United States Code in definition of "peace officer"; May 25 Sp. Sess. P.A. 94-0001 amended Subdiv. (9) by making technical change, effective July 1, 1994; P.A. 95-0079 redefined "person" to include a limited liability company, effective May 31, 1995; P.A. 95-0277 redefined "peace officer", to include investigators in the office of the State Treasurer rather than Workers' Compensation Commission investigators, effective June 29, 1995; P.A. 96-0243 amended Subdiv. (7) to include certain dogs in the definition of "dangerous instrument", effective June 6, 1996; P.A. 00-0099 amended Subdiv. (9) by deleting reference to sheriff, deputy sheriff and special deputy sheriff and adding provision re state marshal exercising statutory authority and judicial marshal in performance of duties, effective December 1, 2000; P.A. 00-0149 added Subdiv. (23) defining "railroad property"; P.A. 01-0084 amended Subdiv. (10) to replace "Fireman" with "Firefighter", effective July 1, 2001; P.A. 02-0132 amended Subdiv. (9) by deleting provision re appointment under Sec. 54-104; P.A. 07-0123 redefined "electronic defense weapon" in Subdiv. (20) to include "a stun gun or other conductive energy device"; pursuant to P.A. 11-0051, "Department of Public Safety" was changed editorially by the Revisors to "Department of Emergency Services and Public Protection" in Subdiv. (9), effective July 1, 2011; P.A. 13-0170 redefined "peace officer" in Subdiv. (9) to include member of law enforcement unit of Mashantucket Pequot Tribe or Mohegan Tribe of Indians of Connecticut under certain conditions, effective June 25, 2013; P.A. 15-0211 amended Subdiv. (9) by redefining "peace officer" to include United States marshal or deputy marshal, effective June 30, 2015.

Case Notes:

Court correctly charged jury on definition of dangerous instrument. 173 C. 91. Subdiv. (3) compared to Subdiv. (4). 175 C. 204. Cited. 182 C. 501; 197 C. 574; 201 C. 505; 211 C. 258; 226 C. 514; 231 C. 545. Offense of carrying a dangerous weapon is not constitutionally overbroad in violation of the first and fourteenth amendments to the U.S. Constitution; defendant's threatened use of a table leg to inflict serious bodily injury against victim, in the event that victim continued to bother him, constitutes a violation of this section and Sec. 53-206 if the threat is found to be a true threat not protected by the first amendment to the U.S. Constitution. 287 C. 237. Evidence re use of pepper spray causing temporary blindness, chemical conjunctivitis and chemical burns constituted sufficient evidence of "serious physical injury" and "dangerous instrument" under section. 292 C. 533.

Cited. 8 CA 545; 9 CA 686; 11 CA 665; 12 CA 221; Id., 225; 14 CA 10; Id., 67; 37 CA 338. Earlier jury instruction in earlier related case defining assault as the reduced ability to act as one would have otherwise acted did not prejudice jury. 71 CA 190.

Cited. 35 CS 519; 37 CS 661; 38 CS 619; 39 CS 494; 40 CS 498; 43 CS 46.

Subdiv. (1):

"Human being" construed for purposes of murder statute in accordance with long-standing common-law principle that the term includes a fetus that has been born alive. 296 C. 622.

Cited. 17 CA 326; 25 CA 586; judgment reversed, see 223 C. 492.

Subdiv. (3):

Cited. 171 C. 276; 197 C. 602.

Cited. 3 CA 353; 5 CA 612; 10 CA 330; 14 CA 586; 17 CA 226; Id., 391; 23 CA 160; 26 CA 641; 28 CA 581; judgment reversed, see 226 C. 601; Id., 612; 37 CA 733; 41 CA 255; Id., 565; 43 CA 76; 45 CA 591.

Subdiv. (4):

Cited. 172 C. 275; 173 C. 389; 174 C. 604; 181 C. 406; 182 C. 66; 186 C. 654; 189 C. 303; 197 C. 602; 202 C. 463; 211 C. 441; 213 C. 593; 225 C. 450; 231 C. 115; 237 C. 748.

Cited. 5 CA 590; Id., 612; 6 CA 667; 8 CA 496; 10 CA 330; Id., 462; 11 CA 499; 14 CA 657; 15 CA 531; 16 CA 346; 17 CA 226; 19 CA 654; Id., 674; 21 CA 688; 23 CA 502; 25 CA 734; 26 CA 641; 28 CA 81; Id., 402; Id., 581; judgment reversed, see 226 C. 601; Id., 612; 29 CA 679; 30 CA 232; 33 CA 782; 34 CA 261; 38 CA 20; 39 CA 18; judgment reversed, see 237 C. 748; 41 CA 565; 42 CA 307; 45 CA 270; Id., 591. "Disfigurement" defined as that which impairs or injures beauty, symmetry or appearance of a person or which renders unsightly, misshapen or imperfect or deforms in some manner. 82 CA 684. Victim's testimony and medical records re injury that required surgical treatment, left victim with impairment to the use of her dominant hand and left victim's hand visibly scarred was sufficient to establish proof of serious physical injury. 116 CA 196. The jury reasonably could have concluded that scars constituted serious physical injury because they negatively affected the appearance of skin on face and abdomen. 118 CA 831. Subdiv. (5):

Cited. 186 C. 654; 188 C. 653; 213 C. 593.

Cited. 8 CA 667; 16 CA 346; 25 CA 734; 30 CA 406; judgment reversed, see 228 C. 335; 31 CA 58.

Subdiv. (6):

Cited. 169 C. 683; 171 C. 277; 175 C. 569; 177 C. 379; 179 C. 576; 182 C. 262; Id., 533; 185 C. 473; 189 C. 268; 190 C. 822; 195 C. 567; Id., 651; Id., 668; 197 C. 507; 203 C. 506. If a weapon from which a shot may be discharged is designed for violence and is capable of inflicting death or serious physical injury, it is a deadly weapon regardless of whether the shot is discharged by gunpowder. 278 C. 113.

Cited. 7 CA 445; 19 CA 111; judgment reversed, see 215 C. 538; 21 CA 299; 25 CA 104; 29 CA 679; 31 CA 614; 33 CA 468; 39 CA 579; 45 CA 591. Trial court did not invade jury's fact-finding province when it ruled as a matter of law that BB gun in evidence was a deadly weapon under Subdiv. in this case. 110 CA 263.

Subdiv. (7):

Cited. 169 C. 683; 171 C. 277. Tire iron used to break into apartment is not a dangerous instrument per se; potential for injury considered only in conjunction with circumstances of actual or threatened use. 177 C. 140. Cited. 182 C. 533; 190 C. 822; 195 C. 668; 202 C. 629; 218 C. 432. A fist or other body part is not a dangerous instrument under definition. 307 C. 115.

Cited. 5 CA 40; 6 CA 667; 7 CA 27; Id., 445; 10 CA 330; 14 CA 586; Id., 657; 15 CA 586; 17 CA 226; 21 CA 299; 25 CA 171; 28 CA 612; 29 CA 262; Id., 679; 33 CA 468; 38 CA 868; 45 CA 270. Jury reasonably could have found that defendant's "feet and footwear" were a "dangerous instrument" in the manner in which they were used because of defendant's above average size, the age and delicate health of the elderly victim, the continual kicking of such victim in the area of several vital organs and the force of the kicks which was intensified by the weight of the footwear. 74 CA 545. Dangerous instrument as defined in Subdiv. is "any instrument, article or substance which, under the circumstances in which it is used ... or threatened to be used, is capable of causing death or serious physical injury". 81 CA 367. Evidence was sufficient to prove that a knife or similar instrument was used thereby constituting a dangerous instrument. 98 CA 13. Jury reasonably could have concluded that being stabbed with a hypodermic

syringe potentially contaminated with a blood-borne pathogen constituted a dangerous instrument. 161 CA 379. Subdiv. (11):

Cited. 171 C. 271; 178 C. 448; 180 C. 382; 182 C. 449; 184 C. 121; 186 C. 414; Id., 555; Id., 574; Id., 654; 188 C. 515; 189 C. 383; 190 C. 219; 194 C. 258; Id., 376; 195 C. 166; 198 C. 92; 199 C. 1; 201 C. 489; 202 C. 520; Id., 629; 204 C. 1; 209 C. 290; 214 C. 77; 216 C. 585; 219 C. 16; Id., 363; Id., 489; 220 C. 285; 223 C. 595; Id., 674; 225 C. 55; Id., 114; 227 C. 456; 228 C. 62; Id., 118; Id., 281; 229 C. 328; 231 C. 115; 233 C. 215; 235 C. 274; Id., 477; 236 C. 189; 237 C. 748; 238 C. 253.

Cited. 5 CA 599; 7 CA 180; 9 CA 111; Id., 373; 11 CA 24; 16 CA 455; 19 CA 674; 24 CA 598; 27 CA 103; 28 CA 81; 34 CA 223; 35 CA 51; 36 CA 417; 39 CA 18; judgment reversed, see 237 C. 748; 40 CA 643; 41 CA 361; 45 CA 297. Provision dealing with intent to engage in proscribed conduct is irrelevant to a murder prosecution pursuant to Sec. 53a-54a. 48 CA 677. Meaning of acting "intentionally". 51 CA 345. Portion of the definition of "intent" relating to intent to engage in proscribed conduct is not relevant to charge of assault in the second degree. 70 CA 855. State sufficiently proved defendant had conscious objective to cause victim's face to be scarred where defendant butted victim's face with his head, bit her face, struck her on the head with a hairdryer, kicked her and attempted to choke her, resulting in scars to victim's face. 74 CA 633. Although court improperly instructed jury on entire definition re attempted murder and kidnapping charge, it properly instructed that jury had to find that defendant intended to cause the death of another or intended to abduct and restrain another. 97 CA 837. Definition embraces both specific intent to cause a result and general intent to engage in proscribed conduct, and it is improper for court to refer in its instruction to entire definitional language, including the intent to engage in conduct, when the charge relates to a crime requiring only the intent to cause a specific result. 99 CA 230. Although court instructed jury regarding intent by using the full statutory definition including portion relating to general intent crimes, it was not reasonably possible that jury was misled by court's instructions because court gave numerous proper instructions regarding proper intent required for crime of attempt to commit assault in the first degree. 107 CA 517.

Subdiv. (12):

Cited. 182 C. 449; 203 C. 682; 223 C. 595; 235 C. 477.

Cited. 5 CA 599; 11 CA 24; 13 CA 288; 16 CA 455; 40 CA 643.

Subdiv. (13):

Cited. 171 C. 271; 180 C. 382; 182 C. 66; ld., 449; 184 C. 400; 185 C. 63; 186 C. 265; 187 C. 6; 193 C. 632; 195 C. 232; 198 C. 92; ld., 454; 199 C. 1; 202 C. 629; 212 C. 593; 213 C. 579; 214 C. 57; 216 C. 585; 219 C. 16; 222 C. 444; 225 C. 55; 226 C. 20; 228 C. 147; 231 C. 115; 233 C. 174.

Cited. 5 CA 40; Id., 571; 7 CA 180; 11 CA 24; Id., 473; 17 CA 502; judgment reversed, see 213 C. 579; 19 CA 674; 26 CA 331; Id., 448; 27 CA 73; Id., 322; 30 CA 95; judgment reversed, see 228 C. 147; 34 CA 807; 35 CA 51; 41 CA 333.

Statute applies an objective yardstick to measure the nature and degree of the risk and a subjective yardstick to measure defendant's awareness of the risk. 35 CS 570.

Subdiv. (14):

Cited. 171 C. 112; 176 C. 451; 180 C. 382; 182 C. 449; 187 C. 6; 195 C. 232; 201 C. 174; 202 C. 520; Id., 629; 204 C. 410; Id., 429; 212 C. 593; 213 C. 579; 214 C. 57; 222 C. 444; 226 C. 20; 228 C. 147; 231 C. 115; 238 C. 253; 242 C. 211.

Cited. 5 CA 40; 11 CA 473; Id., 499; 17 CA 502; judgment reversed, see 213 C. 579; 23 CA 720; 26 CA 448; 29 CA 825; 30 CA 95; judgment reversed, see 228 C. 147.

Subdiv. (18):

Cited. 195 C. 651; 196 C. 395; 197 C. 507; 205 C. 370; 231 C. 235.

Cited. 7 CA 726; 9 CA 169; judgment reversed, see 205 C. 370; Id., 330; 19 CA 48; Id., 111; 36 CA 805; 37 CA 672; 39 CA 502.

Subdiv. (19):

Cited. 175 C. 569; 190 C. 715; 196 C. 395. "Firearm" includes BB. gun; legislature could have restricted the term "firearm" to guns that use gunpowder to discharge their shots, and the fact that legislature elected not to do so is strong evidence that it did not intend to limit the term in that manner. 294 C. 151.

Cited. 3 CA 289; 19 CA 48; Id., 111; 21 CA 299; 34 CA 751; judgment reversed, see 233 C. 211; 38 CA 481; 39 CA 82; Id., 502; 45 CA 591. Subdiv. does not require state to establish that ammunition recovered with handgun was capable of being discharged from the handgun, and use of other ammunition was permitted to establish that handgun was a weapon from which a shot may be discharged. 127 CA 377. Although gun was not operable at time of testing, that responding officer was able to dry fire it at time of seizure and observe that firing mechanism was functional was sufficient to prove operability. 146 CA 844.

Replica antique pistol that propelled via gunpowder a shot that mortally wounded defendant's spouse constituted a pistol, revolver or other weapon from which a shot could be discharged, as defined by Subdiv. 49 CS 248.

§ 53-206c. Sale, carrying and brandishing of facsimile firearms prohibited. Class B misdemeanor.

Connecticut Statutes

Title 53. CRIMES

Chapter 943. OFFENSES AGAINST PUBLIC PEACE AND SAFETY

Current through the 2018 Regular Session

§ 53-206c. Sale, carrying and brandishing of facsimile firearms prohibited. Class B misdemeanor

- (a) For the purposes of this section:
 - (1) "Facsimile of a firearm" means
 - (A) any nonfunctional imitation of an original firearm which was manufactured, designed and produced since 1898, or
 - (B) any nonfunctional representation of a firearm other than an imitation of an original firearm, provided such representation could reasonably be perceived to be a real firearm. Such term does not include any look-a-like, nonfiring, collector replica of an antique firearm developed prior to 1898, or traditional BB. or pellet-firing air gun that expels a metallic or paint-contained projectile through the force of air pressure.
 - (2) "Firearm" means firearm as defined in section 53a-3.
- (b) No person shall give, offer for sale or sell any facsimile of a firearm. The provisions of this subsection shall not apply to any facsimile of a firearm, which, because of its distinct color, exaggerated size or other design feature, cannot reasonably be perceived to be a real firearm.
- (c) Except in self defense, no person shall carry, draw, exhibit or brandish a facsimile of a firearm or simulate a firearm in a threatening manner, with intent to frighten, vex or harass another person.
- (d) No person shall draw, exhibit or brandish a facsimile of a firearm or simulate a firearm in the presence of a peace officer, firefighter, emergency medical technician or paramedic engaged in the performance of his duties knowing or having reason to know that such peace officer, firefighter, emergency medical technician or paramedic is engaged in the performance of his duties, with intent to impede such person in the performance of such duties.
- (e) Any person who violates any provision of this section shall be guilty of a class B misdemeanor.

Cite as Conn. Gen. Stat. § 53-206c Source: P.A. 88-237. § 21a-240. (Formerly Sec. 19-443). Definitions. Connecticut Statutes Title 21A. CONSUMER PROTECTION Chapter 420b. DEPENDENCY-PRODUCING DRUGS Part I. GENERAL PROVISIONS

Current through the 2018 Regular Session

§ 21a-240. (Formerly Sec. 19-443). Definitions

The following words and phrases, as used in this chapter, shall have the following meanings, unless the context otherwise requires:

- (1) "Abuse of drugs" means the use of controlled substances solely for their stimulant, depressant or hallucinogenic effect upon the higher functions of the central nervous system and not as a therapeutic agent prescribed in the course of medical treatment or in a program of research operated under the direction of a physician or pharmacologist;
- (2) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:
 - (A) A practitioner, or, in his presence, by his authorized agent, or
 - (B) the patient or research subject at the direction and in the presence of the practitioner, or
 - (C) a nurse or intern under the direction and supervision of a practitioner;
- (3) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, dispenser or prescribing practitioner. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman;
- (4) "Amphetamine-type substances" include amphetamine, optical isomers thereof, salts of amphetamine and its isomers, and chemical compounds which are similar thereto in chemical structure or which are similar thereto in physiological effect, and which show a like potential for abuse, which are controlled substances under this chapter unless modified;
- (5) "Barbiturate-type drugs" include barbituric acid and its salts, derivatives thereof and chemical compounds which are similar thereto in chemical structure or which are similar thereto in physiological effect, and which show a like potential for abuse, which are controlled substances under this chapter unless modified;
- (6) "Bureau" means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, or its successor agency;
- (7) "Cannabis-type substances" include all parts of any plant, or species of the genus cannabis or any infra specific taxon thereof whether growing or not; the seeds thereof; the resin extracted from any part of such a plant; and every compound, manufacture, salt,

derivative, mixture or preparation of such plant, its seeds or resin; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks, except the resin extracted therefrom, fiber, oil or cake, the sterilized seed of such plant which is incapable of germination, or industrial hemp, as defined in 7 USC 5940, as amended from time to time. Included are cannabinon, cannabinol, cannabidiol and chemical compounds which are similar to cannabinon, cannabinol or cannabidiol in chemical structure or which are similar thereto in physiological effect, and which show a like potential for abuse, which are controlled substances under this chapter unless modified;

- (8) "Controlled drugs " are those drugs which contain any quantity of a substance which has been designated as subject to the federal Controlled Substances Act, or which has been designated as a depressant or stimulant drug pursuant to federal food and drug laws, or which has been designated by the Commissioner of Consumer Protection pursuant to section 21a-243, as having a stimulant, depressant or hallucinogenic effect upon the higher functions of the central nervous system and as having a tendency to promote abuse or psychological or physiological dependence, or both. Such controlled drugs are classifiable as amphetamine-type, barbiturate-type, cannabis-type, cocaine-type, hallucinogenic, morphine-type and other stimulant and depressant drugs. Specifically excluded from controlled drugs and controlled substances are alcohol, nicotine and caffeine;
- "Controlled substance " means a drug, substance, or immediate precursor in schedules I to V, inclusive, of the Connecticut controlled substance scheduling regulations adopted pursuant to section 21a-243;
- (10) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance;
- (11) "Deliver or delivery" means the actual, constructive or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship;
- (12) "Dentist" means a person authorized by law to practice dentistry in this state;
- (13) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for the delivery;
- (14) "Dispenser" means a practitioner who dispenses;
- (15) "Distribute" means to deliver other than by administering or dispensing a controlled

substance;

- (16) "Distributor" means a person who distributes and includes a wholesaler who is a person supplying or distributing controlled drugs which he himself has not produced or prepared to hospitals, clinics, practitioners, pharmacies, other wholesalers, manufacturers and federal, state and municipal agencies;
- (17) "Drug" means (A) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (B) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (C) substances, other than food, intended to affect the structure or any function of the body of man or animals; and (D) substances intended for use as a component of any article specified in subparagraph (A), (B) or (C) of this subdivision. It does not include devices or their components, parts or accessories;
- (18) "Drug dependence" means a psychoactive substance dependence on drugs as that condition is defined in the most recent edition of the "Diagnostic and Statistical Manual of Mental Disorders" of the American Psychiatric Association;
- (19) "Drug-dependent person" means a person who has a psychoactive substance dependence on drugs as that condition is defined in the most recent edition of the "Diagnostic and Statistical Manual of Mental Disorders" of the American Psychiatric Association;
- (20) (A) "Drug paraphernalia" refers to equipment, products and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing or concealing, or ingesting, inhaling or otherwise introducing into the human body, any controlled substance contrary to the provisions of this chapter including, but not limited to:
 - (i) Kits intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
 - (ii) kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;
 - (iii) isomerization devices used, intended for use in increasing the potency of any species of plant which is a controlled substance;
 - (iv) testing equipment used, intended for use or designed for use in identifying

or analyzing the strength, effectiveness or purity of controlled substances;

- (v) dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose used, intended for use or designed for use in cutting controlled substances;
- (vi) separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
- (vii) capsules and other containers used, intended for use or designed for use in packaging small quantities of controlled substances;
- (viii containers and other objects used, intended for use or designed for use instoring or concealing controlled substances;
- (ix) objects used, intended for use or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as: Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with screens, permanent screens, hashish heads or punctured metal bowls; water pipes; carburetion tubes and devices; smoking and carburetion masks; roach clips: Meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand; miniature cocaine spoons, and cocaine vials; chamber pipes; carburetor pipes; electric pipes; air-driven pipes; chillums; bongs or ice pipes or chillers;
- (B) "Factory" means any place used for the manufacturing, mixing, compounding, refining, processing, packaging, distributing, storing, keeping, holding, administering or assembling illegal substances contrary to the provisions of this chapter, or any building, rooms or location which contains equipment or paraphernalia used for this purpose;
- (21) "Federal Controlled Substances Act, 21 USC 801 et seq." means Public Law 91-0513, the Comprehensive Drug Abuse Prevention and Control Act of 1970;
- (22) "Federal food and drug laws" means the federal Food, Drug and Cosmetic Act, as amended, Title 21 USC 301 et seq.;
- (23) "Hallucinogenic substances" are psychodysleptic substances, other than cannabis-type substances, which assert a confusional or disorganizing effect upon mental processes or behavior and mimic acute psychotic disturbances. Exemplary of such drugs are mescaline, peyote, psilocyn and d-lysergic acid diethylamide, which are controlled substances under this chapter unless modified;

- (24) "Hospital ", as used in sections 21a-243 to 21a-283, inclusive, means an institution for the care and treatment of the sick and injured, approved by the Department of Public Health or the Department of Mental Health and Addiction Services as proper to be entrusted with the custody of controlled drugs and substances and professional use of controlled drugs and substances under the direction of a licensed practitioner;
- (25) "Intern" means a person who holds a degree of doctor of medicine or doctor of dental surgery or medicine and whose period of service has been recorded with the Department of Public Health and who has been accepted and is participating in training by a hospital or institution in this state. Doctors meeting the foregoing requirements and commonly designated as "residents" and "fellows" shall be regarded as interns for purposes of this chapter;
- (26) "Immediate precursor" means a substance which the Commissioner of Consumer Protection has found to be, and by regulation designates as being, the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used, in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture;
- (27) "Laboratory" means a laboratory approved by the Department of Consumer Protection as proper to be entrusted with the custody of controlled substances and the use of controlled substances for scientific and medical purposes and for purposes of instruction, research or analysis;
- (28) "Manufacture" means the production, preparation, cultivation, growing, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging or labeling of a controlled substance:
 - (A) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or
 - (B) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale;
- (29) "Marijuana" means all parts of any plant, or species of the genus cannabis or any infra specific taxon thereof, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Marijuana does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such

mature stalks, except the resin extracted therefrom, fiber, oil, or cake, the sterilized seed of such plant which is incapable of germination, or industrial hemp, as defined in 7 USC 5940, as amended from time to time. Included are cannabinon, cannabinol or cannabidiol and chemical compounds which are similar to cannabinon, cannabinol or cannabidiol in chemical structure or which are similar thereto in physiological effect, and which show a like potential for abuse, which are controlled substances under this chapter unless modified;

- (30) "Narcotic substance" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
 - (A) Morphine-type:
 - Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate which are similar thereto in chemical structure or which are similar thereto in physiological effect and which show a like potential for abuse, which are controlled substances under this chapter unless modified;
 - (ii) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (i), but not including the isoquinoline alkaloids of opium;
 - (iii) opium poppy and poppy straw;
 - (B) cocaine-type, coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, isomer, derivatives or preparation thereof which is chemically equivalent or identical with any of these substances or which are similar thereto in physiological effect and which show a like potential for abuse, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine;
- (31) "Nurse " means a person performing nursing as defined in section 20-87a ;
- (32) "Official written order" means an order for controlled substances written on a form provided by the bureau for that purpose under the federal Controlled Substances Act;
- (33) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability; it does not include, unless specifically designated as controlled under this chapter, the dextrorotatory isomer of 3-methoxy-n-methylmorthinan and its salts (dextro-methorphan) but shall include its racemic and levorotatory forms;
- (34) "Opium poppy" means the plant of the species papaver somniferum I., except its seed;
- (35) Repealed by P.A. 99-0102, S. 51;

- (36) "Other stimulant and depressant drugs" means controlled substances other than amphetamine-type, barbiturate-type, cannabis-type, cocaine-type, hallucinogenics and morphine-type which are found to exert a stimulant and depressant effect upon the higher functions of the central nervous system and which are found to have a potential for abuse and are controlled substances under this chapter;
- (37) "Person" includes any corporation, limited liability company, association or partnership, or one or more individuals, government or governmental subdivisions or agency, business trust, estate, trust, or any other legal entity. Words importing the plural number may include the singular; words importing the masculine gender may be applied to females;
- (38) "Pharmacist " means a person authorized by law to practice pharmacy pursuant to section 20-590, 20-591, 20-592 or 20-593 ;
- (39) "Pharmacy " means an establishment licensed pursuant to section 20-594 ;
- (40) "Physician " means a person authorized by law to practice medicine in this state pursuant to section 20-9;
- (41) "Podiatrist" means a person authorized by law to practice podiatry in this state;
- (42) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;
- (43) "Practitioner" means: (A) A physician, dentist, veterinarian, podiatrist, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state; (B) a pharmacy, hospital or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state;
- (44) "Prescribe" means order or designate a remedy or any preparation containing controlled substances;
- (45) "Prescription" means a written, oral or electronic order for any controlled substance or preparation from a licensed practitioner to a pharmacist for a patient;
- (46) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance;
- (47) "Registrant" means any person licensed by this state and assigned a current federal Bureau of Narcotics and Dangerous Drug Registry Number as provided under the federal Controlled Substances Act;
- (48) "Registry number" means the alphabetical or numerical designation of identification assigned to a person by the federal Drug Enforcement Administration, or other federal agency, which is commonly known as the federal registry number;

- (49) "Restricted drugs or substances" are the following substances without limitation and for all purposes: Datura stramonium; hyoscyamus niger; atropa belladonna, or the alkaloids atropine; hyoscyamine; belladonnine; apatropine; or any mixture of these alkaloids such as daturine, or the synthetic homatropine or any salts of these alkaloids, except that any drug or preparation containing any of the above-mentioned substances which is permitted by federal food and drug laws to be sold or dispensed without a prescription or written order shall not be a controlled substance; amyl nitrite; the following volatile substances to the extent that said chemical substances or compounds containing said chemical substances are sold, prescribed, dispensed, compounded, possessed or controlled or delivered or administered to another person with the purpose that said chemical substances shall be breathed, inhaled, sniffed or drunk to induce a stimulant, depressant or hallucinogenic effect upon the higher functions of the central nervous system: Acetone; benzene; butyl alcohol; butyl nitrate and its salts, isomers, esters, ethers or their salts; cyclohexanone; dichlorodifluoromethane; ether; ethyl acetate; formaldehyde; hexane; isopropanol; methanol; methyl cellosolve acetate; methyl ethyl ketone; methyl isobutyl ketone; nitrous oxide; pentochlorophenol; toluene; toluol; trichloroethane; trichloroethylene; 1,4 butanediol;
- (50) "Sale" is any form of delivery which includes barter, exchange or gift, or offer therefor, and each such transaction made by any person whether as principal, proprietor, agent, servant or employee;
- (51) "State", when applied to a part of the United States, includes any state, district, commonwealth, territory or insular possession thereof, and any area subject to the legal authority of the United States of America;
- (52) "State food, drug and cosmetic laws " means the Uniform Food, Drug and Cosmetic Act, section 21a-91 et seq.;
- (53) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household;
- (54) "Veterinarian" means a person authorized by law to practice veterinary medicine in this state;
- (55) "Wholesaler" means a distributor or a person who supplies controlled substances that he himself has not produced or prepared to registrants as defined in subdivision (47) of this section;
- (56) "Reasonable times" means the time or times any office, care-giving institution, pharmacy, clinic, wholesaler, manufacturer, laboratory, warehouse, establishment, store or place of business, vehicle or other place is open for the normal affairs or business or the practice activities usually conducted by the registrant;

- (57) "Unit dose drug distribution system" means a drug distribution system used in a hospital or chronic and convalescent nursing home in which drugs are supplied in individually labeled unit of use packages, each patient's supply of drugs is exchanged between the hospital pharmacy and the drug administration area or, in the case of a chronic and convalescent nursing home between a pharmacy and the drug administration area, at least once each twenty-four hours and each patient's medication supply for this period is stored within a patient-specific container, all of which is conducted under the direction of a pharmacist licensed in Connecticut and, in the case of a hospital, directly involved in the provision and supervision of pharmaceutical services at such hospital at least thirty-five hours each week;
- (58) "Cocaine in a free-base form" means any substance which contains cocaine, or any compound, isomer, derivative or preparation thereof, in a nonsalt form.

Cite as Conn. Gen. Stat. § 21a-240

Source:

1967, P.A. 555, S. 1; 1969, P.A. 391, S. 1; 578, S. 1; 753, S. 1, 2, 38; 1972, P.A. 278, S. 1; 294, S. 42; P.A. 73-137, S. 11-14; 73-291, S. 3; 73-616, S. 61; 73-681, S. 1, 29; P.A. 74-332, S. 4-6; 74-338, S. 36, 94; P.A. 75-176, S. 1; P.A. 77-101, S. 1; 77-614, S. 323, 610; P.A. 80-224, S. 1; P.A. 81-363, S. 1; 81-472, S. 53, 159; P.A. 82-355, S. 1; P.A. 85-613, S. 81, 154; P.A. 87-129, S. 2; 87-373, S. 1; P.A. 90-209, S. 26; P.A. 92-0185, S. 2, 6; May Sp. Sess. P.A. 92-0011, S. 66, 70; P.A. 93-0381, S. 9, 39; P.A. 95-0072, S. 2; 95-79, S. 79, 189; 95-257, S. 11, 12, 21, 58; 95-264, S. 57; P.A. 97-0248, S. 5, 12; P.A. 99-0102, S. 32, 51; June Sp. Sess. P.A. 99-0002, S. 5, 72; P.A. 00-0182, S. 1; P.A. 03-0278, S. 78, 79; June 30 Sp. Sess. P.A. 03-0006, S. 146 (c), (d); P.A. 04-0169, S. 17; 04-189, S. 1; P.A. 06-0195, S. 15; P.A. 09-0022, S. 3; P.A. 10-0032, S. 80; P.A. 15-0202, S. 1, 2; P.A. 16-0043, S. 8. History. Amended by P.A. 17-0017, S. 4 of the Connecticut Acts of the 2017 Regular Session, eff. 10/1/2017. Amended by P.A. 16-0043, S. 8 of the Connecticut Acts of the 2016 Regular Session, eff. 10/1/2016. Amended by P.A. 15-0202, S. 2 of the Connecticut Acts of the 2015 Regular Session, eff. 7/1/2015. Amended by P.A. 15-0202, S. 1 of the Connecticut Acts of the 2015 Regular Session, eff. 7/1/2015. Amended by P.A. 10-0032, S. 80 of the February 2010 Regular Session, eff. 5/10/2010. Amended by P.A. 09-0022, S. 3 of the the 2009 Regular Session, eff. 7/1/2009. Note: 1969 acts divided former Subdiv. (6) into Subparas. (a) and (e), inserting new Subparas. (b) to (d), included doctors designated as residents or fellows as interns in Subdiv. (14), redefined "narcotic drugs" to specifically exclude cannabis-type drugs which had previously been included in Subdiv. (18), included cannabis-type drugs as "restricted drugs" in Subdiv. (32) and added Subdiv. (37) defining "podiatrist"; 1972 acts substituted "substances" or "controlled substances" for "drugs" throughout section and specific Federal Controlled Substances Act for federal narcotics laws, redefined "controlled drugs" to delete drugs specifically named in former Subparas. (b) to (d), redefined "dispense", "narcotic drugs", "official written order", "person", "practitioner", "registrant", "registry number", "restricted drugs or substances" and "sale" for greater clarity and detail, deleted definitions of "federal narcotics laws", "manufacturer", and "wholesaler" and defined "administer", "agent", "bureau", "controlled substance", "counterfeit substance", "deliver or delivery", "dispenser", "distribute", "distributor", "drug", "drug paraphernalia", "Federal Controlled Substances Act", "hospital", "immediate precursor", "manufacture", "marijuana", "opiate", "opium poppy", "poppy straw", "production", "state" and "ultimate user", rearranging and renumbering Subdivs. accordingly; P.A. 73-137 replaced "drugs" with

"substances" in terms defined in Subdivs. (4), (7), (23) and (30); P.A. 73-291 deleted repealed Sec. 17-155a as section for which definitions apply; P.A. 73-616 deleted reference to osteopaths' practice of medicine which initially came into being in 1972 but was removed by later 1972 act before enacted; P.A. 73-681 deleted reference to public health council in Subdivs. (8) and (26) and to commissioner of health in Subdiv. (26), replaced department of health with department of consumer protection in Subdiv. (27), defined "factory", "wholesaler" and "reasonable times" and redefined "opiate" to exclude certain drugs; P.A. 74-332 redefined "cannabis-type drugs" and "marijuana" to include any plant of the genus or infraspecific taxon rather than the single plant Cannabis sativa L. and included "cannabidiol" in Subdiv. (7) and "cannabinon, cannabinol or cannabidiol" in Subdiv. (29) plus other compounds similar in structure or effect; P.A. 74-338 made technical changes; P.A. 75-176 redefined "registry number"; P.A. 77-101 defined "unit dose drug distribution system"; P.A. 77-614 replaced department of health with department of health services in Subdivs. (24) and (25), effective January 1, 1979; P.A. 80-224 redefined "drug paraphernalia"; P.A. 81-363 amended Subsec. (57) to authorize chronic and convalescent nursing homes to utilize a unit dose drug distribution system; P.A. 81-472 made technical changes; P.A. 82-355 amended Subdiv. (49) by revising the list of volatile substances included; Sec. 19-443 transferred to Sec. 21a-240 in 1983; P.A. 85-613 made technical change; P.A. 87-129 redefined "controlled substance" and substituted reference to Sec. 21a-243 for Sec. 21a-242, repealed by the same act; P.A. 87-373 added Subdiv. (58) defining "cocaine in a free-base form"; P.A. 90-209 deleted references to Secs. 17-176, 17-179, 17-183, 17-190, 17-198, 17-199 and 17-201 as sections in which the definitions apply; P.A. 92-0185 amended Subdiv. (20) (A) to make technical changes in the numbering and to provide in (ix) that only hypodermic needles, syringes and other objects used to inject controlled substances, "in a quantity greater than eight", are included in the definition of "drug paraphernalia"; May Sp. Sess. P.A. 92-0011 amended Subdiv. (20)(A)(ix) to increase the quantity of syringes, needles or other objects used to inject controlled substances that constitute "drug paraphernalia" from "greater than eight" to "greater than ten"; (Revisor's note: In 1993 an obsolete reference in Subdiv. (24) to Sec. 21a-285 was replaced editorially by the Revisors with Sec. 21a-283 to reflect the repeal of Secs. 21a-284 and 21a-285); P.A. 93-0381 replaced department of health services with department of public health and addiction services, effective July 1, 1993; P.A. 95-0072 amended Subdiv. (49) to include formaldehyde in the list of restricted substances; P.A. 95-0079 redefined "person" to include a limited liability company, effective May 31, 1995; P.A. 95-0257 replaced Commissioner and Department of Public Health and Addiction Services with Commissioner and Department of Public Health and replaced Commissioner and Department of Mental Health with Commissioner and Department of Mental Health and Addiction Services, effective July 1, 1995; P.A. 95-0264 amended Subdiv. (38) to make technical change; P.A. 97-0248 redefined "drug dependence" in Subdiv. (18) and "drug-dependent person" in Subdiv. (19), effective July 1, 1997; P.A. 99-0102 repealed Subdiv. (35) which had defined "osteopath" and amended Subdivs. (40) and (43) by deleting obsolete reference to osteopathy and to Sec. 20-21; June Sp. Sess. P.A. 99-0002 amended Subdiv. (20)(A)(ix) by replacing "ten" with "thirty" hypodermic syringes; P.A. 00-0182 redefined "restricted drugs or substances" in Subdiv. (49) to include 1,4 butanediol; P.A. 03-0278 made technical changes in Subdivs. (24) and (27), effective July 9, 2003; June 30 Sp. Sess. P.A. 03-0006 and P.A. 04-0169 replaced Commissioner and Department of Consumer Protection with Commissioner and Department of Agriculture and Consumer Protection, effective July 1, 2004: P.A. 04-0189 repealed Sec. 146 of June 30 Sp. Sess. P.A. 03-0006, thereby reversing the merger of the Departments of Agriculture and Consumer Protection, effective June 1, 2004; P.A. 06-0195 redefined "drug paraphernalia" in Subdiv. (20)(A) to exclude equipment, products and material used, intended for use or designed for use in injecting controlled substances into the human body, deleted former Subdiv. (20)(A)(ix) re number of hypodermic syringes, needles and other injecting objects considered drug paraphernalia and redesignated existing

Subdiv. (20)(A)(x) as Subdiv. (20)(A)(ix), effective June 7, 2006; P.A. 09-0022 redefined "prescription" in Subdiv. (45), effective July 1, 2009; P.A. 10-0032 made a technical change in Subdiv. (55), effective May 10, 2010; P.A. 15-0202 amended Subdivs. (7) and (29) by adding ", or industrial hemp, as defined in 7 USC 5940, as amended from time to time" and making technical changes, effective July 1, 2015; P.A. 16-0043 amended Subdiv. (3) by adding reference to prescribing practitioner.

Case Notes:

Annotations to former section 19-443:

Cited. 163 C. 62. Subdiv. (50): Applied to prosecution under Sec. 19-480(a). 166 C. 569. Cited. 169 C. 416; 172 C. 593; 178 C. 704; 181 C. 562; 197 C. 67.

Cited. 30 CS 267; 31 CS 130; 32 CS 324; 33 CS 186.

Marijuana is a cannabis-type drug within the prohibition of chapter; marijuana is within the definition of controlled drugs in section; "narcotics" as used in state and federal legislation is a legal not scientific term. 5 Conn. Cir. Ct. 134. Annotations to present section:

Cited. 197 C. 644; 198 C. 111; 203 C. 641; 212 C. 223; 221 C. 595; 226 C. 514; 227 C. 456; 228 C. 281; 233 C. 174. Cited. 12 CA 225; Id., 274; 13 CA 288; Id., 299; 28 CA 575; 38 CA 815; 43 CA 339.

Subdiv. (19):

Legislature, in redefining "drug-dependent person", did not intend to classify all individuals who are medically dependent on prescribed narcotics as drug dependent persons. 77 CA 393.

Subdiv. (20):

Language in Subpara. (A) clearly not intended as an exhaustive or exclusive list. 51 CA 126.

Subdiv. (50):

Plain meaning of definition encompasses every instance in which defendant offers to, or does in fact, "barter, exchange or gift" narcotics to another. 308 C. 43.

Cited. 3 CA 339; 8 CA 469; 23 CA 667; 24 CA 543; Id., 642; 37 CA 156; 38 CA 621; 39 CA 110. Although statutory definition of "sale" is substantially broader than common dictionary definition, court concluded that term was being used, in specific instance in the case, in its ordinary meaning. 87 CA 24.

§ 21a-277. (Formerly Sec. 19-480). Penalty for illegal manufacture, distribution, sale, prescription, dispensing.

Connecticut Statutes Title 21A. CONSUMER PROTECTION Chapter 420b. DEPENDENCY-PRODUCING DRUGS Part I. GENERAL PROVISIONS

Current through the 2018 Regular Session

§ 21a-277. (Formerly Sec. 19-480). Penalty for illegal manufacture, distribution, sale, prescription, dispensing

- (a) (1) No person may manufacture, distribute, sell, prescribe, dispense, compound, transport with the intent to sell or dispense, possess with the intent to sell or dispense, offer, give or administer to another person, except as authorized in this chapter, any controlled substance that is a (A) narcotic substance, or (B) hallucinogenic substance.
 - (2) Any person who violates subdivision (1) of this subsection (A) for a first offense, shall be imprisoned not more than fifteen years and may be fined not more than fifty thousand dollars, or be both fined and imprisoned, (B) for a second offense, shall be imprisoned not more than thirty years and may be fined not more than one hundred thousand dollars, or be both fined and imprisoned, and (C) for any subsequent offense, shall be imprisoned not more than thirty years and may be fined not more than two hundred fifty thousand dollars, or be both fined and imprisoned.
- (b) (1) No person may manufacture, distribute, sell, prescribe, dispense, compound, transport with the intent to sell or dispense, possess with the intent to sell or dispense, offer, give or administer to another person, except as authorized in this chapter or chapter 420f, any controlled substance other than a (A) narcotic substance, or (B) hallucinogenic substance.
 - (2) Any person who violates subdivision (1) of this subsection (A) for a first offense, may be fined not more than twenty-five thousand dollars or imprisoned not more than seven years, or be both fined and imprisoned, and (B) for any subsequent offense, may be fined not more than one hundred thousand dollars or imprisoned not more than fifteen years, or be both fined and imprisoned.
- (c) No person may knowingly possess drug paraphernalia in a drug factory situation as defined by subdivision (20) of section 21a-240 for the unlawful mixing, compounding or otherwise preparing any controlled substance for purposes of violation of this chapter.
- (d) As an alternative to the sentences specified in subsections (a) and (b) of this section, the court may sentence the person to the custody of the Commissioner of Correction for an indeterminate term not to exceed three years or the maximum term specified for the

offense, whichever is less, and, at any time within such indeterminate term and without regard to any other provision of law regarding minimum term of confinement, the Commissioner of Correction may release the convicted person so sentenced subject to such conditions as the commissioner may impose including, but not limited to, supervision by suitable authority. At any time during such indeterminate term, the Commissioner of Correction may revoke any such conditional release in the commissioner's discretion for violation of the conditions imposed and return the convicted person to a correctional institution.

Cite as Conn. Gen. Stat. § 21a-277

Source:

1967, P.A. 555, S. 36; 1969, P.A. 753, S. 18; 1972, P.A. 278, S. 24; P.A. 73-681, S. 26, 29; P.A. 74-332, S. 2, 6; P.A. 75-567, S. 65, 80; P.A. 84-170; P.A. 85-613, S. 61, 154; P.A. 87-373, S. 4.

History. Amended by P.A. 17-0017, S. 1 of the Connecticut Acts of the 2017 Regular Session, eff. 10/1/2017. Note: 1969 act made provision applicable to persons possessing drugs with intent to sell or dispense and included cannabis-type drugs, made penalty optional rather than mandatory and allowed fine and/or imprisonment for subsequent offenses, previously wording required imposition of both, and added Subsec. (c) re indeterminate sentence; 1972 act substituted "substance" for "drug", made provisions applicable to persons distributing controlled substances, made Subsec. (a) specifically applicable to hallucinogenic or amphetamine-type substances as well as to narcotic and cannabis-type substances, made Subsec. (b) applicable to controlled substances other than those in Subsec. (a) and allowed indeterminate sentencing for violations of Subsec. (a) as well as of Subsec. (b); P.A. 73-681 inserted new Subsec. (c) re possession of drug paraphernalia and relettered former Subsec. (c) as Subsec. (d); P.A. 74-332 specified hallucinogenic substances "other than marijuana" and deleted references to "amphetamine- and cannabis-type substances" in Subsecs. (a) and (b), deleted minimum imprisonment terms of 5 years for first offense and 10 years for subsequent offenses in Subsec. (a), increased maximum terms from 10 to 15 years for first offense and from 15 (second offense) or 25 (third or more offense) years to 30 years for all offenses beyond the first and allowed imposition of both fine and imprisonment and increased maximum terms in Subsec. (b) from 2 to 7 years for first offense and from 10 to 15 years for subsequent offenses; P.A. 75-567 made slight change to wording of Subsec. (b) for clarity, substituting "except" for "other than"; Sec. 19-480 transferred to Sec. 21a-277 in 1983; P.A. 84-170 amended Subsec. (a) by increasing fine for sale of controlled substance which is a hallucinogenic substance other than marijuana, or a narcotic substance from \$3,000 to \$50,000 for the first offense and \$5,000 to \$100,000 for each subsequent offense; and amended Subsec. (b) by increasing fine for sale of controlled substance except a narcotic substance or a hallucinogenic substance, other than marijuana from \$1,000 to \$25,000 for the first offense and from \$5,000 to \$100,000 for each subsequent offense; P.A. 85-613 made technical change; P.A. 87-373 amended Subsec. (a) by adding a penalty for a second offense and increased the fine for a subsequent offense from \$100,000 to \$250,000.

Case Notes:

Annotations to former section 19-480:

When drug possession not a lesser included offense. 163 C. 62. Cited. Id., 105, 242; 186 C. 437; 202 C. 541; 204 C. 585.

Cited. 3 CA 339; 5 CA 207; 6 CA 546; 7 CA 477.

Section's intention was to prohibit the sale of marijuana. 31 CS 130. Classification of marijuana with dangerous

psychoactive drugs, amphetamines and barbiturates is irrational, unreasonable and in violation of equal protection clauses of state and federal constitutions. 32 CS 324.

Subsec. (a):

Conclusions reached by trial court as to impartiality of jurors are tested by the findings; defendant must raise a contention of bias from the realm of speculation to the realm of fact "to rebut the finding". 161 C. 526. Venireman who was former police officer properly not excused for cause. 164 C. 224. Cited. 165 C. 83; Id., 599; 166 C. 268; Id., 569; 168 C. 395; Id., 520; 169 C. 322; Id., 692; 170 C. 12; Id., 206; Id., 469; 171 C. 18; Id., 600; 172 C. 18; Id., 223; Id., 385; Id., 593; 173 C. 197; Id., 344; Id., 431; 174 C. 405; 176 C. 170; 177 C. 391; 178 C. 422; Id., 704; 179 C. 121; Id., 239; 182 C. 335; 187 C. 335; Id., 469; 192 C. 388; Id., 488; 194 C. 1; Id., 331; 195 C. 70; 197 C. 67; 199 C. 591; 200 C. 82; Id., 412; 201 C. 505.

Cited. 3 CA 400; 7 CA 354; Id., 403; 8 CA 63; judgment reversed, see 204 C. 585; Id., 248.

Cited. 29 CS 134; Id., 333; 30 CS 211. Narcotic substance includes cocaine. Id., 267.

Cited. 6 Conn. Cir. Ct. 574.

Subsec. (b):

Cited. 166 C. 126. Cross-examination of defendant on his knowledge of the drug he was charged with selling is proper when the matter was opened by questions on direct examination. 167 C. 379. Cited. 169 C. 416. Classification of marijuana, for penalty purposes, with substances generally considered more harmful is not so irrational and unreasonable as to violate equal protection clauses of U.S. and Connecticut Constitutions. 171 C. 600. Cited. 179 C. 522. Factual basis for defendant's guilty plea insufficient since it did not reveal either the element of possession or the element of intent to sell or dispense. 180 C. 702. Cited. 181 C. 562; 194 C. 18.

Evidence must show a relation between the amount of drugs and the prohibition of statute. 6 Conn. Cir. Ct. 565, 571. Annotations to present section:

Cited. 206 C. 90; 211 C. 258; 212 C. 195; 220 C. 6; 224 C. 253; Id., 322; 225 C. 650; 227 C. 32; 229 C. 385; 233 C. 174; 235 C. 477; 238 C. 692.

Cited. 7 CA 660; 22 CA 567; 23 CA 571; 25 CA 21; Id., 318; 26 CA 779; 27 CA 596; 28 CA 34; Id., 126; 32 CA 724; 33 CA 432; 34 CA 166; Id., 595; 38 CA 815; 42 CA 640; 45 CA 282; 46 CA 321. Subsec. (a):

Cited. 197 C. 644; 199 C. 354; 204 C. 156; 206 C. 81; 207 C. 35; 209 C. 1; Id., 98; Id., 423; 210 C. 480; 212 C. 485; 216 C. 185; Id., 402; 218 C. 239; 220 C. 38; 221 C. 595; 224 C. 347; Id., 593; Id., 627; 227 C. 456; 228 C. 59; Id., 281; 235 C. 405; Id., 539; 236 C. 216; 237 C. 81; 238 C. 380; 240 C. 799. Violation of Sec. 21a-279(a) is a lesser included offense in section since no element in possession charge is not included in charge of possession with intent to sell, where information alleges crimes committed on same date, at same location and with same narcotic. 288 C. 345. Defendant's conviction of possession of a narcotic substance with intent to sell under Subsec. must be vacated as a lesser included offense re his conviction of possession of a narcotic substance with intent to sell by a person who is not drug-dependent in violation of Sec. 21a-278(b) ; merger of convictions approach in 216 C. 699 overruled. 308 C. 242.

Cited. 7 CA 265; 8 CA 317; Id., 330; Id., 361; 9 CA 667; 10 CA 7; Id., 532; 11 CA 11; Id., 47; Id., 540; judgment reversed, see 209 C. 1; 12 CA 225; Id., 274; Id., 313; 13 CA 288; 14 CA 134; Id., 356; Id., 536; Id., 574; Id., 605; 15 CA 328; Id., 589; 16 CA 89; Id., 142; Id., 148; Id., 245; Id., 272; Id., 518; 17 CA 108; Id., 142; Id., 257; Id., 273; Id., 677; 18 CA 32; Id., 820; 19 CA 640; Id., 668; 20 CA 137; Id., 190; Id., 395; 21 CA 48; Id., 162; Id., 519; Id., 622; 22 CA 458; Id., 557; Id., 601; 23 CA 495; Id., 532; Id., 592; Id., 602; Id., 667; Id., 746; judgment reversed, see 221 C. 595;

Id., 823; 24 CA 543; Id., 811; 25 CA 3; Id., 99; Id., 354; 26 CA 94; Id., 103; Id., 259; 27 CA 128; Id., 248; 28 CA 508; Id., 638; 29 CA 359; Id., 584; Id., 843; 30 CA 9; Id., 783; 31 CA 548; 33 CA 253; Id., 409; 34 CA 236; Id., 411; Id., 717; 35 CA 107; Id., 360; 36 CA 161; Id., 488; Id., 546; 37 CA 205; Id., 509; Id., 561; judgment reversed, see 236 C. 216; 38 CA 588; Id., 621; 39 CA 110; Id., 369; Id., 550; 40 CA 288; 41 CA 180; Id., 604; 43 CA 448; Id., 555; 45 CA 110; 46 CA 791. Time not an essential element of the crime but may become material if defendant raises an alibi defense. 49 CA 323. Conviction for both possession and sale of narcotics does not violate prohibition against double jeopardy. 53 CA 661. Section is a lesser included offense of Sec. 21a-278(b), and where two convictions arose out of same act or transaction and were substantially identical, multiple punishments were improper. 60 CA 534. Defendant's conviction for sale of narcotic substance vacated where there was no evidence presented to support finding that the substance transferred was crack cocaine. 64 CA 596. There was sufficient evidence to prove beyond a reasonable doubt that defendant knowingly entered into conspiracy to possess a narcotic substance with intent to sell; conviction of both possession of at least one-half gram of crack cocaine with intent to sell under Sec. 21a-278 and possession of powder cocaine with intent to sell under this section does not constitute double jeopardy. 75 CA 223. The quantity of drugs is not sole dispositive factor in determining whether defendant had intent to sell; intent is determined from the cumulative weight of circumstantial evidence and reasonable and logical inferences derived therefrom. 78 CA 659. Defendant was in constructive possession of cocaine when it was found in plain view on the floor of backseat of vehicle where defendant's feet had been when police officer first approached vehicle, and there was sufficient evidence of defendant's intent to sell narcotics where he had in his constructive possession 43 individually packaged bags of various forms of cocaine, he was arrested in an area known for drug activity, he did not have any drug paraphernalia on his person to indicate personal use of drugs, and cash in small denominations and a cellular telephone were present in the vehicle. 110 CA 778. There was insufficient evidence that it was defendant who had hidden narcotics and insufficient evidence to buttress an inference of dominion and control by defendant; evidence was insufficient to show that defendant had requisite intent to sell narcotics. 123 CA 690. Defendant's conviction of possession of a narcotic substance with intent to sell in violation of Subsec. must be merged with his conviction of possession of a narcotic substance with intent to sell by a person who is not drug-dependent in violation of Sec. 21a-278(b), and his sentence for possession of narcotics with intent to sell must be vacated. 126 CA 323; judgment reversed in part re merger of convictions, see 308 C. 242. Conviction of conspiracy to possess narcotics under Sec. 21a-279(a) and conspiracy to possess narcotics with intent to sell under Subsec. constitutes double jeopardy and court must vacate conviction for lesser included offense of conspiracy to possess narcotics. 137 CA 733; judgment reversed in part re requirement that court vacate conviction, see 316 C. 34.

Subsec. (b):

Cited. 205 C. 560; 230 C. 372; Id., 385; 236 C. 561; 239 C. 427.

Cited. 6 CA 505; 8 CA 158; 10 CA 7; 11 CA 251; Id., 632; 12 CA 274; 14 CA 388; 17 CA 257; 18 CA 406; 19 CA 195; 20 CA 386; 27 CA 171; 30 CA 340; Id., 550; Id., 783; 31 CA 278; judgment reversed, see 230 C. 385; Id., 443; 32 CA 267; 34 CA 411; 37 CA 156; Id., 801; 38 CA 29; 42 CA 17.

Subsec. (c):

Cited. 214 C. 692; 227 C. 456; 228 C. 281.

Cited. 8 CA 111; 10 CA 7; Id., 561; 20 CA 321; 21 CA 162; 22 CA 10; 33 CA 253.

§ 21a-278. (Formerly Sec. 19-480a). Penalty for illegal manufacture, distribution, sale, prescription or administration by non-drug-dependent person.

Connecticut Statutes

Title 21A. CONSUMER PROTECTION

Chapter 420b. DEPENDENCY-PRODUCING DRUGS

Part I. GENERAL PROVISIONS

Current through the 2018 Regular Session

§ 21a-278. (Formerly Sec. 19-480a). Penalty for illegal manufacture, distribution, sale, prescription or administration by non-drug-dependent person

- (a) (1) No person may manufacture, distribute, sell, prescribe, dispense, compound, transport with the intent to sell or dispense, possess with the intent to sell or dispense, offer, give or administer to another person, except as authorized in this chapter, (A) one or more preparations, compounds, mixtures or substances containing an aggregate weight of (i) one ounce or more of heroin or methadone, or (ii) one-half ounce or more of cocaine or cocaine in a free-base form, or (B) a substance containing five milligrams or more of lysergic acid diethylamide. The provisions of this subdivision shall not apply to a person who is, at the time of the commission of the offense, a drug-dependent person.
 - (2) Any person who violates subdivision (1) of this subsection shall be imprisoned not less than five years or more than life. The execution of the mandatory minimum sentence imposed by the provisions of this subdivision shall not be suspended, except that the court may suspend the execution of such mandatory minimum sentence if, at the time of the commission of the offense, such person was under the age of eighteen years or such person's mental capacity was significantly impaired, but not so impaired as to constitute a defense to prosecution.
- (b) (1) No person may manufacture, distribute, sell, prescribe, dispense, compound, transport with the intent to sell or dispense, possess with the intent to sell or dispense, offer, give or administer to another person, except as authorized in this chapter or chapter 420f, (A) a narcotic substance, (B) a hallucinogenic substance, (C) an amphetamine-type substance, or (D) one kilogram or more of a cannabis-type substance. The provisions of this subdivision shall not apply to a person who is, at the time of the commission of the offense, a drug-dependent person.
 - (2) Any person who violates subdivision (1) of this subsection (A) for a first offense, shall be imprisoned not less than five years or more than twenty years, and (B) for any subsequent offense, shall be imprisoned not less than ten years or more than twenty-five years. The execution of the mandatory minimum sentence imposed by the provisions of this subdivision shall not be suspended, except that the court may suspend the execution of such mandatory minimum sentence if, at the time of the commission of the offense, such person was under the age of eighteen years or

such person's mental capacity was significantly impaired, but not so impaired as to constitute a defense to prosecution.

Cite as Conn. Gen. Stat. § 21a-278

Source:

1971, P.A. 812, S. 1; 1972, P.A. 278, S. 25; P.A. 73-137, S. 10; P.A. 74-332, S. 1, 6; P.A. 87-373, S. 2; P.A. 01-0195, S. 92, 181; P.A. 05-0248, S. 8; P.A. 06-0196, S. 254; P.A. 07-0217, S. 97.

History. Amended by P.A. 17-0017, S. 2 of the Connecticut Acts of the 2017 Regular Session, eff. 10/1/2017. Note: 1972 act substituted "substance" for "drug" and made provisions applicable to distributors and to hallucinogenic or amphetamine-type drugs; P.A. 73-137 substituted "such action" for "his arrest" and added proviso re life imprisonment penalty; P.A. 74-332 applied Subsec. (a) to substances containing specified amounts of heroin, methadone, cocaine or LSD, imposing minimum term of 5 to 20 years and maximum term of life imprisonment and added provisions re suspension of minimum term and added Subsec. (b) applicable to hallucinogenic, narcotic, amphetamine- or cannabis-type substances formerly dealt with in Subsec. (a), reducing minimum term for first offense from 10 to 5 years, replacing 15-year minimum and 30-year maximum for second offense and 35-year sentence for third or more offenses with 10-year minimum and 25-year maximum sentence for all offenses beyond the first and added provisions re suspension of minimum sentence; Sec. 19-480a transferred to Sec. 21a-278 in 1983; P.A. 87-373 amended Subsec. (a) to make provisions applicable to an aggregate weight of one-half gram or more of cocaine in a free-base form; P.A. 01-0195 made technical changes in Subsecs. (a) and (b), effective July 11, 2001; P.A. 05-0248 amended Subsec. (a) to decrease from one ounce to one-half ounce the minimum aggregate weight of cocaine and increase from one-half gram to one-half ounce the minimum aggregate weight of cocaine in a free-base form that subjects a person to the penalties of said Subsec.; P.A. 06-0196 made technical changes in Subsec. (a), effective June 7, 2006; P.A. 07-0217 made technical changes in Subsec. (b), effective July 12, 2007.

Case Notes:

Annotations to former section 19-480a:

Cited. 166 C. 439; Id., 620. Statute on its face does not violate the constitutional prohibition against cruel and unusual punishment. 167 C. 328. Cited. 172 C. 16; 186 C. 26; 197 C. 67; 199 C. 359; 201 C. 605. Subsec. (a):

Order directing defendant to submit to drug dependency examination is interlocutory and not appealable until conviction and final judgment. 180 C. 290. Cited. 194 C. 612; 200 C. 412.

Subsec. (b):

Cited. 179 C. 239; Id., 522. Question of burden of drug dependency is one of first impression; held that proof of drug dependency constitutes an exemption under Sec. 19-474 (21a-269) and that burden of producing some substantial evidence of drug dependency rests initially on defendant. 182 C. 142. Cited. 187 C. 469; 188 C. 183. Annotations to present section:

Cited. 191 C. 360; 192 C. 383; 194 C. 589; 204 C. 377; 211 C. 258; 212 C. 195; 221 C. 595; 224 C. 322; 227 C. 32; 231 C. 514; Id., 941; 235 C. 477; Id., 487.

Cited. 9 CA 686; 13 CA 69; 19 CA 195; 26 CA 779; 27 CA 713; 32 CA 724; 35 CA 609; 36 CA 488; Id., 631; 41 CA 604; 42 CA 640. Defendant could not be convicted on one set of facts of both possession of narcotics by a person who is not drug-dependent and simple possession of narcotics and court ordered one sentence vacated. 60 CA 436. Subsec. (a):

Cited. 200 C. 412. Institution of definite sentencing scheme for any felony under Sec. 53a-35a implicitly repealed indeterminate sentencing aspect of this section. 214 C. 378. Cited. 237 C. 81; 239 C. 427.

Cited. 10 CA 561; 11 CA 47; 15 CA 161; 16 CA 518; 18 CA 104; 30 CA 783; 45 CA 110. Design and effect of statute discussed; conviction for both possession and sale of narcotics does not violate prohibition against double jeopardy. 53 CA 661. Conviction of both possession of at least one-half gram of crack cocaine with intent to sell under this section and possession of powder cocaine with intent to sell under Sec. 21a-277 does not constitute double jeopardy; evidence was sufficient to support conviction of possession with intent to sell. 75 CA 223. Sentence of 35 years of incarceration does not exceed authorized sentencing limit. 127 CA 706.

Subsec. (b):

Cited. 205 C. 560; 214 C. 692; 215 C. 667; 216 C. 150, see also 223 C. 902 and 225 C. 10; 217 C. 811; 218 C. 458; 219 C. 529; Id., 752; 220 C. 6; Id., 628; 221 C. 518. Defendant bears burden of proving by preponderance of evidence that she was drug-dependent. Id., 595. Cited. Id., 925; 223 C. 283; Id., 461; Id., 703; 224 C. 253; 225 C. 650; 226 C. 514; 229 C. 60; 236 C. 176; 238 C. 380; 239 C. 629; 241 C. 322; Id., 650. Holdings in 182 C. 142 and 221 C. 595 that Subsec. creates exception for drug-dependent persons within meaning of Sec. 21a-269 and that the absence of drug dependency is not an element of the offense upheld; holding in 221 C. 595 that defendant must prove exception of drug dependency by a preponderance of the evidence upheld; requirement that defendant prove drug dependency by a preponderance of the evidence is not unconstitutional. 290 C. 24; judgment superseded, see Id., 602. Jury could reasonably conclude that defendant, who was not in exclusive possession of a vehicle containing narcotics, knew about and had control over narcotics found in the vehicle's center console from evidence that defendant closed the center console as police approached the vehicle and that a plastic bag, later determined to contain cocaine, was observed protruding from the corner of the console, and evidence that defendant was a narcotics dealer further supported the inference that defendant possessed the narcotics. 296 C. 62. Defendant's conviction of possession of a narcotic substance with intent to sell under Sec. 21a-277(a) must be vacated as a lesser included offense re his conviction of possession of a narcotic substance with intent to sell by a person who is not drug-dependent in violation of Subsec.; merger of convictions approach in 216 C. 699 overruled. 308 C. 242.

Cited. 7 CA 588; 8 CA 469; 10 CA 347; 11 CA 140; 13 CA 40; 14 CA 146; Id., 807; 15 CA 519, see also 27 CA 291, 223 C. 902 and 225 C. 10; 16 CA 18; 17 CA 104; Id., 114; Id., 556; Id., 635; 18 CA 175; Id., 184; Id., 716; 19 CA 265; Id., 277; Id., 478; judgment reversed, see 216 C. 150, see also 27 CA 291, 223 C. 902 and 225 C. 10; Id., 626; Id., 640; Id., 668; 20 CA 168; judgment reversed, see 215 C. 667; Id., 183; Id., 290; Id., 386; Id., 824; 21 CA 235; Id., 474; Id., 506; Id., 519; 22 CA 1; Id., 62; judgment reversed, see 219 C. 529; Id., 303; Id., 567; Id., 665; 23 CA 358; Id., 392; Id., 426; Id., 543; Id., 559; Id., 571; Id., 592; Id., 667; Id., 746; judgment reversed, see 221 C. 595; 24 CA 158; Id., 347; Id., 642; Id., 670; Id., 678; 25 CA 3; Id., 318; Id., 575; 26 CA 86; Id., 94; Id., 259; Id., 423, see also 27 CA 291, 223 C. 902 and 225 C. 10; Id., 472; Id., 667; 27 C. 171; Id., 307; Id., 558; Id., 596; 28 CA 126; Id., 575; 29 CA 304; Id., 359; Id., 584; Id., 675; Id., 694; 30 CA 9; Id., 470; Id., 654; Id., 712; Id., 783; 31 CA 548; 32 CA 84; Id., 505; Id., 811; Id., 831; Id., 842; 33 CA 253; Id., 409; Id., 509; Id., 647; 34 CA 141; Id., 191; Id., 492; Id., 501; Id., 629; 35 CA 360; 36 CA 672; 37 CA 355; Id., 360; Id., 456; judgment reversed, see 236 C. 176; Id., 491; 38 CA 29; Id., 536; 39 CA 526; Id., 550; 41 CA 47; Id., 772; 42 CA 1; Id., 264; Id., 500; Id., 537; judgment reversed, see 241 C. 650; Id., 687; Id., 751; 43 CA 339; 4 5 CA 207; Id., 679. Court declines to distinguish prior case on due process challenge to unitary adjudication of sale of narcotics and drug dependency. 47 CA 86. Cited re admission of, and sufficiency of, evidence re conviction. 51 CA 824. Defendant's claim of drug dependency discussed and rejected. 62 CA 102. Trial court improperly failed to provide definition of "drug dependency" in accordance with the term's statutory definition or

otherwise in its instructions to jury. 69 CA 505. Circumstantial evidence at trial provided adequate evidentiary basis for jury to find that substance at issue was LSD, which evidence included court's definition and description of LSD, defendant's statement re substance and manner of ingestion and effect of substance on person who ingested it. 85 CA 575. Defendant failed to demonstrate that his two convictions under section, resulting from searches on the same day, constituted double jeopardy because defendant was found with one stash of cocaine in his pocket, and a later search of his home found another stash of different purity, reflecting different purposes related to the cocaine; defendant did not demonstrate a due process violation regarding jury instruction on nonexclusive possession of premises where narcotics were found. 93 CA 548. Circumstantial evidence that defendant picked up package and was engaged in illicit activity was insufficient to support conviction of possession of marijuana and possession with the intent to sell marijuana when essential element of offense, knowledge of the character of the illegal substance, was lacking. 98 CA 458. Evidence sufficient to show defendant possessed requisite knowledge for conviction under statute. 110 CA 245. Defendant's conviction of possession of a narcotic substance with intent to sell in violation of Sec. 21a-277(a) must be merged with his conviction of possession of a narcotic substance with intent to sell by a person who is not drug-dependent in violation of Subsec., and his sentence for possession of narcotics with intent to sell must be vacated. 126 CA 323; judgment reversed in part re merger of convictions, see 308 C. 242. Proof that defendant knew package contained marijuana, and not a different substance, was an essential element of both the conspiracy count and accessory count; where defendant is charged as an accessory, state must prove defendant possessed 1 kilogram or more of marijuana, but need not prove that defendant knew he possessed 1 kilogram or more of marijuana. 151 CA 154.

Cross References:

See Sec. 21a-283a re authority of court to depart from prescribed mandatory minimum sentence.

§ 921. Definitions.

United States Statutes

Title 18. CRIMES AND CRIMINAL PROCEDURE

Part I. CRIMES

Chapter 44. FIREARMS

Current through P.L. 115-193

§ 921. Definitions

- (a) As used in this chapter-
 - (1) The term "person" and the term "whoever" include any individual, corporation, company, association, firm, partnership, society, or joint stock company.
 - (2) The term "interstate or foreign commerce" includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, but such term does not include commerce between places within the same State but through any place outside of that State. The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).
 - (3) The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.
 - (4) The term "destructive device" means-
 - (A) any explosive, incendiary, or poison gas-
 - (i) bomb,
 - (ii) grenade,
 - (iii) rocket having a propellant charge of more than four ounces,
 - (iv) missile having an explosive or incendiary charge of more than onequarter ounce,
 - (v) mine, or

- (vi) device similar to any of the devices described in the preceding clauses;
- (B) any type of weapon (other than a shotgun or a shotgun shell which the Attorney General finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and
- (C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled. The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10; or any other device which the Attorney General finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.
- (5) The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.
- (6) The term "short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification or otherwise) if such a weapon as modified has an overall length of less than twenty-six inches.
- (7) The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger.
- (8) The term "short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.

- (9) The term "importer" means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution; and the term "licensed importer" means any such person licensed under the provisions of this chapter.
- (10) The term "manufacturer" means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution; and the term "licensed manufacturer" means any such person licensed under the provisions of this chapter.
- (11) The term "dealer" means (A) any person engaged in the business of selling firearms at wholesale or retail, (B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or (C) any person who is a pawnbroker. The term "licensed dealer" means any dealer who is licensed under the provisions of this chapter.
- (12) The term "pawnbroker" means any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm as security for the payment or repayment of money.
- (13) The term "collector" means any person who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by regulation define, and the term "licensed collector" means any such person licensed under the provisions of this chapter.
- (14) The term "indictment" includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.
- (15) The term "fugitive from justice" means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.
- (16) The term "antique firearm" means-
 - (A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or
 - (B) any replica of any firearm described in subparagraph (A) if such replica-
 - (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or
 - uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or

- (C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, the term "antique firearm" shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.
- (17) (A) The term "ammunition" means ammunition or cartridge cases, primers, bullets, or propellent powder designed for use in any firearm.
 - (B) The term "armor piercing ammunition" means-
 - a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or
 - (ii) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile.
 - (C) The term "armor piercing ammunition" does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Attorney General finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Attorney General finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device.
- (18) The term "Attorney General" means the Attorney General of the United States ¹
- (19) The term "published ordinance" means a published law of any political subdivision of a State which the Attorney General determines to be relevant to the enforcement of this chapter and which is contained on a list compiled by the Attorney General, which list shall be published in the Federal Register, revised annually, and furnished to each licensee under this chapter.
- (20) The term "crime punishable by imprisonment for a term exceeding one year" does not include-
 - (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the

regulation of business practices, or

- (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less. What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.
- (21) The term "engaged in the business" means-
 - (A) as applied to a manufacturer of firearms, a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured;
 - (B) as applied to a manufacturer of ammunition, a person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured;
 - (C) as applied to a dealer in firearms, as defined in section 921(a)(11)(A), a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms;
 - (D) as applied to a dealer in firearms, as defined in section 921(a)(11)(B), a person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit, but such term shall not include a person who makes occasional repairs of firearms, or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms;
 - (E) as applied to an importer of firearms, a person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported; and

- (F) as applied to an importer of ammunition, a person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition imported.
- (22) The term "with the principal objective of livelihood and profit" means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection: *Provided*, That proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism. For purposes of this paragraph, the term "terrorism" means activity, directed against United States persons, which-
 - (A) is committed by an individual who is not a national or permanent resident alien of the United States;
 - (B) involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States; and
 - (C) is intended-
 - (i) to intimidate or coerce a civilian population;
 - (ii) to influence the policy of a government by intimidation or coercion; or
 - (iii) to affect the conduct of a government by assassination or kidnapping.
- (23) The term "machinegun" has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b)).
- (24) The terms "firearm silencer" and "firearm muffler" mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.
- (25) The term "school zone" means-
 - (A) in, or on the grounds of, a public, parochial or private school; or
 - (B) within a distance of 1,000 feet from the grounds of a public, parochial or private school.
- (26) The term "school" means a school which provides elementary or secondary

education, as determined under State law.

- (27) The term "motor vehicle" has the meaning given such term in section 13102 of title 49, United States Code.
- (28) The term "semiautomatic rifle" means any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.
- (29) The term "handgun" means-
 - (A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and
 - (B) any combination of parts from which a firearm described in subparagraph(A) can be assembled.
- [(30, (31) Repealed. Pub. L. 103-322, title XI, §110105(2), Sept. 13, 1994, 108 Stat.
 2000.]
- (32) The term "intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.
- (33) (A) Except as provided in subparagraph (C),² the term "misdemeanor crime of domestic violence" means an offense that-
 - (i) is a misdemeanor under Federal, State, or Tribal ³ law; and
 - (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.
 - (B) (i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless-
 - (I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and
 - (II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the

jurisdiction in which the case was tried, either

- (a the case was tried by a jury, or
- a)
- (b the person knowingly and intelligently waived the right to
- b) have the case tried by a jury, by guilty plea or otherwise.
- (ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.
- (34) The term "secure gun storage or safety device" means-
 - (A) a device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device;
 - (B) a device incorporated into the design of the firearm that is designed to prevent the operation of the firearm by anyone not having access to the device; or
 - (C) a safe, gun safe, gun case, lock box, or other device that is designed to be or can be used to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.
- (35) The term "body armor" means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment.
- (b) For the purposes of this chapter, a member of the Armed Forces on active duty is a resident of the State in which his permanent duty station is located.
 ¹ So in original. Probably should be followed by a period.

³ So in original. Probably should not be capitalized.

² So in original. No subparagraph (C) has been enacted.

Source: Added Pub. L. 90-351, title IV, §902, June 19, 1968, 82 Stat. 226; amended Pub. L. 90-618, title I, §102, Oct. 22, 1968, 82 Stat. 1214; Pub. L. 93-639, §102, Jan. 4, 1975, 88 Stat. 2217; Pub. L. 99-308, §101, May 19, 1986, 100 Stat. 449; Pub. L. 99-360, §1(b), July 8, 1986, 100 Stat. 766; Pub. L. 99-408, §1, Aug. 28, 1986, 100 Stat. 920; Pub. L. 101-647, title XVII, §1702(b)(2), title XXII, §2204(a), Nov. 29, 1990, 104 Stat. 4845, 4857; Pub. L. 103-159, title I, §102(a)(2), Nov. 30, 1993, 107 Stat. 1539; Pub. L. 103-322, title XI, §§110102(b), 110103, title XXXIII, §330021(1), Sept. 13, 1994, 108 Stat. 1997, 1999, 2000, 2014, 2020, 2150; Pub. L. 104-88, title III, §303(1), Dec. 29, 1995, 109 Stat. 943; Pub. L. 104-208, div. A, title I, §101(f) [title VI, §658(a)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-371; Pub. L. 105-277, div. A, §101(b) [title I, §119(a)], (h) [title I, §115], Oct. 21, 1998, 112 Stat. 2681-50, 2681-69, 2681-480, 2681-490; Pub. L. 107-273, div. C, title I, §11009(e)(1), Nov. 2, 2002, 116 Stat. 1821; Pub. L. 107-296, title XI, §1112(f)(1)-(3), (6), Nov. 25, 2002, 116 Stat. 2276; Pub. L. 109-162, title IX, §908(a), Jan. 5, 2006, 119 Stat. 3083.

Notes from the Office of Law Revision Counsel

current through 6/7/2018

REFERENCES IN TEXTFor definition of Canal Zone, referred to in subsec. (a)(2), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS2006-Subsec. (a)(33)(A)(i). Pub. L. 109-162 which directed the general amendment of "section 921(33)(A)(i) of title 18", was executed to par. (33)(A)(i) of subsec. (a), to reflect the probable intent of Congress. Prior to amendment, cl. (i) read as follows: "is a misdemeanor under Federal or State law; and".2002-Subsec. (a)(4). Pub. L. 107-296, §1112(f)(2), substituted "Attorney General" for "Secretary of the Treasury" in concluding provisions. Subsec. (a)(4)(B). Pub. L. 107-296, §1112(f)(1), substituted "Attorney General" for "Secretary". Subsec. (a)(13), (17)(C). Pub. L. 107-296, §1112(f)(6), substituted "Attorney General" for "Secretary" wherever appearing.Subsec. (a)(18). Pub. L. 107-296, §1112(f)(3), added par. (18) and struck out former par. (18) which read as follows: "The term 'Secretary' or 'Secretary of the Treasury' means the Secretary of the Treasury or his delegate."Subsec. (a)(19). Pub. L. 107-296, §1112(f)(6), substituted "Attorney General" for "Secretary" in two places.Subsec. (a)(35). Pub. L. 107-273 added par. (35).1998-Subsec. (a)(5). Pub. L. 105-277, §101(h) [title I, §115(1)], substituted "an explosive" for "the explosive in a fixed shotgun shell".Subsec. (a)(7). Pub. L. 105-277, §101(h) [title I, §115(2)], substituted "an explosive" for "the explosive in a fixed metallic cartridge". Subsec. (a)(16). Pub. L. 105-277, §101(h) [title I, §115(3)], added par. (16) and struck out former par. (16) which read as follows: "The term 'antique firearm' means-"(A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and"(B) any replica of any firearm described in subparagraph (A) if such replica-"(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or"(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade."Subsec. (a)(34). Pub. L. 105-277, §101(b) [title I, §119(a)], added par. (34). 1996-Subsec. (a)(33). Pub. L. 104-208 added par. (33).1995-Subsec. (a)(27). Pub. L. 104-88substituted "section 13102" for "section 10102".1994-Subsec. (a)(17)(B). Pub. L. 103-322, §110519, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "The term 'armor piercing ammunition' means a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other

substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium. Such term does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Secretary finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Secretary finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device." Subsec. (a)(17)(C). Pub. L. 103-322, §110519, added subpar. (C).Subsec. (a)(22)(C)(iii). Pub. L. 103-322, §330021(1), substituted "kidnapping" for "kidnaping". Subsec. (a)(30). Pub. L. 103-322, §110102(b), which added par. (30) defining "semiautomatic assault weapon", was repealed by Pub. L. 103-322, §110105(2). See Effective and Termination Dates of 1994 Amendment note below.Subsec. (a)(31). Pub. L. 103-322, §110103(b), which added par. (31) defining "large capacity ammunition feeding device", was repealed by Pub. L. 103-322, §110105(2). See Effective and Termination Dates of 1994 Amendment note below.Subsec. (a)(32). Pub. L. 103-322, §110401(a), added par. (32).1993-Subsec. (a)(29). Pub. L. 103-159 added par. (29).1990-Subsec. (a)(25) to (27). Pub. L. 101-647, §1702(b)(2), added pars. (25) to (27).Subsec. (a)(28). Pub. L. 101-647, §2204(a), added par. (28).1986-Subsec. (a)(10). Pub. L. 99-308, §101(1), substituted "business of manufacturing" for "manufacture of". Subsec. (a)(11)(A). Pub. L. 99-308, §101(2), struck out "or ammunition" after "firearms". Subsec. (a)(12). Pub. L. 99-308, §101(3), struck out "or ammunition" after "firearm". Subsec. (a)(13). Pub. L. 99-308, §101(4), struck out "or ammunition" after "firearms". Subsec. (a)(17). Pub. L. 99-408designated existing provisions as subpar. (A) and added subpar. (B). Subsec. (a)(20). Pub. L. 99-308, §101(5), amended par. (20) generally. Prior to amendment, par. (20) read as follows: "The term 'crime punishable by imprisonment for a term exceeding one year' shall not include (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices as the Secretary may by regulation designate, or (B) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less. "Subsec. (a)(21). Pub. L. 99-308, §101(6), added par. (21). Subsec. (a)(22). Pub. L. 99-360 inserted provision that proof of profit not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism and defined terrorism. Pub. L. 99-308, §101(6), added par. (22).Subsec. (a)(23), (24). Pub. L. 99-308, §101(6), added pars. (23) and (24).1975-Subsec. (a)(4). Pub. L. 93-639substituted "to use solely for sporting, recreational or cultural purposes" for "to use solely for sporting purposes".1968-Subsec. (a). Pub. L. 90-618 inserted definitions of "collector", "licensed collector", and "crime punishable by imprisonment for a term exceeding one year", amended definitions of "person", "whoever", "interstate or foreign commerce", "State", "firearm", "destructive device", "dealer", "indictment", "fugitive from justice", "antique firearm", "ammunition", and "published ordinance", and reenacted without change definitions of "shotgun", "shortbarreled shotgun", "rifle", "short-barreled rifle", "importer", "licensed importer", "manufacturer", "licensed manufacturer", "licensed dealer", "pawnbroker", and "Secretary" or "Secretary of the Treasury".Subsec. (b). Pub. L. 90-618 substituted provisions determining that a member of the armed forces on active duty is a resident of the State in which his permanent duty station is located for provisions defining "firearm", "destructive device", and "crime punishable by imprisonment for a term exceeding one year".

EFFECTIVE DATE OF 2002 AMENDMENTAmendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296 set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1998 AMENDMENTPub. L. 105-277, div. A, §101(b) [title I, §119(e)], Oct. 21, 1998, 112 Stat. 2681-50, 2681-70, provided that: "The amendments made by this section [amending this section and section 923 of

this title] shall take effect 180 days after the date of enactment of this Act [Oct. 21, 1998]."

EFFECTIVE DATE OF 1995 AMENDMENTAmendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88 set out as an Effective Date note under section 1301 of Title 49, Transportation.

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENT Pub. L. 103-322, title XI, §110105, Sept. 13, 1994, 108 Stat. 2000, provided that subtitle A (§§110101-110106) of title XI of Pub. L. 103-322 (amending this section and sections 922 to 924 of this title and enacting provisions set out as notes under this section) and the amendments made by that subtitle were effective Sept. 13, 1994, and were repealed effective as of the date that is 10 years after that date.

EFFECTIVE DATE OF 1990 AMENDMENT Pub. L. 101-647, title XVII, §1702(b)(4), Nov. 29, 1990, 104 Stat. 4845, provided that: "The amendments made by this section [amending this section and sections 922 and 924 of this title] shall apply to conduct engaged in after the end of the 60-day period beginning on the date of the enactment of this Act [Nov. 29, 1990]."

EFFECTIVE DATE OF 1986 AMENDMENTS; PUBLICATION AND AVAILABILITY OF COMPILATION OF STATE LAWS AND PUBLISHED ORDINANCES Pub. L. 99-408, §9, Aug. 28, 1986, 100 Stat. 921, provided that: "The amendments made by this Act [amending this section and sections 922, 923, and 929 of this title and enacting provisions set out as notes under this section] shall take effect on the date of enactment of this Act [Aug. 28, 1986], except that sections 3, 4, and 5 [amending section 923 of this title] shall take effect on the first day of the first calendar month which begins more than ninety days after the date of the enactment of this Act."Pub. L. 99-360, §2, July 8, 1986, 100 Stat. 767, provided that: "This Act and the amendments made by this Act [enacting section 926A of this title, amending this section and section 923 of this title, and repealing former section 926A of this title], intended to amend the Firearms Owners' Protection Act [Pub. L. 99-308 see Short Title of 1986 Amendment note below], shall become effective on the date on which the section they are intended to amend in such Firearms Owners' Protection Act becomes effective [see section 110 of Pub. L. 99-308 set out below] and shall apply to the amendments to title 18, United States Code, made by such Act."Pub. L. 99-308, §110, May 19, 1986, 100 Stat. 460, provided that:"(a) IN GENERAL.-The amendments made by this Act [enacting section 926A of this title, amending this section, sections 922 to 926 and 929 of this title, and section 5845 of Title 26, Internal Revenue Code, repealing title VII of Pub. L. 90-351 set out in the Appendix to this title, and enacting provisions set out as notes under this section] shall become effective one hundred and eighty days after the date of the enactment of this Act [May 19, 1986]. Upon their becoming effective, the Secretary shall publish and provide to all licensees a compilation of the State laws and published ordinances of which licensees are presumed to have knowledge pursuant to chapter 44 of title 18, United States Code, as amended by this Act. All amendments to such State laws and published ordinances as contained in the aforementioned compilation shall be published in the Federal Register, revised annually, and furnished to each person licensed under chapter 44 of title 18, United States Code, as amended by this Act."(b) PENDING ACTIONS, PETITIONS, AND APPELLATE PROCEEDINGS.-The amendments made by sections 103(6)(B), 105, and 107 of this Act [enacting section 926A of this title and amending sections 923 and 925 of this title] shall be applicable to any action, petition, or appellate proceeding pending on the date of the enactment of this Act [May 19, 1986]."(c) MACHINEGUN PROHIBITION.-Section 102(9) [amending section 922 of this title] shall take effect on the date of the enactment of this Act [May 19, 1986]."

EFFECTIVE DATE OF 1968 AMENDMENTPub. L. 90-618, title I, §105, Oct. 22, 1968, 82 Stat. 1226, provided that: "(a) Except as provided in subsection (b), the provisions of chapter 44 of title 18, United States Code, as amended by section 102 of this title [amending this chapter], shall take effect on December 16, 1968."(b) The following sections of chapter 44 of title 18, United States Code, as amended by section 102 of this title shall take effect on the date of the enactment of this title [Oct. 22, 1968]: Sections 921, 922(I), 925(a)(1), and 925(d)."

EFFECTIVE DATEPub. L. 90-351, title IV, §907, June 19, 1968, 82 Stat. 235, provided that: "The amendments made by this title [enacting this chapter and provisions set out as notes under this section and repealing sections 901 to 910 of Title 15, Commerce and Trade] shall become effective one hundred and eighty days after the date of its enactment [June 19, 1968]; except that repeal of the Federal Firearms Act [sections 901 to 910 of Title 15] shall not in itself terminate any valid license issued pursuant to that Act and any such license shall be deemed valid until it shall expire according to its terms unless it be sooner revoked or terminated pursuant to applicable provisions of law."

SHORT TITLE OF 2005 AMENDMENT Pub. L. 109-92, §5(a), Oct. 26, 2005, 119 Stat. 2099, provided that: "This section [amending sections 922 and 924 of this title and enacting provisions set out as notes under section 922 of this title] may be cited as the 'Child Safety Lock Act of 2005'."

SHORT TITLE OF 2004 AMENDMENT Pub. L. 108-277, §1, July 22, 2004, 118 Stat. 865, provided that: "This Act [enacting sections 926B and 926C of this title] may be cited as the 'Law Enforcement Officers Safety Act of 2004'."

SHORT TITLE OF 1994 AMENDMENT Pub. L. 103-322, title XI, §110101, Sept. 13, 1994, 108 Stat. 1996, provided that subtitle A (§§110101-110106) of title XI of Pub. L. 103-322 (amending this section and sections 922 to 924 of this title and enacting provisions set out as notes under this section) could be cited as the "Public Safety and Recreational Firearms Use Protection Act", prior to repeal by Pub. L. 103-322, title XI, §110105(2), Sept. 13, 1994, 108 Stat. 2000, effective 10 years after Sept. 13, 1994.

SHORT TITLE OF 1993 AMENDMENT Pub. L. 103-159, title I, §101, Nov. 30, 1993, 107 Stat. 1536, provided that: "This title [enacting section 925A of this title, amending this section, sections 922 and 924 of this title, and section 3759 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and section 922 of this title] may be cited as the 'Brady Handgun Violence Prevention Act'."Pub. L. 103-159, title III, §301, Nov. 30, 1993, 107 Stat. 1545, provided that: "This title [amending sections 922 to 924 of this title] may be cited as the 'Federal Firearms License Reform Act of 1993'."

SHORT TITLE OF 1990 AMENDMENT Pub. L. 101-647, title XVII, §1702(a), Nov. 29, 1990, 104 Stat. 4844, provided that: "This section [amending this section and sections 922 and 924 of this title and enacting provisions set out as notes under this section and section 922 of this title] may be cited as the 'Gun-Free School Zones Act of 1990'."

SHORT TITLE OF 1988 AMENDMENTPub. L. 100-649, §1, Nov. 10, 1988, 102 Stat. 3816, provided that: "This Act [amending sections 922, 924, and 925 of this title and enacting provisions set out as notes under section 922 of this title and section 1356 of former Title 49, Transportation] may be cited as the 'Undetectable Firearms Act of 1988'."
SHORT TITLE OF 1986 AMENDMENTSPub. L. 99-570, title I, subtitle I, §1401, Oct. 27, 1986, 100 Stat. 3207-39, provided that: "This subtitle [amending section 924 of this title] may be cited as the 'Career Criminals Amendment Act of 1986'."Pub. L. 99-308, §1(a), May 19, 1986, 100 Stat. 449, provided that: "This Act [enacting section 926A of this title, amending this section, sections 922 to 926 and 929 of this title, and section 5845 of Title 26, Internal Revenue Code, repealing title VII of Pub. L. 90-351 set out in the Appendix to this title, and enacting provisions set out as notes under this section] may be cited as the 'Firearms Owners' Protection Act'."

SHORT TITLEPub. L. 90-618, §1, Oct. 22, 1968, 82 Stat. 1213, provided: "That this Act [enacting sections 5822, 5871 and 5872 of Title 26, Internal Revenue Code, amending this section, sections 922 to 928 of this title, and Appendix to this title, and sections 5801, 5802, 5811, 5812, 5821, 5841 to 5849, 5851 to 5854, 5861, 6806, and 7273 of Title 26, repealing sections 5692 and 6107 of Title 26, omitting sections 5803, 5813, 5814, 5831, 5855, and 5862 of Title 26, and enacting material set out as notes under this section and Appendix to this title, and section 5801 of Title 26] may be cited as the 'Gun Control Act of 1968'."

RESTRICTIONS ON AMENDMENT OF REGULATIONS AS TO CURIOS OR RELICS Pub. L. 113-6, 127 Stat. 248, provided in part: "That, in the current fiscal year and any fiscal year thereafter, no funds appropriated under this or any other Act shall be used to pay administrative expenses or the compensation of any officer or employee of the United States to implement an amendment or amendments to section 478.118 of title 27, Code of Federal Regulations, or to change the definition of 'Curios or relics' in section 478.11 of title 27, Code of Federal Regulations, or remove any item from ATF Publication 5300.11 as it existed on January 1, 1994".

CONSTRUCTION OF PUB. L. 103-159 WITH SECTION 552A OF TITLE 5 Pub. L. 103-159, title I, §105, Nov. 30, 1993, 107 Stat. 1543, provided that: "This Act [enacting section 925A of this title, amending this section, sections 922 to 924 of this title, and section 3759 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and section 922 of this title] and the amendments made by this Act shall not be construed to alter or impair any right or remedy under section 552a of title 5, United States Code."

STATUTORY CONSTRUCTION; EVIDENCEFor provisions relating to statutory construction of, and admissibility of evidence regarding compliance or noncompliance with, the amendment by section 101(b) [title I, §119(a)] of Pub. L. 105-277 see section 101(b) [title I, §119(d)] of Pub. L. 105-277 set out as a note under section 923 of this title.

STUDY BY ATTORNEY GENERAL Pub. L. 103-322, title XI, §110104, Sept. 13, 1994, 108 Stat. 2000, which provided that the Attorney General was to study the effect of subtitle A (§§110101-110106) of title XI of Pub. L. 103-322 and to report the results of the study to Congress not later than 30 months after Sept. 13, 1994, was repealed by Pub. L. 103-322, title XI, §110105(2), Sept. 13, 1994, 108 Stat. 2000, effective 10 years after Sept. 13, 1994.

CONGRESSIONAL FINDINGS AND DECLARATIONPub. L. 99-308, §1(b), May 19, 1986, 100 Stat. 449, provided that: "The Congress finds that-"(1) the rights of citizens-"(A) to keep and bear arms under the second amendment to the United States Constitution;"(B) to security against illegal and unreasonable searches and seizures under the fourth amendment;"(C) against uncompensated taking of property, double jeopardy, and assurance of due process of law under the fifth amendment; and"(D) against unconstitutional exercise of authority under the ninth and tenth amendments; require additional legislation to correct existing firearms statutes and enforcement policies; and"(2)

additional legislation is required to reaffirm the intent of the Congress, as expressed in section 101 of the Gun Control Act of 1968 [section 101 of Pub. L. 90-618 set out below], that 'it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes.'."Pub. L. 90-618, title I, §101, Oct. 22, 1968, 82 Stat. 1213, provided that: "The Congress hereby declares that the purposes of this title [amending this chapter] is to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence, and it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes, or provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title."Pub. L. 90-351, title IV, §901, June 19, 1968, 82 Stat. 225, provided that:"(a) The Congress hereby finds and declares-"(1) that there is a widespread traffic in firearms moving in or otherwise affecting interstate or foreign commerce, and that the existing Federal controls over such traffic do not adequately enable the States to control this traffic within their own borders through the exercise of their police power;"(2) that the ease with which any person can acquire firearms other than a rifle or shotgun (including criminals, juveniles without the knowledge or consent of their parents or guardians, narcotics addicts, mental defectives, armed groups who would supplant the functions of duly constituted public authorities, and others whose possession of such weapon is similarly contrary to the public interest) is a significant factor in the prevalence of lawlessness and violent crime in the United States;"(3) that only through adequate Federal control over interstate and foreign commerce in these weapons, and over all persons engaging in the businesses of importing, manufacturing, or dealing in them, can this grave problem be properly dealt with, and effective State and local regulation of this traffic be made possible;"(4) that the acquisition on a mail-order basis of firearms other than a rifle or shotgun by nonlicensed individuals, from a place other than their State of residence, has materially tended to thwart the effectiveness of State laws and regulations, and local ordinances;"(5) that the sale or other disposition of concealable weapons by importers, manufacturers, and dealers holding Federal licenses, to nonresidents of the State in which the licensees' places of business are located, has tended to make ineffective the laws, regulations, and ordinances in the several States and local jurisdictions regarding such firearms;"(6) that there is a casual relationship between the easy availability of firearms other than a rifle or shotgun and juvenile and youthful criminal behavior, and that such firearms have been widely sold by federally licensed importers and dealers to emotionally immature, or thrill-bent juveniles and minors prone to criminal behavior; "(7) that the United States has become the dumping ground of the castoff surplus military weapons of other nations, and that such weapons, and the large volume of relatively inexpensive pistols and revolvers (largely worthless for sporting purposes), imported into the United States in recent years, has contributed greatly to lawlessness and to the Nation's law enforcement problems;"(8) that the lack of adequate Federal control over interstate and foreign commerce in highly destructive weapons (such as bazookas, mortars, antitank guns, and so forth, and destructive devices such as explosive or incendiary grenades, bombs, missiles, and so forth) has allowed such weapons and devices to fall into the hands of lawless persons, including armed groups who would supplant lawful authority, thus creating a problem of national concern;"(9) that the existing licensing system under the Federal Firearms Act [former sections 901 to 910 of Title 15, Commerce and Trade] does not provide adequate license fees or proper standards for

the granting or denial of licenses, and that this has led to licenses being issued to persons not reasonably entitled thereto, thus distorting the purposes of the licensing system."(b) The Congress further hereby declares that the purpose of this title [enacting this chapter and repealing sections 901 to 910 of Title 15, Commerce and Trade] is to cope with the conditions referred to in the foregoing subsection, and that it is not the purpose of this title [enacting this chapter and repealing sections 901 to 910 of Title 15] to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trap shooting, target shooting, personal protection, or any other lawful activity, and that this title [enacting this chapter and repealing sections 901 to 910 of Title 15] is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes, or provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title [enacting this chapter and repealing sections 901 to 910 of Title 15]."

ADMINISTRATION AND ENFORCEMENTPub. L. 90-618, title I, §103, Oct. 22, 1968, 82 Stat. 1226, as amended by Pub. L. 107-296, title XI, §1112(s), Nov. 25, 2002, 116 Stat. 2279, provided that: "The administration and enforcement of the amendment made by this title [amending this chapter] shall be vested in the Attorney General."Pub. L. 90-351, title IV, §903, June 19, 1968, 82 Stat. 234, provided that: "The administration and enforcement of the amendment made by this title [enacting this chapter and provisions set out as notes under this section] shall be vested in the Secretary of the Treasury [now Attorney General]."

MODIFICATION OF OTHER LAWSPub. L. 90-618, title I, §104, Oct. 22, 1968, 82 Stat. 1226, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Nothing in this title or the amendment made thereby [amending this chapter] shall be construed as modifying or affecting any provision of-"(a) the National Firearms Act (chapter 53 of the Internal Revenue Code of 1986) [section 5801 et seq. of Title 26, Internal Revenue Code];"(b) section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934), as amended, relating to munitions control; or"(c) section 1715 of title 18, United States Code, relating to nonmailable firearms."Pub. L. 90-351, title IV, §904, June 19, 1968, 82 Stat. 234, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Nothing in this title or amendment made thereby [enacting this chapter and provisions set out as notes under this section] shall be construed as modifying or affecting any provision of-"(a) the National Firearms Act (chapter 53 of the Internal Revenue Code of 1986) [section 5801 et seq. of Title 26, Internal Revenue Code of 1986, 82 Stat. 234, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Nothing in this title or amendment made thereby [enacting this chapter and provisions set out as notes under this section] shall be construed as modifying or affecting any provision of-"(a) the National Firearms Act (chapter 53 of the Internal Revenue Code of 1986) [section 5801 et seq. of Title 26, Internal Revenue Code]; or"(b) section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934), as amended, relating to munitions control; or"(c) section 1715 of title 18, United States Code, relating to nonmailable firearms."

DEFINITION OF "HANDGUN"Pub. L. 99-408, §10, Aug. 28, 1986, 100 Stat. 922, provided that: "For purposes of section 921(a)(17)(B) of title 18, United States Code, as added by the first section of this Act, 'handgun' means any firearm including a pistol or revolver designed to be fired by the use of a single hand. The term also includes any combination of parts from which a handgun can be assembled."

UNITED STATES CODE TITLE 20—EDUCATION CHAPTER 33—EDUCATION OF INDIVIDUALS WITH DISABILITIES

Sec. 1415. Procedural safeguards.

United States Statutes

Title 20. EDUCATION

Chapter 33. EDUCATION OF INDIVIDUALS WITH DISABILITIES

Subchapter II. ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

Current through P.L. 115-193

§ 1415. Procedural safeguards

(a) Establishment of procedures

Any State educational agency, State agency, or local educational agency that receives assistance under this subchapter shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies.

(b) Types of procedures

The procedures required by this section shall include the following:

- (1) An opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child.
- (2) (A) Procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual to act as a surrogate for the parents, which surrogate shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child. In the case of-
 - a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of this paragraph; and
 - (ii) an unaccompanied homeless youth as defined in section 11434a(6) of title 42, the local educational agency shall appoint a surrogate in accordance with this paragraph.

- (B) The State shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.
- (3) Written prior notice to the parents of the child, in accordance with subsection (c)(1), whenever the local educational agency-
 - (A) proposes to initiate or change; or
 - (B) refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.
- (4) Procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so.
- (5) An opportunity for mediation, in accordance with subsection (e).
- (6) An opportunity for any party to present a complaint-
 - (A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and
 - (B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this subchapter, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph.
- (7) (A) Procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with subsection (c)(2) (which shall remain confidential)-
 - (i) to the other party, in the complaint filed under paragraph (6), and forward a copy of such notice to the State educational agency; and
 - (ii) that shall include-
 - (I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;

- (II) in the case of a homeless child or youth (within the meaning of section 11434a(2) of title 42), available contact information for the child and the name of the school the child is attending;
- (III a description of the nature of the problem of the child relating to
-) such proposed initiation or change, including facts relating to such problem; and
- (IV a proposed resolution of the problem to the extent known and
-) available to the party at the time.
- (B) A requirement that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii).
- (8) Procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.

(c) Notification requirements

(1) Content of prior written notice

The notice required by subsection (b)(3) shall include-

- (A) a description of the action proposed or refused by the agency;
- (B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- (C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this subchapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- (D) sources for parents to contact to obtain assistance in understanding the provisions of this subchapter;
- (E) a description of other options considered by the IEP Team and the reason why those options were rejected; and
- (F) a description of the factors that are relevant to the agency's proposal or refusal.

(2) Due process complaint notice

(A) Complaint

The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of subsection (b)(7)(A).

(B) **Response to complaint**

(i) Local educational agency response

(I) In general

If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, such local educational agency shall, within 10 days of receiving the complaint, send to the parent a response that shall include-

- (a an explanation of why the agency proposed or refused to
- a) take the action raised in the complaint;
- (b a description of other options that the IEP Team
- b) considered and the reasons why those options were rejected;
- (c a description of each evaluation procedure, assessment,
- c) record, or report the agency used as the basis for the proposed or refused action; and
- (d a description of the factors that are relevant to the
- d) agency's proposal or refusal.

(II) Sufficiency

A response filed by a local educational agency pursuant to subclause (I) shall not be construed to preclude such local educational agency from asserting that the parent's due process complaint notice was insufficient where appropriate.

(ii) Other party response

Except as provided in clause (i), the non-complaining party shall, within 10 days of receiving the complaint, send to the complaint a response that specifically addresses the issues raised in the complaint.

(C) Timing

The party providing a hearing officer notification under subparagraph (A)

shall provide the notification within 15 days of receiving the complaint.

(D) **Determination**

Within 5 days of receipt of the notification provided under subparagraph (C), the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A), and shall immediately notify the parties in writing of such determination.

(E) Amended complaint notice

(i) In general

A party may amend its due process complaint notice only if-

- (I) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subsection (f)(1)(B); or
- (II) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.

(ii) Applicable timeline

The applicable timeline for a due process hearing under this subchapter shall recommence at the time the party files an amended notice, including the timeline under subsection (f)(1)(B).

(d) Procedural safeguards notice

(1) In general

(A) Copy to parents

A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents-

- (i) upon initial referral or parental request for evaluation;
- (ii) upon the first occurrence of the filing of a complaint under subsection(b)(6); and
- (iii) upon request by a parent.

(B) Internet website

A local educational agency may place a current copy of the procedural safeguards notice on its Internet website if such website exists.

(2) Contents

The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to-

- (A) independent educational evaluation;
- (B) prior written notice;
- (C) parental consent;
- (D) access to educational records;
- (E) the opportunity to present and resolve complaints, including-
 - (i) the time period in which to make a complaint;
 - (ii) the opportunity for the agency to resolve the complaint; and
 - (iii) the availability of mediation;
- (F) the child's placement during pendency of due process proceedings;
- (G) procedures for students who are subject to placement in an interim alternative educational setting;
- (H) requirements for unilateral placement by parents of children in private schools at public expense;
- due process hearings, including requirements for disclosure of evaluation results and recommendations;
- (J) State-level appeals (if applicable in that State);
- (K) civil actions, including the time period in which to file such actions; and
- (L) attorneys' fees.

(e) Mediation

(1) In general

Any State educational agency or local educational agency that receives assistance under this subchapter shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.

(2) **Requirements**

Such procedures shall meet the following requirements:

- (A) The procedures shall ensure that the mediation process-
 - (i) is voluntary on the part of the parties;
 - (ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this subchapter; and
 - (iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
- (B) OPPORTUNITY TO MEET WITH A DISINTERESTED PARTY.-A local educational agency or a State agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with-
 - a parent training and information center or community parent resource center in the State established under section 1471 or 1472 of this title; or
 - (ii) an appropriate alternative dispute resolution entity, to encourage the use, and explain the benefits, of the mediation process to the parents.
- (C) LIST OF QUALIFIED MEDIATORS.-The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.
- (D) COSTS.-The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).
- (E) SCHEDULING AND LOCATION.-Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.
- (F) WRITTEN AGREEMENT.-In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that-
 - states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;
 - (ii) is signed by both the parent and a representative of the agency who

has the authority to bind such agency; and

- (iii) is enforceable in any State court of competent jurisdiction or in a district court of the United States.
- (G) MEDIATION DISCUSSIONS.-Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

(f) Impartial due process hearing

(1) In general

(A) Hearing

Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

(B) **Resolution session**

(i) **Preliminary meeting**

Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint-

- (I) within 15 days of receiving notice of the parents' complaint;
- (II) which shall include a representative of the agency who has decisionmaking authority on behalf of such agency;
- (III which may not include an attorney of the local educational
-) agency unless the parent is accompanied by an attorney; and
- (IV where the parents of the child discuss their complaint, and the
-) facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint,

unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e).

(ii) Hearing

If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this subchapter shall commence.

(iii) Written settlement agreement

In the case that a resolution is reached to resolve the complaint at a meeting described in clause (i), the parties shall execute a legally binding agreement that is-

- (I) signed by both the parent and a representative of the agency who has the authority to bind such agency; and
- (II) enforceable in any State court of competent jurisdiction or in a district court of the United States.

(iv) Review period

If the parties execute an agreement pursuant to clause (iii), a party may void such agreement within 3 business days of the agreement's execution.

(2) Disclosure of evaluations and recommendations

(A) In general

Not less than 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing.

(B) Failure to disclose

A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(3) Limitations on hearing

(A) Person conducting hearing

A hearing officer conducting a hearing pursuant to paragraph (1)(A) shall, at a minimum-

- (i) not be-
 - (I) an employee of the State educational agency or the local educational agency involved in the education or care of the child; or

- (II) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;
- (ii) possess knowledge of, and the ability to understand, the provisions of this chapter, Federal and State regulations pertaining to this chapter, and legal interpretations of this chapter by Federal and State courts;
- (iii) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
- (iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(B) Subject matter of hearing

The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.

(C) Timeline for requesting hearing

A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this subchapter, in such time as the State law allows.

(D) Exceptions to the timeline

The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to-

- (i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or
- the local educational agency's withholding of information from the parent that was required under this subchapter to be provided to the parent.

(E) Decision of hearing officer

(i) In general

Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

(ii) **Procedural issues**

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies-

- (I) impeded the child's right to a free appropriate public education;
- (II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
- (III caused a deprivation of educational benefits.

(iii) Rule of construction

Nothing in this subparagraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.

(F) Rule of construction

Nothing in this paragraph shall be construed to affect the right of a parent to file a complaint with the State educational agency.

(g) Appeal

(1) In general

If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency.

(2) Impartial review and independent decision

The State educational agency shall conduct an impartial review of the findings and decision appealed under paragraph (1). The officer conducting such review shall make an independent decision upon completion of such review.

(h) Safeguards

Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded-

- the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- (2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;
- (3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

- (4) the right to written, or, at the option of the parents, electronic findings of fact and decisions, which findings and decisions-
 - (A) shall be made available to the public consistent with the requirements of section 1417(b) of this title (relating to the confidentiality of data, information, and records); and
 - (B) shall be transmitted to the advisory panel established pursuant to section 1412(a)(21) of this title.

(i) Administrative procedures

(1) In general

(A) **Decision made in hearing**

A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2).

(B) Decision made at appeal

A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2).

(2) **Right to bring civil action**

(A) In general

Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision made under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.

(B) Limitation

The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bringing such action under this subchapter, in such time as the State law allows.

(C) Additional requirements

In any action brought under this paragraph, the court-

- (i) shall receive the records of the administrative proceedings;
- (ii) shall hear additional evidence at the request of a party; and

(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(3) Jurisdiction of district courts; attorneys' fees

(A) In general

The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

(B) Award of attorneys' fees

(i) In general

In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs-

- (I) to a prevailing party who is the parent of a child with a disability;
- (II) to a prevailing party who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
- (III to a prevailing State educational agency or local educational
-) agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(ii) Rule of construction

Nothing in this subparagraph shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

(C) Determination of amount of attorneys' fees

Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(D) **Prohibition of attorneys' fees and related costs for certain services**

(i) In general

Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if-

- (I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;
- (II) the offer is not accepted within 10 days; and
- (III the court or administrative hearing officer finds that the relief
-) finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) IEP Team meetings

Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e).

(iii) Opportunity to resolve complaints

A meeting conducted pursuant to subsection (f)(1)(B)(i) shall not be considered-

- a meeting convened as a result of an administrative hearing or judicial action; or
- (II) an administrative hearing or judicial action for purposes of this paragraph.

(E) Exception to prohibition on attorneys' fees and related costs

Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(F) Reduction in amount of attorneys' fees

Except as provided in subparagraph (G), whenever the court finds that-

 the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

- the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
- (iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
- (iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A), the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

(G) Exception to reduction in amount of attorneys' fees

The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

(j) Maintenance of current educational placement

Except as provided in subsection (k)(4), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

(k) Placement in alternative educational setting

(1) Authority of school personnel

(A) Case-by-case determination

School personnel may consider any unique circumstances on a case-bycase basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

(B) Authority

School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

(C) Additional authority

If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in section 1412(a)(1) of this title although it may be provided in an interim alternative educational setting.

(D) Services

A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or subparagraph (C) shall-

- (i) continue to receive educational services, as provided in section 1412(a)(1) of this title, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
- (ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(E) Manifestation determination

(i) In general

Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine-

- if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- (II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.
- (ii) Manifestation

If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

(F) Determination that behavior was a manifestation

If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall-

- (i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);
- (ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and
- (iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

(G) Special circumstances

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child-

- carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;
- knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or
- (iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

(H) Notification

Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.

(2) Determination of setting

The interim alternative educational setting in subparagraphs (C) and (G) of paragraph (1) shall be determined by the IEP Team.

(3) Appeal

(A) In general

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

(B) Authority of hearing officer

(i) In general

A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).

(ii) Change of placement order

In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may-

- (I) return a child with a disability to the placement from which the child was removed; or
- (II) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

(4) Placement during appeals

When an appeal under paragraph (3) has been requested by either the parent or the local educational agency-

 (A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

(B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

(5) Protections for children not yet eligible for special education and related services

(A) In general

A child who has not been determined to be eligible for special education and related services under this subchapter and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this subchapter if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(B) Basis of knowledge

A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred-

- the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
- the parent of the child has requested an evaluation of the child pursuant to section 1414(a)(1)(B) of this title; or
- (iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

(C) Exception

A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to section 1414 of this title or has refused services under this subchapter or the child has been evaluated and it was determined that the child was not a child with a disability under this subchapter.

(D) Conditions that apply if no basis of knowledge

(i) In general

If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

(ii) Limitations

If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this subchapter, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

(6) Referral to and action by law enforcement and judicial authorities

(A) Rule of construction

Nothing in this subchapter shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(B) Transmittal of records

An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(7) **Definitions**

In this subsection:

(A) Controlled substance

The term "controlled substance" means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(B) Illegal drug

The term "illegal drug" means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act [21 U.S.C. 801 et seq.] or under any other provision of Federal law.

(C) Weapon

The term "weapon" has the meaning given the term "dangerous weapon" under section 930(g)(2) of title 18.

(D) Serious bodily injury

The term "serious bodily injury" has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18.

(I) Rule of construction

Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.], title V of the Rehabilitation Act of 1973 [29 U.S.C. 790 et seq.], or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

(m) Transfer of parental rights at age of majority

(1) In general

A State that receives amounts from a grant under this subchapter may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)-

- (A) the agency shall provide any notice required by this section to both the individual and the parents;
- (B) all other rights accorded to parents under this subchapter transfer to the child;
- (C) the agency shall notify the individual and the parents of the transfer of rights; and
- (D) all rights accorded to parents under this subchapter transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

(2) Special rule

If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this subchapter.

(n) Electronic mail

A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the agency makes such option available.

(o) Separate complaint

Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

Cite as 20 U.S.C. § 1415

Source: Pub. L. 91-230, title VI, §615, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2715.

Notes from the Office of Law Revision Counsel

current through 7/23/2018

REFERENCES IN TEXTSection 327 of the District of Columbia Appropriations Act, 2005, referred to in subsec. (i)(3)(B)(ii), is section 327, Oct. 18, 2004 of Pub. L. 108-335, 118 Stat. 1344, which is not classified to the Code.The Federal Rules of Civil Procedure, referred to in subsec. (i)(3)(D)(i)(I), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.The Controlled Substances Act, referred to in subsec. (k)(7)(B), is title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.The Americans with Disabilities Act of 1990, referred to in subsec. (I), is Pub. L. 101-336, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§12101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.The Rehabilitation Act of 1973, referred to in subsec. (I), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended. Title V of the Act is classified generally to subchapter V (§790 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

PRIOR PROVISIONSA prior section 1415, Pub. L. 91-230, title VI, §615, as added Pub. L. 105-17, title I, §101, June 4, 1997, 111 Stat. 88; amended Pub. L. 106-25, §6(a), Apr. 29, 1999, 113 Stat. 49, related to procedural safeguards, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446. Another prior section 1415, Pub. L. 91-230, title VI, §615, as added Pub. L. 94-142, §5(a), Nov. 29, 1975, 89 Stat. 788; amended Pub. L. 99-372,

§§2, 3, Aug. 5, 1986, 100 Stat. 796, 797; Pub. L. 100-630, title I, §102(e), Nov. 7, 1988, 102 Stat. 3294; Pub. L. 101-476, title IX, §901(b)(71)-(75), Oct. 30, 1990, 104 Stat. 1145; Pub. L. 102-119, §25(b), Oct. 7, 1991, 105 Stat. 607;
Pub. L. 103-382, title III, §314(a)(1), Oct. 20, 1994, 108 Stat. 3936, related to procedural safeguards, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

CODE OF FEDERAL REGULATIONS TITLE 34–EDUCATION PART 300–ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

- Sec. 300.530 Authority of school personnel.
- Sec. 300.531 Determination of setting.
- Sec. 300.532 Appeal.
- Sec. 300.533 Placement during appeals.
- Sec. 300.534 Protections of children not determined eligible for special education and related services.
- Sec. 300.535 Referral to and action by law enforcement and judicial authorities.
- Sec. 300.536 Change of placement because of disciplinary removals.
- Sec. 300.537 State enforcement mechanisms.

§ 300.530. Authority of school personnel.

Code of Federal Regulations

Title 34. Education

Subtitle B. REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION

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Part 300. ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

Subpart E. PROCEDURAL SAFEGUARDS DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

DISCIPLINE PROCEDURES

Current through July 27, 2018

§ 300.530. Authority of school personnel

- (a) *Case-by-case determination.* School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.
- (b) General.
 - (1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536).
 - (2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.
- (c) Additional authority. For disciplinary changes in placement that would exceed 10 Page 137 of 405

consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.

- (d) Services.
 - (1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must-
 - (i) Continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
 - (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.
 - (2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.
 - (3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.
 - (4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under §300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.
 - (5) If the removal is a change of placement under §300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.

(e) Manifestation determination.

(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the

child's IEP, any teacher observations, and any relevant information provided by the parents to determine-

- (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.
- (2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.
- (3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.
- (f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must-
 - (1) Either-
 - Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
 - (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and
 - (2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.
- (g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child-
 - Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;
 - (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

- (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.
- (h) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in §300.504.
- (i) *Definitions.* For purposes of this section, the following definitions apply:
 - (1) Controlled substance means a drug or other substance identified under schedules
 I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
 - (2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
 - (3) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.
 - (4) *Weapon* has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

Cite as 34 C.F.R. § 300.530

Source: Authority: 20 U.S.C. 1415(k)(1) and (7) § 300.531. Determination of setting.

Code of Federal Regulations

Title 34. Education

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§ 300.531. Determination of setting

The child's IEP Team determines the interim alternative educational setting for services under §300.530(c), (d)(5), and (g).

Cite as 34 C.F.R. § 300.531

Source: Authority: 20 U.S.C. 1415(k)(2) § 300.532. Appeal.

Code of Federal Regulations

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DISCIPLINE PROCEDURES

Current through July 27, 2018

§ 300.532. Appeal

- (a) General. The parent of a child with a disability who disagrees with any decision regarding placement under §§300.530 and 300.531, or the manifestation determination under §300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§300.507 and 300.508(a) and (b).
- (b) Authority of hearing officer.
 - (1) A hearing officer under §300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section.
 - (2) In making the determination under paragraph (b)(1) of this section, the hearing officer may-
 - Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of §300.530 or that the child's behavior was a manifestation of the child's disability; or
 - (ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if

the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

(c) Expedited due process hearing.

- (1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§300.507 and 300.508(a) through (c) and §§300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section.
- (2) The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.
- (3) Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in §300.506 -
 - (i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and
 - (ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.
- (4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in §§300.510 through 300.514 are met.
- (5) The decisions on expedited due process hearings are appealable consistent with §300.514.

Cite as 34 C.F.R. § 300.532

Source:

§ 300.533. Placement during appeals.

Code of Federal Regulations

Title 34. Education

Subtitle B. REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION

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§ 300.533. Placement during appeals

When an appeal under §300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in §300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

Cite as 34 C.F.R. § 300.533

Source: Authority: 20 U.S.C. 1415(k)(4)(A) History. 71 FR 46753, Aug. 14, 2006, as amended at 72 FR 61307, Oct. 30, 2007
§ 300.534. Protections for children not determined eligible for special education and related services.

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Current through July 27, 2018

§ 300.534. Protections for children not determined eligible for special education and related services

- (a) General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.
- (b) *Basis of knowledge.* A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred-
 - The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
 - The parent of the child requested an evaluation of the child pursuant to §§300.300 through 300.311; or
 - (3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the

director of special education of the agency or to other supervisory personnel of the agency.

- (c) *Exception.* A public agency would not be deemed to have knowledge under paragraph (b) of this section if-
 - (1) The parent of the child-
 - Has not allowed an evaluation of the child pursuant to §§300.300 through 300.311; or
 - (ii) Has refused services under this part; or
 - (2) The child has been evaluated in accordance with §§300.300 through 300.311 and determined to not be a child with a disability under this part.
- (d) Conditions that apply if no basis of knowledge.
 - (1) If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (d)(2) of this section.
 - (i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under §300.530, the evaluation must be conducted in an expedited manner.
 - Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
 - (iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of §§300.530 through 300.536 and section 612(a)(1)(A) of the Act.

Cite as 34 C.F.R. § 300.534

Source:

Authority: 20 U.S.C. 1415(k)(5)

§ 300.535. Referral to and action by law enforcement and judicial authorities.

Code of Federal Regulations

Title 34. Education

Subtitle B. REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION

Chapter III. OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES, DEPARTMENT OF EDUCATION

Part 300. ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

Subpart E. PROCEDURAL SAFEGUARDS DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

DISCIPLINE PROCEDURES

Current through July 27, 2018

§ 300.535. Referral to and action by law enforcement and judicial authorities

- (a) Rule of construction. Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.
- (b) Transmittal of records.
 - (1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.
 - (2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

Cite as 34 C.F.R. § 300.535

Source:

Authority: 20 U.S.C. 1415(k)(6)

§ 300.536. Change of placement because of disciplinary removals.

Code of Federal Regulations

Title 34. Education

Subtitle B. REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION

Chapter III. OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES, DEPARTMENT OF EDUCATION

Part 300. ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

Subpart E. PROCEDURAL SAFEGUARDS DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

DISCIPLINE PROCEDURES

Current through July 27, 2018

§ 300.536. Change of placement because of disciplinary removals

- (a) For purposes of removals of a child with a disability from the child's current educational placement under §§300.530 through 300.535, a change of placement occurs if-
 - (1) The removal is for more than 10 consecutive school days; or
 - (2) The child has been subjected to a series of removals that constitute a pattern-
 - Because the series of removals total more than 10 school days in a school year;
 - (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.
- (b) (1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
 - (2) This determination is subject to review through due process and judicial proceedings.

Cite as 34 C.F.R. § 300.536

Source:

Authority: 20 U.S.C. 1415(k)

§ 300.537. State enforcement mechanisms.

Code of Federal Regulations

Title 34. Education

Subtitle B. REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION

Chapter III. OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES, DEPARTMENT OF EDUCATION

Part 300. ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

Subpart E. PROCEDURAL SAFEGUARDS DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

DISCIPLINE PROCEDURES

Current through July 27, 2018

§ 300.537. State enforcement mechanisms

Notwithstanding §§300.506(b)(7) and 300.510(d)(2), which provide for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in this part that would prevent the SEA from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States.

Cite as 34 C.F.R. § 300.537

Source: Authority: 20 U.S.C. 1415(e)(2)(F), 1415(f)(1)(B)

REGULATIONS OF CONNECTICUT STATE AGENCIES TITLE 10—EDUCATION SECTION 10-76D: CONDITIONS OF INSTRUCTION

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§ 10-76d-1. Special education and related services.

Connecticut Administrative Code

Title 10. Education and Culture

76. Children Requiring Special Education

10-76d. Conditions of instruction.

Current through September 22, 2017

§ 10-76d-1. Special education and related services

Each board of education shall provide a free appropriate public education for each child with a disability. A child with a disability is entitled to receive a free appropriate public education on and after the child's third birthday, notwithstanding the fact that the third birthday occurs outside of the regular school year. The PPT shall determine whether a child whose birthday occurs outside of the regular school year requires extended school year services.

- (a) **General requirements.** Each board of education shall provide special education and related services for each child with a disability in accordance with the following requirements.
 - Such education shall be consistent with the requirements of the IDEA, sections 10-76a to 10-76ii, inclusive, of the Connecticut General Statutes and sections 10-76a-1 to 10-76d-19, inclusive, of the Regulations of Connecticut State Agencies;
 - (2) Each child with a disability shall be entitled to participate in the general education high school graduation exercises and related activities of the board of education in the event such child will not be graduating with a general education high school diploma. Such child, such child's parents and the PPT shall determine such child's high school graduating class for purposes of participation in the high school graduation exercises and related activities. A child with a disability is entitled to participate in high school graduation exercises and related activities while such child is enrolled in high school;
 - (3) Each board of education shall award its general education high school diploma to each child with a disability who (A) meets the requirements for graduation for such board, (B) is provided a free appropriate public education by such board, and (C) is enrolled by such board in a program that does not award a diploma for purposes of high school graduation; and
 - (4) Such education shall be continued until the end of the school year in the event that the child turns twenty-one during that school year. For purposes of this subdivision,

school year means July first through June thirtieth.

- (b) Provision of services. Each board of education shall be required to provide referral, identification and evaluation services only for gifted and talented children enrolled in grades kindergarten to twelve, inclusive, in a public school under the jurisdiction of such board of education. The provision of all other special education and related services to gifted and talented children shall be at the discretion of each board of education, except if a child identified as gifted or talented is also identified as a child with a disability, then the child shall receive special education and related services.
- (c) Arrangements for service. A board of education may make arrangements to provide special education and related services when educational needs cannot be met by public school arrangements. Each board of education shall ensure that all services are provided to implement each child's individualized education program in the least restrictive environment and are provided in accordance with the requirements of the IDEA, sections 10-76a to 10-76ii, inclusive, of the Connecticut General Statutes and sections 10-76a-1 to 10-76d-19, inclusive, of the Regulations of Connecticut State Agencies. A board of education may arrange for the provision of the following services including, but not limited to:

Instructional services and programs

Diagnostic medical services

Psychological services

Social work services

Speech and hearing services

Guidance and counseling services

Parent counseling and training services as related to educational objectives

Physical therapy services

Occupational therapy services

Translation services

Transportation services

In-service training

(d) Payment. Each board of education shall file with the State Board of Education the required state form for payment for expenditures made for special education and related services. A board of education shall be eligible to receive state grants for the provision of special education and related services to a child with a disability if applicable state requirements are met.

Cite as Conn. Agencies Regs. § 10-76d-1

History. Effective September 1, 1980; Amended February 4, 2005; Amended July 1, 2013

§ 10-76d-2. Personnel.

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10-76d. Conditions of instruction.

Current through September 22, 2017

§ 10-76d-2. Personnel

Each local board of education shall employ the number of certified or licensed personnel and support personnel necessary to implement the special education and related services required in each child's individualized education program.

- (a) Aides. Provision shall be made for the direct supervision of each aide who is assisting in the provision of special education or related services by a person certified or licensed in the area of specialization to which such aide is assigned. An aide works under the direct supervision of a teacher or related service personnel if (1) the teacher or related service personnel prepares the lessons and plans and the instructional support activities the aide performs, (2) the teacher or related service personnel evaluates the achievement of the child with whom such aide is working and (3) such aide works in close and frequent proximity with the teacher or related service personnel.
- (b) **Consultation.** Time shall be scheduled during the school day for personnel who provide special education and related services or general education to consult with each other, other personnel and parents.
- (c) Personnel development. Each board of education shall provide for a system of personnel development to meet the requirements of the IDEA, sections 10-76a to 10-76ii, inclusive, of the Connecticut General Statutes and sections 10-76a-1 to 10-76d-19, inclusive, of the Regulations of Connecticut State Agencies. In-service training on special education and related services shall be given to general and special education instructional, related services and support personnel. A board of education may require certain personnel to attend specific in-service training activities identified by the Department of Education to respond to specific corrective actions ordered by the Department of Education as a result of a complaint investigation, monitoring activities or a due process hearing officer decision.

§ 10-76d-3. Length of school day and year.

Connecticut Administrative Code

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76. Children Requiring Special Education

10-76d. Conditions of instruction.

Current through September 22, 2017

§ 10-76d-3. Length of school day and year

- (a) Unless otherwise specified in a child's individualized education program, the minimum school day and year for children with disabilities shall be the same as that for children in the general education program established by the board of education in accordance with section 10-16 of the Connecticut General Statutes. The PPT shall determine whether an individual child requires extended school day or extended school year services.
- (b) Each board of education shall ensure that extended school day or extended school year services are available to each child with a disability in accordance with the IDEA. Each board of education shall ensure that consideration of such child's eligibility for, and the content, duration and location of such child's extended school year services is determined so as to allow the parent sufficient time to challenge the determination of eligibility, the program or the placement for such child before the beginning of the extended school year services for such child unless it is clearly not feasible to do so.

Cite as Conn. Agencies Regs. § 10-76d-3

§ 10-76d-4. Physical facilities and equipment.

Connecticut Administrative Code

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76. Children Requiring Special Education

10-76d. Conditions of instruction.

Current through September 22, 2017

§ 10-76d-4. Physical facilities and equipment

- (a) **Physical facilities.** Each board of education shall provide special education and related services in a physical environment appropriate to the child's needs as set forth in the child's individualized education program.
 - (1) Children requiring special education and related services shall receive special education and related services in general education facilities where appropriate.
 - (2) Special education and related services shall be provided in facilities which meet all building, health and safety codes.
 - (3) Children with limited mobility shall have access, free from barriers to their mobility, to those areas to which access is necessary for the implementation of their individualized education programs.
 - (4) A board of education may rent special education facilities. Such facilities shall meet the requirements as set forth in section 10-76d-4(a) (1) through (3) of these regulations. To receive payment for rental of special education facilities, a board of education shall document that adequate space is not available in any of its public school buildings and that rental is necessary because of improvement in or expansion of the special education program. Rented facilities for special education may be used to house general education classes where such use is a means of initiating or improving special education programs or facilities within a regular public school building.
- (b) Equipment or assistive technology device. Each board of education shall provide education equipment or assistive technology devices and instructional and related service materials sufficient to meet the requirements of each child's individualized education program. An "assistive technology device" means an assistive technology device as defined in the IDEA.
 - (1) The board of education shall maintain an inventory of all education equipment and

assistive technology devices purchased with IDEA funds costing more than four thousand nine hundred ninety-nine dollars per unit if the cost of the equipment or assistive technology device is included in special education costs for purposes of payment. The inventory shall identify the equipment or assistive technology device and state its cost, date of purchase and current use or disposition. Records of inventories of such education equipment and assistive technology devices shall be retained for three years beyond the useful life or disposition of the equipment or assistive technology device.

(2) All equipment, assistive technology devices and instructional and related service materials for which full payment is sought shall be used exclusively for special education and related services. Payment for all shared equipment and materials shall be prorated in accordance with the proportion of time such equipment and materials are used for special education and related services.

Cite as Conn. Agencies Regs. § 10-76d-4

§ 10-76d-5. Class size and composition.

Connecticut Administrative Code

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76. Children Requiring Special Education

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Current through September 22, 2017

§ 10-76d-5. Class size and composition

The number and age range of children with disabilities assigned to a class shall be such that the specifications of each child's individualized education program can be met.

Cite as Conn. Agencies Regs. § 10-76d-5 History. Effective September 1, 1980; Amended July 1, 2013 § 10-76d-6. Identification and eligibility of students.

Connecticut Administrative Code

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76. Children Requiring Special Education

10-76d. Conditions of instruction.

Current through September 22, 2017

§ 10-76d-6. Identification and eligibility of students

- (a) Identification. Each board of education shall ensure that children with disabilities, including children who are educated at home, homeless children, children who are wards of the state and children attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are located, identified and evaluated in accordance with the IDEA. This responsibility shall include cooperating with other agencies in a position to identify children with disabilities.
- (b) Eligibility for services for parentally placed private school children or children educated at home by their parents. Special education and related services available for parentally placed private school children eligible for special education shall be provided in accordance with the IDEA. Children being educated at home by their parents shall not be considered parentally placed private school children for the purpose of receiving special education and related services in accordance with the IDEA.

Cite as Conn. Agencies Regs. § 10-76d-6 History. Effective September 1, 1980; Amended July 1, 2013 § 10-76d-7. Referral.

Connecticut Administrative Code

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76. Children Requiring Special Education

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Current through September 22, 2017

§ 10-76d-7. Referral

- (a) (1) Each board of education shall accept and process referrals for the initial evaluation of a child to determine if the child is a child with a disability from appropriate school personnel, as well as from a child's parents, or from a physician, clinic or social worker, provided the parent so permits. The Department of Education shall make available a standard referral form which shall be used in all referrals for the initial evaluation of a child to determine if the child is a child with a disability.
 - (2) The board of education shall make available information, understandable to the general public, concerning the procedures for requesting an initial evaluation of a child to all parents and professional staff of such board. Such information shall include, but not be limited to, a description of the general education interventions that are provided to meet the needs of individual children before a referral for a special education evaluation is requested and the special education referral and evaluation process. Such information shall identify at least one person in each school building that parents or professional staff of the board may contact regarding school policies and procedures for special education referrals and evaluations. The board may include such information in the student handbook, on the board's website or in another location to afford parents and staff access to such information.
 - (3) A parent is not required to submit the standard referral form for a referral for an initial evaluation to determine if a child is a child with a disability. The board of education shall accept as a referral a concern expressed in writing from the parent of the child that such child be referred for an initial evaluation and such written concern shall be provided to supervisory or administrative personnel of the board or such child's teacher. The board shall accept a referral that uses terms that clearly indicate a concern that such child may be a child with a disability and should be evaluated for special education identification and services. The date of referral for purposes of this subsection and section 10-76d-13 is the date board

personnel receive the referral. The date of referral is not the date the board's referral form is filled out by the board. Each board of education shall develop a process for accepting referrals from parents who cannot put their request in writing.

- (b) If a child is receiving alternative procedures and programs in general education and the board of education of such child receives a referral for an initial evaluation, such board shall (1) accept the referral for an initial evaluation to determine if a child is a child with a disability and shall convene a PPT meeting to consider the referral to determine if an evaluation of the child is appropriate and (2) continue the alternative procedures and programs in general education.
- (c) Provision shall be made for the prompt referral to a planning and placement team of all children who have been suspended repeatedly or whose behavior, attendance, including truant behavior, or progress in school is considered unsatisfactory or at a marginal level of acceptance.
- (d) If the referral for the initial evaluation is made by someone other than the child's parent, the board shall provide notice of the referral to the parent no later than five days after the referral is received by the board.

Cite as Conn. Agencies Regs. § 10-76d-7

§ 10-76d-8. Notice and consent.

Connecticut Administrative Code

Title 10. Education and Culture

76. Children Requiring Special Education

10-76d. Conditions of instruction.

Current through September 22, 2017

§ 10-76d-8. Notice and consent

Written notice shall be sent to the parents no later than five days after date of referral.

(a) Written notice.

- (1) Written notice that meets the requirements of this subsection shall be given to the parents of a child with a disability a reasonable time before the PPT proposes or refuses to initiate or change the identification, evaluation, or educational placement of a child with a disability or a child who may have a disability or the provision of a free appropriate public education to a child with a disability. The requirement for providing the parents of a child with a disability, or the parents of a child who may be eligible for special education and related services, with written notice occurs after the PPT meeting at which the PPT proposes to, or refuses to, initiate or change the child's identification, evaluation, or educational placement or the provision of a free appropriate public education to the child.
- (2) The written notice required by this subsection shall include (A) a description of the action proposed or refused by the PPT, (B) an explanation of why such PPT proposes or refuses to take the action, (C) a description of each evaluation procedure, assessment, record, or report such board used as a basis for the proposed or refused action, (D) a statement that the parents of a child with a disability have protection under the procedural safeguards of IDEA and, if the written notice required by this section is the initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained, (E) sources for parents to contact to obtain assistance in understanding the procedural safeguards of IDEA, (F) a description of other options the PPT considered and the reasons why those options were rejected, and (G) a description of other factors that are relevant to the board of education's proposal or refusal.
- (3) The written notice required under this subsection shall be (A) written in language understandable to the general public, and (B) provided in the native language of

the parent or other mode of communication used by the parent unless it is clearly not feasible to do so.

- (4) If the native language or other mode of communication of the parents is not a written language, the board of education shall take steps to ensure (A) the notice is translated orally or by other means to the parent in his or her native language or other mode of communication, (B) the parent understands the content of the notice, and (C) there is written evidence that the requirements of subparagraphs (A) and (B) of this subdivision have been meet.
- (5) Written notice required by this subsection may be provided to the parents at the PPT meeting where such PPT proposes to, or refuses to, initiate or change the child's identification, evaluation, or educational placement of the child with a disability or the provision of a free appropriate public education to the child with a disability. If such notice is not provided at the PPT meeting, it shall be provided to the parents of the child with a disability, or to the parents of a child who may be eligible for special education and related services, not later than ten days before the PPT proposes to, or refuses to, initiate or change the child's identification, evaluation or educational placement of the child or the provision of a free appropriate public education to the child.
- (b) Written consent. The board of education shall obtain written parental consent, in accordance with the provisions of the IDEA, for initial evaluation, reevaluation and initial receipt of special education and related services. The failure of the parent to respond to a request from the board for consent to conduct an initial evaluation, reevaluation or for the initial receipt of special education and related services within ten days from the date of the notice to the parent shall be construed as parental refusal of consent.

Cite as Conn. Agencies Regs. § 10-76d-8

History. Effective September 1, 1980; Amended February 4, 2005; Amended July 1, 2013

§ 10-76d-9. Evaluation; Independent Educational Evaluation; Determining the existence of a learning disability; Evaluation and identification for gifted and talented.

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76. Children Requiring Special Education

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Current through September 22, 2017

§ 10-76d-9. Evaluation; Independent Educational Evaluation; Determining the existence of a learning disability; Evaluation and identification for gifted and talented

- (a) Evaluation; Independent Educational Evaluations. The board of education shall conduct an initial evaluation or reevaluation, in accordance with the provisions of the IDEA, to determine if a child is a child with a disability. A parent shall be permitted to obtain an independent educational evaluation, in accordance with the provisions of the IDEA.
- (b) **Determination of a learning disability.** The following criteria shall be used to determine if a child is a child with a learning disability.
 - (1) (A) The child does not achieve adequately for the child's age or meet stateapproved grade-level standards in one or more of the following areas when provided with learning experiences appropriate for the child's age or stateapproved grade-level standards:
 - (i) oral expression;
 - (ii) listening comprehension;
 - (iii) written expression;
 - (iv) basic reading skills;
 - (v) reading fluency skills;
 - (vi) reading comprehension;

(vii mathematics calculation; or)

- (vii mathematics problem solving;
-)

- (B) The child does not make sufficient progress to meet age or state-approved grade-level standards in oral expression, listening comprehension, written expression, basic reading skills, reading fluency skills, reading comprehension, mathematics calculation, or mathematics problem solving when using a process based on the child's response to scientific, researchbased intervention; and
- (C) The child's learning difficulties are not primarily the result of a visual, hearing or motor disability, an intellectual disability, emotional disturbance, cultural factors, environmental or economic disadvantage, or limited English proficiency; and
- (2) A severe discrepancy between educational performance and measured intellectual ability (Intelligence Quotient-achievement discrepancy) shall not be utilized to determine if a child is a child with a learning disability. The PPT may request the administration of individual intelligence quotient tests if the PPT believes such tests could provide information that would be helpful in an evaluation.
- (3) To ensure that underachievement in a child suspected of having a learning disability is not due to lack of appropriate instruction in reading or math, the PPT shall consider, as part of the comprehensive evaluation conducted to determine the child's eligibility for special education:
 - (A) Data demonstrating that prior to, or as part of, the referral process, such child was provided appropriate instruction by qualified personnel in a regular education setting; and
 - (B) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.
- (4) The board shall promptly request parental consent to evaluate a child who is suspected of having a learning disability to determine if such child needs special education and related services, and shall adhere to the timeframes described in section 10-76d-13 of the Regulations of Connecticut State Agencies, unless extended by mutual written agreement of the child's parents and the PPT (A) if prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction pursuant to this subsection and (B) whenever a child is referred for an evaluation.

(c) Identification and evaluation of children who may be gifted or talented.

(1) Each board of education shall evaluate and identify gifted and talented children using the planning and placement team. A board of education may identify up to Page 167 of 405 ten per cent of its total student population for the district as gifted and talented.

(2) A board of education may use individual evaluations or group assessment and evaluations to identify gifted and talented children, provided the board of education obtains parental consent in writing before a child is individually evaluated. A board of education may conduct planning and placement team meetings on groups of children for whom evaluation and identification as gifted and talented are planned. The board of education shall provide parents with written notice that their child has been referred to the planning and placement team for consideration as a gifted and talented child. Written parental consent shall be secured before a child is individually evaluated for identification as gifted and talented. The results of the planning and placement team meeting concerning a determination of the child's identification as gifted or talented shall be provided to the parent in writing. If a parent disagrees with the results of the evaluation conducted by the board of education, the parent has a right to a hearing, pursuant to sections 10-76h-1 to 10-76h-16, inclusive, of the Regulations of Connecticut State Agencies.

Cite as Conn. Agencies Regs. § 10-76d-9 History. Adopted effective May 7, 2009; Amended July 1, 2013 § 10-76d-10. Planning and placement team.

Connecticut Administrative Code

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76. Children Requiring Special Education

10-76d. Conditions of instruction.

Current through September 22, 2017

§ 10-76d-10. Planning and placement team

Each board of education shall establish a sufficient number of planning and placement teams (1) to ensure that all children requiring special education and related services within its jurisdiction are located, evaluated and identified and, (2) to develop and implement an individualized education program for each child who is found eligible for special education and related services. The planning and placement team shall be responsible for the following:

- (a) **Referral.** The planning and placement team shall convene to process a referral submitted in accordance with section 10-76d-7 of the Regulations of Connecticut State Agencies.
- (b) **Evaluation of a child with a disability.** Conducting an evaluation, in accordance with the provisions of the IDEA, before the initial provision of special education and related services to a child with a disability.
- (c) **Determination of eligibility.** Determining, following evaluation, the eligibility of a child for special education and related services.
- (d) Meetings. Meeting to develop the individualized education program in the event of a determination that a child is eligible to receive special education and related services, and meeting to review or revise the individualized education program, in accordance with section 10-76d-11 of the Regulations of Connecticut State Agencies.
- (e) **Re-evaluation.** Conducting a re-evaluation, in accordance with the provisions of the IDEA, of each child receiving special education and related services.

Cite as Conn. Agencies Regs. § 10-76d-10

§ 10-76d-11. Individualized education program.

Connecticut Administrative Code

Title 10. Education and Culture

76. Children Requiring Special Education

10-76d. Conditions of instruction.

Current through September 22, 2017

§ 10-76d-11. Individualized education program

Each board of education shall adopt written policies and procedures for developing, implementing, reviewing, maintaining and evaluating the individualized education program for each child with a disability. Such policies and procedures shall be consistent with the requirements of the IDEA, sections 10-76a-10 -76ii of the Connecticut General Statutes and sections 10-76a-1 to 10-76d-19, inclusive of the Regulations of Connecticut State Agencies. Each board of education shall develop, review and revise the IEP for each child with a disability in accordance with the requirements of the IDEA, sections 10-76a to 10-76ii, inclusive, of the Connecticut General Statutes and the Regulations of Connecticut State Agencies.

- (a) Components. In addition to the IEP components required under the IDEA, the IEP shall also include (1) a statement of short-term instructional objectives derived from the measurable annual goals. A measurable annual goal, including academic and functional goals, is designed to meet the needs of a child with a disability that result from the child's disability to enable such child to be involved in and make progress in the general education curriculum and meet each of such child's other educational needs that result from such child's disability. Short-term instructional objectives shall include objective criteria, evaluation procedures and schedules for determining, on a regular basis, whether the short-term instructional objectives are being achieved; (2) a list of the individuals who will be implementing the IEP; (3) in the case of a residential placement, whether such placement is being recommended because of the need for services other than educational services; and (4) the specifics of the child's transportation needs.
- (b) **Individualized education program form.** Each board of education shall use the individualized education program form developed by the Department of Education.

Cite as Conn. Agencies Regs. § 10-76d-11

§ 10-76d-12. Planning and Placement Team Meetings; Transfer of Rights; exception.

Connecticut Administrative Code

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76. Children Requiring Special Education

10-76d. Conditions of instruction.

Current through September 22, 2017

§ 10-76d-12. Planning and Placement Team Meetings; Transfer of Rights; exception

Each planning and placement team is responsible for initiating, conducting and maintaining a record of planning and placement team meetings for developing, reviewing or revising a child's individualized education program.

- (a) Parental participation. Each board of education shall take steps to ensure that one or both of the child's parents are afforded the opportunity to participate in each meeting to develop, review or revise the individualized education program for that child. Every effort shall be made to schedule meetings at a mutually agreed upon time and place. Steps to ensure parental participation shall be taken in accordance with the following.
 - (1) At least five days prior to the meeting, parents shall be advised in writing, in their native language, of their rights to be participating members of the planning and placement team.
 - (2) Such notice shall also specify the purpose, time and location of the meeting and who has been invited.
 - (3) If neither parent can attend, reasonable effort shall be made to secure parental participation by other means such as conference calls or home visits.
 - (4) A meeting may be conducted without a parent in attendance if the board of education is unable to secure parental attendance. In this event, the board of education shall have a detailed record of its attempts to arrange parental participation.
 - (5) Each board of education shall take any and all actions necessary to ensure that the parents understand the proceedings at the meeting. This shall include, but not be limited to, providing an interpreter for the parents who are in need of such services.
- (b) Transfer of rights; exception. When a child with a disability reaches the age of eighteen,

(1) the board shall provide any notices required by the IDEA, sections 10-76a to 10-76ii, inclusive, of the Connecticut General Statutes and sections 10-76a-1 to 10-76d-19, inclusive, of the Regulations of Connecticut State Agencies to such child and the parents of such child, and (2) all other rights accorded to the parents of such child under the IDEA, sections 10-76a to 10-76ii, inclusive, of the Connecticut General Statutes and, section 10-76b-9 and sections 10-76d-1 to 10-76h-19, inclusive, of the Regulations of Connecticut State Agencies shall transfer to such child.

- (c) All rights accorded to parents under the IDEA, sections 10-76a to 10-76ii, inclusive, of the Connecticut General Statutes and section 10-76b-9 and sections 10-76a-1 to 10-76d-19, inclusive, of the Regulations of Connecticut State Agencies shall transfer to the child with a disability of such parents at the age of eighteen who is incarcerated in an adult or juvenile, state or local correctional institution.
- (d) Whenever a board transfers rights under these provisions, it shall notify the child with a disability and the child's parents of the transfer of rights.
- (e) A child with a disability who has reached eighteen years of age may notify, in writing, the board of education that the parent of such child shall continue to have the right to make educational decisions on behalf of such child notwithstanding the fact the child has turned eighteen years of age. The child with a disability may revoke the granting of these rights at any time. If such child requires assistance to write or sign by reason of disability or inability to read or write, such assistance may be provided by a person of the child's choosing.
- (f) Any child with a disability who has been determined to be incapacitated by a court shall be represented by the legal guardian appointed by the court.
- (g) A child with a disability age eighteen or older who has not been determined incapacitated by a court may be certified as unable to provide informed consent or to make educational decisions and have an educational representative appointed for such child in accordance with the following procedures:
 - (1) Two separate professionals shall state in writing they have conducted a personal examination or interview with such child, such child is incapable of providing informed consent to make educational decisions and such child has been informed of this decision and is informed of the right to challenge it. The professional shall be (A) a medical doctor licensed in the state where the doctor practices medicine;
 (B) a physician's assistant whose certification is countersigned by a supervising physician; (C) a certified nurse practitioner; (D) a licensed clinical psychologist; or (E) a guardian ad litem appointed for such child.
 - (2) When the board receives the required certification, the board shall designate an educational representative from the following list and in the following order of representation:

- (A) such child's spouse;
- (B) such child's parents; or
- (C) another adult relative willing to act as such child's educational representative.
- (3) A child shall be certified as unable to provide informed consent pursuant to this section for a period of one year, except such child or an adult on behalf of such child, with a bona fide interest in and knowledge of such child may challenge the certification at any time, through verbal or written communication to any official of the board at which time the rights revert back to such child. For purposes of this subsection, "bona fide interest in and knowledge of the child' means an adult who understands and is familiar with the educational needs of such child including, but not limited to an adult who (A) is able to understand the nature, extent and probable consequences of a proposed educational program or option on a continuing or consistent basis for such child; and (B) can make a rational evaluation of the benefits or disadvantages of a proposed educational decision or program as compared with the benefits or disadvantages of another proposed educational decision or program on a continuing or consistent basis. In no case shall such adult be an employee of the board of education providing services to the child.
- (h) Nothing in this section shall prevent a child who has reached the age of eighteen from authorizing another adult to make educational decisions on behalf of that child using a power of attorney consistent with the requirements of sections 1-42 to 1-56, inclusive, of the Connecticut General Statutes.

Cite as Conn. Agencies Regs. § 10-76d-12

§ 10-76d-13. Timelines.

Connecticut Administrative Code

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76. Children Requiring Special Education

10-76d. Conditions of instruction.

Current through September 22, 2017

§ 10-76d-13. Timelines

Special education and related services shall be provided as soon as possible after the planning and placement team meeting held to review, revise or develop the child's individualized education program, but in any event not later than the following timelines.

- (a) **School year.** In the case of a referral made during the academic year, the timelines shall be as follows.
 - (1) The individualized education program shall be implemented within forty-five days of referral or notice, exclusive of the time required to obtain parental consent.
 - (2) In the case of a child whose individualized education program calls for out-ofdistrict or private placement, the individualized education program shall be implemented within sixty days of referral or notice, exclusive of the time required to obtain parental consent. If difficulty of placement is such as to occasion a delay beyond this period, the board of education shall submit to the state board of education written documentation of its efforts to obtain placement in a timely manner.
 - (3) Notice shall be sent to the parents in accordance with the requirements of Section 10-76d-8 of these regulations.
 - (4) Where necessary, parental consent shall be given within ten days of the date of notice or, where appropriate, of the date of the planning and placement team meeting in which the parents participated. Consent shall be as specified in Section 10-76d-8 of these regulations.
 - (5) Notice of a planning and placement team meeting to develop, review or revise the child's individualized education program shall be sent to the parents in accordance with Section 10-76d-12(c) of these regulations.
 - (6) A full copy of the individualized education program shall be sent to the parents

within five days after the planning and placement team meeting to develop, review or revise the individualized education program.

(b) **Between school years.** In the case of a referral made in between school years, the effective date of the referral may be deemed to be the first school day of the next school year.

Cite as Conn. Agencies Regs. § 10-76d-13 History. Effective April 24, 1991 § 10-76d-14. Trial placement for diagnostic purposes.

Connecticut Administrative Code

Title 10. Education and Culture

76. Children Requiring Special Education

10-76d. Conditions of instruction.

Current through September 22, 2017

§ 10-76d-14. Trial placement for diagnostic purposes

Each board of education may use trial placement for diagnostic purposes as part of the initial evaluation or reevaluation of a child. This shall mean a structured program, of not more than forty school days duration, the purpose of which is to assess the needs of a child who is or may be a child with a disability, but for whom the evaluation or reevaluation is either inconclusive or the data insufficient to determine the child's eligibility for special education and related services or to develop or revise the child's individualized education program. A trial placement for diagnostic purposes is an evaluation and shall not be the current educational placement of a child for purposes of determining the child's status during due process proceedings in accordance with 20 USC 1415(j) of the IDEA and the regulations adopted thereunder, as amended from time to time, unless the parents and the board otherwise agree. If a trial placement for diagnostic purposes is conducted as part of a referral, the timeline for the implementation of the IEP in accordance with section 10-76d-13 of the Regulations of Connecticut State Agencies shall be extended by the PPT for the time necessary to complete the trial placement for diagnostic purposes.

- (a) The planning and placement team shall specify, in writing, diagnostic goals and objectives, as well as the types and amounts of services needed to conduct the trial placement for diagnostic purposes in order to determine more conclusively the child's needs.
- (b) The planning and placement team or, if the parents and the PPT agree to designate members of the PPT, such designated members, shall meet at least once every ten school days with personnel working with the child to discuss the child's progress and to revise, where necessary, the services being provided.
- (c) A child's time may be divided between the trial placement for diagnostic purposes and another program, or the child may be placed in the trial placement for diagnostic purposes full-time. Decisions regarding such options shall be made by the planning and placement team.
- (d) A trial placement for diagnostic purposes shall be terminated as soon as the child's needs have been determined, but in any event no later than forty school days after the trial

placement for diagnostic purposes begins.

(e) Five school days before the end of the trial placement for diagnostic purposes, the planning and placement team shall reconvene to determine the child's eligibility for special education and related services, as appropriate, or review, revise or develop the child's individualized education program, as appropriate, based on findings made during the trial placement for diagnostic purposes as well as other evaluative information regarding the child.

Cite as Conn. Agencies Regs. § 10-76d-14

§ 10-76d-15. Homebound and hospitalized instruction.

Connecticut Administrative Code

Title 10. Education and Culture

76. Children Requiring Special Education

10-76d. Conditions of instruction.

Current through September 22, 2017

§ 10-76d-15. Homebound and hospitalized instruction

- (a) (1) Provision of instruction for verified medical reason. A board of education shall provide instruction to a child in a public school under the jurisdiction of such board when such child is unable to attend school due to a verified medical reason which may include mental health issues. The child's treating physician shall provide a statement in writing directly to the board of education, on a form provided by such board, stating:
 - (A) the child's treating physician has consulted with school health supervisory personnel and has determined that attendance at school with reasonable accommodations is not feasible,
 - (B) the child is unable to attend school due to a verified medical reason,
 - (C) the child's diagnosis with supporting documentation,
 - (D) the child will be absent from school for at least ten consecutive school days or the child's condition is such that the child may be required to be absent from school for short, repeated periods of time during the school year and,
 - (E) the expected date the child will be able to return to school.
 - (2) The PPT shall consider the educational needs of a child with a disability who is medically complex and the need for instruction to be provided in accordance with the IEP of such child when such child is not able to attend school due to medical reasons. The PPT shall consider and make accommodation for the child's program to be moved (A) from public school to a home or health care facility, including but not limited to, a hospital, psychiatric facility or rehabilitation center, and (B) back to school when the child is able to return to school. For purposes of this section, "medically complex" means a child who has a serious, ongoing illness or chronic condition for at least a year and requires prolonged or intermittent hospitalization and ongoing medical treatments or medical devices to compensate for the loss of

bodily functions.

- (b) **Requirements of individualized education program.** Homebound and hospitalized instruction shall be as specified in the child's individualized education program, subject to the following.
 - (1) In the case of a child not otherwise in need of special education and related services, homebound or hospitalized instruction shall maintain the continuity of the child's regular program. The requirements of evaluation and an individualized education program shall not apply and a planning and placement team meeting need not be convened.
 - (2) In the case of a child not previously receiving special education and related services, the requirements of evaluation and an individualized education program shall apply if there is reason for the planning and placement team to believe that the child will continue to require special education and related services.
 - (3) In the case of a child receiving special education and related services, the planning and placement team shall, where necessary, modify short-term instructional objectives in the child's individualized education program.
- (c) (1) Commencement of services. Instruction for a child who is unable to attend school for medical reasons shall begin no later than the eleventh day of absence from school, provided the board has received notice in writing that meets the requirements of subsection (a) of this section. If the board is provided with adequate notice prior to the child's absence from school, instruction may begin earlier than the eleventh day of absence. If the child's condition is such that the child cannot receive instruction, the child's treating physician shall determine when instruction shall begin and shall, in writing, inform the board.
 - (2) Instruction for a child with a disability who is medically complex shall begin no later than the third day of absence, provided such child is medically able to receive instruction.
- (d) Resolution of disputes. In the event there is a dispute regarding the basis upon which the child's treating physician has asserted the need for instruction, the child shall receive such instruction pending review of the written statement provided by the child's treating physician, pursuant to subsection (a) of this section, by the school medical advisor or other health professional employed by the board of education who is qualified to review the information submitted. The parent of such child shall provide consent for the school medical advisor or other qualified health professional employed by the board of education who is qualified to review to consult with the child's treating physician to assess the need for instruction. The board is not required to begin instruction until such consent is provided. Consultation with the child's treating physician shall include a review of educational and medical records and, if

appropriate, accommodations and school health services that can be provided to the child so the child can attend school safely. If there continues to be a disagreement regarding the provision of homebound instruction, the board may offer, at the board's expense, a review of the child's case by a qualified independent medical practitioner. If the parent fails to make the child available for such review, the obligation of the board to provide homebound instruction shall end, and if the child continues to be absent from school, the board shall pursue school attendance interventions. The board and the parent have the right to request a hearing pursuant to section 10-76h-3 of the Regulations of Connecticut State Agencies, or in lieu of a hearing, may request mediation pursuant to section 10-76h-5 of the Regulations of Connecticut State Agencies, if the dispute regarding the provision of instruction pursuant to this section is not resolved.

(e) **Time and place.** Instruction shall be provided as follows:

- for any child with a disability from three to five years of age, inclusive, for the amount of time determined appropriate by the PPT;
- (2) no less than one hour per day or five hours per week for children in grades kindergarten through six; and
- (3) no less than two hours per day or ten hours per week for children in grades seven through twelve. Where evaluative data indicates that these time requirements should be modified, instruction time may be increased or decreased upon the agreement of the parent and the board of education or upon a determination made by the PPT as appropriate. Instruction may be provided in the setting of the child's home or the hospital to which the child is confined or the board may offer such instruction in other sites such as the town library, taking into consideration the child's medical condition.
- (f) Content of services. Instruction provided pursuant to the provisions of this section shall maintain the continuity of the child's general education program and, in the case of a child with a disability, shall be provided so as to enable the child to continue to participate in the general education curriculum and to progress towards meeting the goals and objectives in the child's IEP. For purposes of this section, "maintaining the continuity of the child's general education program" means the child shall receive instruction in core academic subjects required by the board of education for such child or an interdistrict magnet school or charter school in which such child is enrolled for promotion or graduation. Such interdistrict magnet school or charter school or charter school shall cooperate with the board in planning homebound instruction and shall provide instructional materials to enable the board to provide appropriate instruction to the child.
- (g) **Provision of services for a child who is pregnant or who has given birth.** A child who is pregnant or who has given birth and cannot attend school pursuant to this section shall be provided with homebound instruction and such other instruction as will enable the child
to remain in school or otherwise have access to instruction and support services. The board shall consider the child's individualized needs and shall provide, as appropriate, services that may include, but need not be limited to, transportation, a shortened school day, counseling, modified assignments or modified class schedule.

Cite as Conn. Agencies Regs. § 10-76d-15

History. Effective September 1, 1980; Amended July 1, 2013

§ 10-76d-16. Placement.

Connecticut Administrative Code

Title 10. Education and Culture

76. Children Requiring Special Education

10-76d. Conditions of instruction.

Current through September 22, 2017

§ 10-76d-16. Placement

Each board of education shall determine the educational placement of a child with a disability in accordance with the placement requirements of the IDEA.

Cite as Conn. Agencies Regs. § 10-76d-16 History. Effective September 1, 1980; Amended July 1, 2013 § 10-76d-17. Private facilities.

Connecticut Administrative Code

Title 10. Education and Culture

76. Children Requiring Special Education

10-76d. Conditions of instruction.

Current through September 22, 2017

§ 10-76d-17. Private facilities

A board of education may place a child with a disability in a private special education program.

- (a) **Requirements.** Each board of education shall ensure that any placement in a private special education program is made in accordance with the following requirements.
 - (1) Before a board of education decides that a child with a disability cannot be appropriately placed in a school operated by such board of education or a program operated on behalf of such board of education, such as a program operated by a private special education program or a regional educational service center in a public school building, the board shall explore all other placement options that are consistent with the least restrictive environment requirements of the IDEA;
 - (2) The child's individualized education program shall be maintained by the staff administering the private special education program;
 - (3) The placement shall be at no cost to the parents;
 - (4) Prior to the placement of a child with a disability in a private special education program, a representative of the program shall participate in a PPT meeting in order to discuss the child's individualized education program; and
 - (5) A child placed in a private special education program shall be accorded all of the educational rights the child would have if served directly by his or her board of education including, but not limited to, access to extracurricular and nonacademic programs and services and the right to participate in the high school graduation exercises and activities of the board of education and to receive a general education high school diploma upon completion of the requirements for graduation from the board of education. The PPT shall consider and make arrangements for the child to participate in such activities if the PPT determines that it is appropriate for the child to participate; and

- (6) All out-of-state private programs shall meet the educational standards for private special education programs in the state it is located. If no such standards exist, the sending board of education shall provide the Department of Education with documentation that the private placement is appropriate to the child's needs as set forth in the child's individualized education program.
- (b) No child shall be placed in a private special education program by a board unless such placement is required by the child's individualized education program as developed by the PPT of the board of education responsible for the child's education, except when a child is placed by a state agency in a private special education program for other than educational reasons.
- (c) Approval of private special education programs. Each private special education program seeking approval shall submit a written application for approval as required by the State Board of Education. In order to be approved, each private special education program shall have been in operation for at least one year prior to application, shall have an enrollment of at least ten students, shall comply with the Principles and Standards for Approval of Private Special Education Programs adopted by the State Board of Education, and shall meet the following requirements:
 - (1) Each private special education program shall agree that in its operations no person shall be excluded from participation, be denied benefits or be otherwise discriminated against on the basis of sex, race, color, creed, religion, national origin, age, marital status or disability in any program or activity for which the special education program receives public monies;
 - (2) Each private special education program shall obtain a copy of the child's IEP from the sending board of education and implement the IEP for each child placed by a board of education;
 - (3) Each private special education program shall, with the sending board of education, cooperate in and contribute to each PPT meeting convened for each child placed by a board of education in a private special education program, including the annual review of each child's individualized education program and the determination of continued placement. The private special education program shall ensure that a special education teacher of the child (A) participates in each such meeting, or (B) if the child's parent and the sending board of education consent to the teacher being excused from such meeting, submits written input regarding the development of the child's individualized education program to the sending board of education within a reasonable time prior to the meeting so such written input can be discussed at such meeting;
 - (4) Each private special education program shall complete periodic reviews and evaluations of each child's progress relative to the child's IEP. The private special

education program shall submit reports of the child's progress to the child's parents and the sending board of education in accordance with the reporting schedule and content requirements of the child's IEP as determined by the PPT;

- (5) Each private special education program shall have written policies and procedures for both emergency and early termination of a child's placement. The procedure for emergency termination shall provide for immediate notification of the sending board of education and the child's parents. The procedure for early termination shall provide for prior consultation with the sending board of education as well as an orderly transfer of provision of service;
- (6) Each private special education program shall conform to the requirements of these regulations with respect to class size and composition, length of school day and year and physical facilities;
- Each private special education program shall have policies and procedures which meet the requirements of section 10-76d-18 of the Regulations of Connecticut State Agencies;
- (8) Each private special education program shall ensure that all administrative personnel, instructional personnel, and related service personnel shall hold appropriate certification, except as provided in section 10-145d-610(c) of the Regulations of Connecticut State Agencies, which shall be on file with the State Board of Education;
- (9) Each private special education program shall require of its personnel, on an annual basis, evidence of having met the health requirements for public school employees as established by the General Statutes and their regulations;
- (10) Each private special education program shall have policies and procedures which permit personnel of the sending board of education to visit the program and observe children on a reasonable basis in order for the board to fulfill its responsibilities with regard to the provision of a free appropriate public education to eligible children;
- (11) Each private special education program shall have policies and procedures which permit parents of enrolled and prospective children to visit the program and observe children on a reasonable basis in order for the parents to participate meaningfully in PPT meetings for their children; and
- (d) Private program within a school or facility. In the event that a private special education program is a component of a school or facility of which at least one other component provides education services to school-aged children, all administrative, instructional and related service personnel of each component of the school or facility that provides education services to school-aged children shall hold appropriate certification, except as

provided in 10-145d-610(c) of the Regulations of Connecticut State Agencies, which shall be on file with the State Board of Education.

- (e) Procedures for approval of private special education programs. Upon receipt of a written application for approval as required by subsection (c) of this section, the State Board of Education shall initiate the following actions:
 - (1) A site visit to the private special education program shall be made by representatives of the Department of Education.
 - (2) Based upon the written application and the site visit, a recommendation shall be made to the State Board of Education that approval be granted or withheld. The Commissioner of Education may be authorized to act on behalf of the State Board of Education. Appeal from a decision of the State Board of Education shall follow the provisions of Chapter 54 of the Connecticut General Statutes.
 - (3) Following initial approval, the State Board of Education shall review the approved status of a private special education program before the end of the following school year. Thereafter, approval may be granted for a maximum of five years.
 - (4) The Department of Education shall maintain a current list of all approved private special education programs which shall be available to the public upon request.
 A board of education may place a child requiring special education and related services in a private special education program.
 - (5) The State Board of Education, or the Commissioner of Education acting on behalf of the State Board of Education, may suspend or revoke the approval status of a private special education program pursuant to Chapter 54 of the Connecticut General Statutes.

Cite as Conn. Agencies Regs. § 10-76d-17

History. Effective November 23, 1994; Amended July 1, 2013

§ 10-76d-18. Education records and reports.

Connecticut Administrative Code

Title 10. Education and Culture

76. Children Requiring Special Education

10-76d. Conditions of instruction.

Current through September 22, 2017

§ 10-76d-18. Education records and reports

Each board of education shall maintain records concerning children with disabilities or children referred for an evaluation to determine the child's eligibility for special education and related services consistent with the requirements of the IDEA, except as provided in this section.

- (a) Access rights to records. Parents shall have the right to inspect and review any education records relating to their child which are collected, maintained or used by the board of education.
 - (1) A request to inspect and review a child's records shall be in writing. The board of education shall comply with a request to review and inspect the child's education records without unnecessary delay and before any meeting regarding an IEP or any due process hearing or resolution session held in accordance with the IDEA; otherwise, the board of education shall comply with such request not later than ten days of such request.
 - (2) The parents' right to inspect and review the child's records shall include the right to one free copy of those records. A request for the free copy shall be made in writing. The board of education shall comply with such request not later than ten days of such request. Notwithstanding the fact that a test instrument or portion of a test instrument may meet the criteria of an "education record" under the Family Educational Rights and Privacy Act, 20 USC 1232g, any test instrument or portion of a test instrument for which the test manufacturer asserts a proprietary or copyright interest in the instrument shall not be copied. The parent retains the right to review and inspect such information and the board of education shall respond to reasonable requests from the parent for explanations and interpretations of the child's education record, which may include reviewing copyrighted testing instruments.

History. Effective September 1, 1980; Amended March 26, 2004; Amended July 1, 2013

§ 10-76d-19. Transportation.

Connecticut Administrative Code

Title 10. Education and Culture

76. Children Requiring Special Education

10-76d. Conditions of instruction.

Current through September 22, 2017

§ 10-76d-19. Transportation

Each board of education shall provide, as a related service, safe and appropriate transportation as required to implement the individualized education program for each child with a disability.

- (a) Travel time. Total travel time shall not exceed one hour each way to and from a special education facility. All decisions relating to travel time shall take into account the nature and severity of the child's disability and the child's age. If an appropriate placement cannot be made without exceeding the one-hour travel time limit, written parental consent to longer travel time shall be obtained prior to implementing the transportation service.
- (b) Operators of vehicles. Operators of vehicles shall be given such in-service training as is necessary to acquaint them with the specific needs of the children being transported and to equip them to meet those needs. Operators of vehicles shall meet the licensure requirements of the department of motor vehicles.
- (c) **Vehicles.** All vehicles shall comply with requirements of the Department of Motor Vehicles and shall be equipped so as to ensure safe and appropriate transportation.
- (d) Transportation aides. Each board of education shall provide transportation aides where such aides are ascertained to be necessary to ensure safe and appropriate transportation. A transportation aide shall be assigned to each vehicle transporting a child whose individualized education program specifies the need for such an aide.
- (e) Transportation provided by parents. If the board of education requests that the parents transport a child, it shall reimburse the parents for the cost of such transportation at the standard mileage reimbursement for a privately owned automobile established by the Internal Revenue Service. Such reimbursement shall be for a round trip to transport the child to, and retrieve the child from, the program. No parent shall be required to provide transportation, nor shall any board of education be relieved of the obligation to provide transportation for a child because of the inability or unwillingness of parents to provide transportation. No board of education shall be required to reimburse parents for the cost of

transporting a child if the parents reject the transportation offered by the board of education unless reimbursement is ordered by a hearing officer who finds the transportation offered by the board was not appropriate to meet the child's needs. In lieu of a hearing, the parents and the board may resolve their disagreement through mediation or resolution session.

Cite as Conn. Agencies Regs. § 10-76d-19

History. Effective September 1, 1980; Amended July 1, 2013

STATE AND FEDERAL STATUTES & REGULATIONS REGARDING RECORDS

United States Code:

20 U.S.C. §1232g. Family Educational Privacy Rights.

Connecticut General Statutes:

Sec. 46b-124	Confidentiality of records of juvenile matters. Exceptions.
Sec. 10-233h	Arrested students. Reports by police, disclosure, confidentiality.
	Police testimony at expulsion hearings.
Sec. 10-15b	Access of parent or guardian to student's records

§ 1232. Regulations.

United States Statutes

Title 20. EDUCATION

Chapter 31. GENERAL PROVISIONS CONCERNING EDUCATION

Subchapter III. GENERAL REQUIREMENTS AND CONDITIONS CONCERNING OPERATION AND ADMINISTRATION OF EDUCATION PROGRAMS: GENERAL AUTHORITY OF SECRETARY

Part 2. ADMINISTRATION: REQUIREMENTS AND LIMITATIONS

Current through P.L. 115-193

§ 1232. Regulations

(a) "Regulation" defined

For the purpose of this section, the term "regulation" means any generally applicable rule, regulation, guideline, interpretation, or other requirement that-

- (1) is prescribed by the Secretary or the Department; and
- (2) has legally binding effect in connection with, or affecting, the provision of financial assistance under any applicable program.

(b) **Citation of authority**

Regulations shall contain, immediately following each substantive provision of such regulations, citations to the particular section or sections of statutory law or other legal authority on which such provision is based.

(c) **Uniform application**

All regulations shall be uniformly applied and enforced throughout the 50 States.

(d) Application of exemption

The exemption for public property, loans, grants and benefits in section 553(a)(2) of title 5 shall apply only to regulations-

- (1) that govern the first grant competition under a new or substantially revised program authority as determined by the Secretary; or
- (2) where the Secretary determines that the requirements of this subsection will cause extreme hardship to the intended beneficiaries of the program affected by such regulations.

(e) Schedule for promulgation of final regulations

Not later than 60 days after the date of enactment of any Act, or any portion of any Act, affecting the administration of any applicable program, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a schedule in accordance with which the Secretary plans to promulgate final regulations that the Secretary determines are necessary to implement such Act or portion of such Act. Such schedule shall provide that all such final regulations shall be promulgated within 360 days after the date of enactment of such Act or portion of such Act.

(f) Transmittal of final regulations

Concurrently with the publication of any final regulations, the Secretary shall transmit a copy of such final regulations to the Speaker of the House of Representatives and the President pro tempore of the Senate.

Cite as 20 U.S.C. § 1232

Source: Pub. L. 90-247, title IV, §437, formerly §421, as added Pub. L. 91-230, title IV, §401(a)(10), Apr. 13, 1970, 84 Stat. 169; renumbered §431, Pub. L. 92-318, title III, §301(a)(1), June 23, 1972, 86 Stat. 326; amended Pub. L. 93-380, title V, §509(a), Aug. 21, 1974, 88 Stat. 566; Pub. L. 94-142, §7, Nov. 29, 1975, 89 Stat. 796; Pub. L. 94-482, title IV, §405, Oct. 12, 1976, 90 Stat. 2231; Pub. L. 96-374, title XIII, §1302, Oct. 3, 1980, 94 Stat. 1497; Pub. L. 97-35, title V, §533(a)(3), Aug. 13, 1981, 95 Stat. 453; renumbered §437 and amended Pub. L. 103-382, title II, §§212(b)(1), Oct. 20, 1994, 247, Oct. 20, 1994, 108 Stat. 3913, 3923; Pub. L. 103-437, §7(a)(1), Nov. 2, 1994, 108 Stat. 4587.

Notes from the Office of Law Revision Counsel

current through 7/23/2018

PRIOR PROVISIONSA prior section 437 of Pub. L. 90-247 was renumbered section 443, and is classified to section 1232f of this title. Another prior section 437 of Pub. L. 90-247 was renumbered section 406A, and was classified to section 1221e-1a of this title prior to repeal by Pub. L. 103-382. Another prior section 437 of Pub. L. 90-247 was renumbered section 447, and was classified to section 1233f of this title prior to repeal by Pub. L. 103-382.

AMENDMENTS1994- Pub. L. 103-437 which directed that section 431(b)(2)(B), (d)(2), and (g) of Pub. L. 90-247 be amended by substituting "Labor and Human Resources" for "Labor and Public Welfare", could not be executed because this section, which was section 431 of Pub. L. 90-247 was renumbered section 437 and amended generally by Pub. L. 103-382.Pub. L. 103-382, §247, amended section generally. Prior to amendment, section consisted of subsecs. (a) to (g) relating to promulgation of regulations by Secretary, and their publication, application, disapproval by Congress, and modification subsequent to disapproval.**1981**-Subsec. (d)(1). Pub. L. 97-35substituted "final regulation (except expected family contribution schedules and any amendments thereto promulgated pursuant to sections 1078(a)(2)(D) and (E) and 1089(a)(1) of this title) as required" for "final regulation as required".**1980**-Subsec. (d)(1). Pub. L. 96-374inserted ", in whole or in part" after "disapprove such final regulation".**1976**-Subsec. (a). Pub. L.

94-482, §405(a), added par. (1), designated existing provisions which constituted entire subsec. (a) as par. (2) and, as so redesignated, struck out applicability to rules, guidelines, interpretations, or orders. Subsec. (b)(1). Pub. L. 94-482, §405(b)(1), substituted "proposed regulation" for "standard, rule, regulation, or requirement of general applicability". Subsec. (b)(2)(A). Pub. L. 94-482, §405(b)(2), substituted "regulation" for "standard, rule, regulation, or general requirement" in two places.Subsec. (c). Pub. L. 94-482, §405(c), struck out applicability to rules, guidelines, interpretations, or orders. Subsec. (d)(1). Pub. L. 94-482, §405(d)(1), (2), struck out applicability to standards, rules, requirements, or requirements of general applicability.Subsec. (d)(2). Pub. L. 94-482, §405(d)(3), substituted "regulation" for "standard, rule, regulation, or requirement" wherever appearing. Subsec. (e). Pub. L. 94-482, §405(e), substituted "regulation" for "standard, rule, regulation, or requirement" wherever appearing and "final regulation" for "proposed standard, rule, regulation, or requirement of general applicability". Subsec. (g). Pub. L. 94-482, §405(f), substituted "final regulations" for "rules, regulations, and guidelines" wherever appearing.1975-Subsec. (d)(1). Pub. L. 94-142, §7(a)(1), (b), inserted "final" before "standard" wherever appearing in existing provisions and inserted provisions covering the effect of the failure of Congress to adopt the concurrent resolution with respect to any final standard, rule, regulation, or requirement.Subsec. (d)(2). Pub. L. 94-142, §7(a)(2), (3), substituted "objection to the final standard" for "objection to the proposed standard", "effective date of the final standard" for "effective date of the standard", and "In no event shall the final standard" for "In no event shall the standard".1974-Subsec. (b). Pub. L. 93-380, §509(a)(1), designated existing provisions as par. (1) and added par. (2).Subsecs. (d) to (g). Pub. L. 93-380, §509(a)(2), added subsecs. (d) to (g).

CHANGE OF NAMECommittee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999. Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

EFFECTIVE DATE OF 1981 AMENDMENT Pub. L. 97-35, title V, §540(a), Aug. 13, 1981, 95 Stat. 458, provided that the amendment made by Pub. L. 97-35 is effective Oct. 1, 1981.

EFFECTIVE DATE OF 1980 AMENDMENTAmendment by Pub. L. 96-374 effective Oct. 1, 1980, see section 1393(a) of Pub. L. 96-374 set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTAmendment by Pub. L. 94-482 effective 30 days after Oct. 12, 1976, except either as specifically otherwise provided or, if not so specifically otherwise provided, effective July 1, 1976, for those amendments providing for authorization of appropriations, see section 532 of Pub. L. 94-482 set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1975 AMENDMENTPub. L. 94-142, §8, Nov. 29, 1975, 89 Stat. 796, provided that:"(a) Notwithstanding any other provision of law, the amendments made by sections 2(a), 2(b), and 2(c) [amending sections 1411 and 1412 of this title as in effect through Sept. 30, 1977, and amending provisions set out as notes under sections 1411 to 1413 of this title] shall take effect on July 1, 1975."(b) The amendments made by sections 2(d), 2(e), 3, 6, and 7 [enacting sections 1405 and 1406 of this title, amending this section and sections 1412 and 1453 of this title, enacting provisions set out as a note under section 1411 of this title, and amending provisions set out as a note under section 1401 of this title] shall take effect on the date of the enactment of this Act [Nov. 29, 1975]."(c) The amendments made by sections 4 and 5(a) [enacting sections 1415 to 1420 of this title and amending sections 1401, 1411, 1412, 1413, and 1414 of this title] shall take effect on October 1, 1977, except that the provisions of clauses (A), (C), (D), and (E) of paragraph (2) of section 612 of the Act [section 1412 of this title], as amended by this Act, section 617(a)(1)(D) of the Act [section 1417(a)(1)(D) of this title], as amended by this Act, section 617(b) of the Act [section 1417(b) of this title], as amended by this Act, and section 618(a) of the Act [section 1418(a) of this title], as amended by this Act, shall take effect on the date of the enactment of this Act [Nov. 29, 1975]."(d) The provisions of section 5(b) [amending section 1411 of this title and enacting provisions set out as notes under section 1411 of this title] shall take effect on the date of the enactment of this Act [Nov. 29, 1975]."

EFFECTIVE DATE OF 1974 AMENDMENTPub. L. 93-380, title V, §509(b), Aug. 21, 1974, 88 Stat. 568, provided that: "The amendment made by paragraph (2) of subsection (a) [amending this section] shall be effective on the date of enactment of this [Aug. 21, 1974] and shall be effective with respect to the provisions of this Act [see Short Title note set out under section 821 of this title]."

STUDY AND REPORT ON RULES AND REGULATIONSPub. L. 92-318, title V, §503, June 23, 1972, 86 Stat. 346, provided for a study by the Commissioner of all rules, regulations, etc., in connection with the administration of any program to which the General Education Provisions Act [this chapter] applies, with a report to be submitted to Congress not later than one year after June 23, 1972. Such section further mandated the publication of all rules, regulations, etc., in the Federal Register not later than 60 days after submission of such report, followed by a public hearing on such matters within the 60 day period following such publication. Such section then required a subsequent report to the relevant Congressional Committees on such hearings, and a republication of all rules and regulations in the Federal Register, such republished rules, etc., to supercede all preceding rules and regulations.

§ 46b-124. [Effective 7/1/2019] (Formerly Sec. 51-305). Confidentiality of records of juvenile matters. Exceptions.

Connecticut Statutes

Title 46B. FAMILY LAW

Chapter 815t. JUVENILE MATTERS

Part I. GENERAL PROVISIONS

Current through the 2018 Regular Session

§ 46b-124. [Effective 7/1/2019] (Formerly Sec. 51-305). Confidentiality of records of juvenile matters. Exceptions

- (a) For the purposes of this section, "records of cases of juvenile matters" includes, but is not limited to, court records, records regarding juveniles maintained by the Court Support Services Division, records regarding juveniles maintained by an organization or agency that has contracted with the Judicial Branch to provide services to juveniles, records of law enforcement agencies including fingerprints, photographs and physical descriptions, and medical, psychological, psychiatric and social welfare studies and reports by juvenile probation officers, public or private institutions, social agencies and clinics.
- (b) All records of cases of juvenile matters, as provided in section 46b-121, except delinquency proceedings, or any part thereof, and all records of appeals from probate brought to the superior court for juvenile matters pursuant to section 45a-186, shall be confidential and for the use of the court in juvenile matters, and open to inspection or disclosure to any third party, including bona fide researchers commissioned by a state agency, only upon order of the Superior Court, except that:
 - (1) Such records shall be available to (A) the attorney representing the child, including the Division of Public Defender Services, in any proceeding in which such records are relevant, (B) the parents or guardian of the child until such time as the child reaches the age of majority or becomes emancipated, (C) an adult adopted person in accordance with the provisions of sections 45a-736, 45a-737 and 45a-743 to 45a-757, inclusive, (D) employees of the Division of Criminal Justice who, in the performance of their duties, require access to such records, (E) employees of the Judicial Branch who, in the performance of their duties, require access to such records, (F) another court under the provisions of subsection (d) of section 46b-115j, (G) the subject of the record, upon submission of satisfactory proof of the subject's identity, pursuant to guidelines prescribed by the Office of the Chief Court Administrator, provided the subject has reached the age of majority or has been emancipated, (H) the Department of Children and Families, (I) the employees of

the Division of Public Defender Services who, in the performance of their duties related to Division of Public Defender Services assigned counsel, require access to such records, and (J) judges and employees of the Probate Court who, in the performance of their duties, require access to such records; and

- (2) all or part of the records concerning a youth in crisis with respect to whom a court order was issued prior to January 1, 2010, may be made available to the Department of Motor Vehicles, provided such records are relevant to such order. Any records of cases of juvenile matters, or any part thereof, provided to any persons, governmental or private agencies, or institutions pursuant to this section shall not be disclosed, directly or indirectly, to any third party not specified in subsection (d) of this section, except as provided by court order, in the report required under section 54-76d or 54-91a or as otherwise provided by law.
- (c) All records of cases of juvenile matters involving delinquency proceedings, or any part thereof, shall be confidential and for the use of the court in juvenile matters and shall not be disclosed except as provided in this section and section 46b-124a.
- (d) Records of cases of juvenile matters involving delinquency proceedings shall be available to (1) Judicial Branch employees who, in the performance of their duties, require access to such records, (2) judges and employees of the Probate Court who, in the performance of their duties, require access to such records, and (3) employees and authorized agents of state or federal agencies involved in (A) the delinguency proceedings, (B) the provision of services directly to the child, or (C) the delivery of court diversionary programs. Such employees and authorized agents include, but are not limited to, law enforcement officials, community-based youth service bureau officials, state and federal prosecutorial officials, school officials in accordance with section 10-233h, court officials including officials of both the regular criminal docket and the docket for juvenile matters and officials of the Division of Criminal Justice, the Division of Public Defender Services, the Department of Children and Families, if the child is committed pursuant to section 46b-129, provided such disclosure shall be limited to (i) information that identifies the child as the subject of the delinguency petition, or (ii) the records of the delinguency proceedings, when the juvenile court orders the department to provide services to said child, the Court Support Services Division and agencies under contract with the Judicial Branch. Such records shall also be available to (I) the attorney representing the child, including the Division of Public Defender Services, in any proceeding in which such records are relevant, (II) the parents or guardian of the child, until such time as the subject of the record reaches the age of majority, (III) the subject of the record, upon submission of satisfactory proof of the subject's identity, pursuant to guidelines prescribed by the Office of the Chief Court Administrator, provided the subject has reached the age of majority, (IV) law enforcement officials and prosecutorial officials conducting legitimate criminal investigations, (V) a state or federal agency providing services related to the collection of moneys due or funding to support the service needs of eligible juveniles, provided such disclosure shall be limited to Page 197 of 405

that information necessary for the collection of and application for such moneys, and (VI) members and employees of the Board of Pardons and Paroles and employees of the Department of Correction who, in the performance of their duties, require access to such records, provided the subject of the record has been convicted of a crime in the regular criminal docket of the Superior Court and such records are relevant to the performance of a risk and needs assessment of such person while such person is incarcerated, the determination of such person's suitability for release from incarceration or for a pardon, or the determination of the supervision and treatment needs of such person while on parole or other supervised release. Records disclosed pursuant to this subsection shall not be further disclosed, except that information contained in such records may be disclosed in connection with bail or sentencing reports in open court during criminal proceedings involving the subject of such information, or as otherwise provided by law.

- (e) Records of cases of juvenile matters involving delinquency proceedings, or any part thereof, may be disclosed upon order of the court to any person who has a legitimate interest in the information and is identified in such order. Records disclosed pursuant to this subsection shall not be further disclosed, except as specifically authorized by a subsequent order of the court.
- (f) Information concerning a child who is the subject of an order to take such child into custody or other process that has been entered into a central computer system pursuant to subsection (i) of section 46b-133 may be disclosed to employees and authorized agents of the Judicial Branch, law enforcement agencies and the Department of Children and Families, provided the information is limited to a child who has been committed pursuant to section 46b-129, in accordance with policies and procedures established by the Chief Court Administrator.
- (g) Information concerning a child who has absconded, escaped or run away from, or failed to return from an authorized leave to, a detention center or a residential treatment facility in which the child has been placed by a court order in a delinquency case, or for whom an arrest warrant has been issued with respect to the commission of a felony may be disclosed by law enforcement officials.
- (h) Nothing in this section shall be construed to prohibit any person employed by the Judicial Branch from disclosing any records, information or files in such employee's possession to any person employed by the Division of Criminal Justice as a prosecutorial official, inspector or investigator who, in the performance of his or her duties, requests such records, information or files, or to prohibit any such employee of said division from disclosing any records, information or files in such employee's possession to any such employee of the Judicial Branch who, in the performance of his or her duties, requests such records, information or files.
- (i) Nothing in this section shall be construed to prohibit a party from making a timely objection to the admissibility of evidence consisting of records of cases of juvenile matters, or any

part thereof, in any Superior Court or Probate Court proceeding, or from making a timely motion to seal any such record pursuant to the rules of the Superior Court or the rules of procedure adopted under section 45a-78.

- (j) A state's attorney shall disclose to the defendant or such defendant's counsel in a criminal prosecution, without the necessity of a court order, exculpatory information and material contained in any record disclosed to such state's attorney pursuant to this section and may disclose, without a court order, information and material contained in any such record which could be the subject of a disclosure order.
- (k) (1) Notwithstanding the provisions of subsection (d) of this section, any information concerning a child that is obtained during any mental health screening or assessment of such child, shall be used solely for planning and treatment purposes and shall otherwise be confidential and retained in the files of the entity performing such screening or assessment. Such information may be further disclosed only for the purposes of any court-ordered evaluation or treatment of the child or provision of services to the child, or pursuant to sections 17a-101 to 17a-101e, inclusive, 17b-450, 17b-451 or 51-36a. Such information shall not be subject to subpoena or other court process for use in any other proceeding or for any other purpose.
 - (2) Notwithstanding the provisions of subsection (d) of this section, any information concerning a child that is obtained during any detention risk screening of such child shall be used solely for determining the child's risk to public safety as required by subsection (e) of section 46b-133. The information obtained and results of the detention risk screening shall be used for the purpose of making a recommendation to the court regarding the detention of the child and shall otherwise be confidential and retained in the files of the person performing such screening, but shall be disclosed to any attorney of record upon motion and order of the court. Any information and results disclosed upon such motion and order shall be available to any attorney of record for such case. Such information and results shall otherwise not be subject to subpoena or other court process for use in any other proceeding or for any other purpose.
- (I) Records of cases of juvenile matters involving delinquency proceedings, or any part thereof, containing information that a child has been adjudicated as delinquent for a violation of subdivision (e) of section 1-1h, subsection (c) of section 14-147, subsection (a) of section 14-215, section 14-222, subsection (b) of section 14-223, subsection (a), (b) or (c) of section 14-224, section 14-227a, section 14-227g, subsection (d) of section 21a-267, section 21a-279a, section 30-88a or subsection (b) of section 30-89, shall be disclosed to the Department of Motor Vehicles for administrative use in determining whether administrative sanctions regarding such child's motor vehicle operator's license are warranted. Records disclosed pursuant to this subsection shall not be further

disclosed.

- (m) Records of cases of juvenile matters involving adoption proceedings, or any part thereof, shall be confidential and may only be disclosed pursuant to sections 45a-743 to 45a-757, inclusive.
- (n) Records of cases of juvenile matters involving delinquency proceedings shall be available to a victim of the delinquent act in accordance with the provisions of section 46b-124a.

Cite as Conn. Gen. Stat. § 46b-124

Source:

1969, P.A. 794, S. 3; P.A. 75-602, S. 2, 13; P.A. 76-436, S. 13, 681; P.A. 77-246, S. 11; 77-486, S. 1, 2, 5; P.A. 78-280, S. 92, 127; 78-318, S. 27; P.A. 79-456; P.A. 80-165, S. 1; P.A. 81-472, S. 82, 159; P.A. 82-140, S. 1; P.A. 93-0048; P.A. 94-0221, S. 15; July Sp. Sess. P.A. 94-0002, S. 10; P.A. 95-0225, S. 12; 95-254, S. 3; 95-261, S. 1; P.A. 96-0246, S. 35; P.A. 98-0070, S. 1; P.A. 99-0185, S. 35, 40; P.A. 02-0132, S. 22; P.A. 03-0202, S. 8; P.A. 04-0234, S. 2; P.A. 05-0152, S. 9; P.A. 06-0187, S. 75; June Sp. Sess. P.A. 07-0004, S. 81; Jan. Sp. Sess. P.A. 08-0001, S. 23; P.A. 08-0086, S. 4; P.A. 10-0032, S. 140; 10-0043, S. 31; June Sp. Sess. P.A. 10-0001, S. 29; P.A. 11-0051, S. 15; 11-0157, S. 14, 15; P.A. 12-0082, S. 18; 12-0133, S. 34; P.A. 14-0104, S. 10; 14-0173, S. 2; P.A. 16-0147, S. 4. History. Amended by P.A. 18-0031, S. 30 of the Connecticut Acts of the 2018 Regular Session, eff. 7/1/2018. Amended by P.A. 17-0002, S. 593 of the Connecticut Acts of the 2017 Special Session, eff. 7/1/2019. Amended by P.A. 17-0002, S. 147 of the Connecticut Acts of the 2017 Special Session, eff. 10/31/2017. Amended by P.A. 17-0099, S. 2 of the Connecticut Acts of the 2017 Regular Session, eff. 10/1/2017. Amended by P.A. 16-0147, S. 4 of the Connecticut Acts of the 2016 Regular Session, eff. 1/1/2017. Amended by P.A. 14-0173, S. 2 of the Connecticut Acts of the 2014 Regular Session, eff. 10/1/2014. Amended by P.A. 14-0104, S. 10 of the Connecticut Acts of the 2014 Regular Session, eff. 10/1/2014. Amended by P.A. 12-0133, S. 34 of the the 2012 Regular Session, eff. 10/1/2012. Amended by P.A. 12-0082, S. 18 of the the 2012 Regular Session, eff. 10/1/2012. Amended by P.A. 11-0157, S. 15 of the the 2011 Regular Session, eff. 10/1/2011. Amended by P.A. 11-0157, S. 14 of the the 2011 Regular Session, eff. 10/1/2011. Amended by P.A. 11-0051, S. 15 of the the 2011 Regular Session, eff. 7/1/2011. Amended by P.A. 10-0001, S. 29 of the June 2010 Sp. Sess., eff. 7/1/2010. Amended by P.A. 10-0043, S. 31 of the February 2010 Regular Session, eff. 10/1/2010. Amended by P.A. 10-0032, S. 140 of the February 2010 Regular Session, eff. 5/10/2010.

Note: P.A. 75-602 added reference to youths; P.A. 76-436 replaced references to juvenile court with references to superior court and juvenile matters and added Subsec. (b) re confidentiality of complaint or information transferred from circuit to juvenile court before October 1, 1971, effective July 1, 1978; P.A. 77-246 required that records be available to adult adopted persons; P.A. 77-486 added provisions requiring that records be available to judges and adult probation officers for consideration in sentencing or granting youthful offender status for person under twenty-one; P.A. 78-280 added exception re Sec. 54-76d or 54-109 in provision prohibiting disclosure to third party; P.A. 78-318 authorized disclosure to another court in custody proceedings; P.A. 79-456 required superior court order for

disclosure of records to "bona fide researchers commissioned by a state agency"; Sec. 17-57a temporarily renumbered as Sec. 51-305 and ultimately transferred to Sec. 46b-124 in 1979, and references to other sections within provisions revised as necessary by the Revisors to reflect their transfer; P.A. 80-165 authorized disclosure of information concerning disposition of criminal case to the victim of the crime if juvenile's identity is not revealed; P.A. 81-472 made technical corrections; P.A. 82-140 amended Subsec. (a) to permit disclosure of identity of child or youth to victim if the victim intends to bring a civil action for damages or if the child or youth is adjudicated delinguent; P.A. 93-0048 added provision in Subsec. (a) re disclosure of records concerning adjudications re child abuse to state's attorney and added Subsec. (c) re disclosure of exculpatory information and material contained in disclosed record by state's attorney to defendant; P.A. 94-0221 added Subsecs. (a)(4) re availability of information on the identity of a child arrested for a felony and the nature of the offense and (a)(5) re availability of information on the identity of a child adjudicated a delinquent as a result of a felony; July Sp. Sess. P.A. 94-0002 added Subsec. (a)(4) re availability to a state's attorney of records concerning adjudications involving certain firearm-related offenses, renumbering the remaining Subdivs. accordingly, and amended Subsec. (c) to add reference to said Subdiv. (4); P.A. 95-0225 substantially revised section by amending Subsec. (a) to add exception for proceedings concerning delinquent children, deleting former Subdivs. (2) to (6), inclusive, re specific exceptions to the prohibition on disclosure, deleting provision making delinquency records of any person who has not attained the age of 21 available to a judge and an adult probation officer in certain circumstances and provide that the prohibition on disclosure to a third party applies to a third party "not specified in subsection (c) of this section", deleting former Subsec. (b) re confidentiality of records transferred from the Circuit Court to the Juvenile Court prior to October 1, 1971, adding new Subsec. (b) re confidentiality of records of cases of juvenile matters involving proceedings concerning delinguent children, adding new Subsec. (c) re disclosure of delinquency records to certain individuals and agencies, adding Subsec. (d) re disclosure of delinquency records to persons with a legitimate interest therein upon order of the court, adding Subsec. (e) re availability of delinquency records to the victim of the crime, adding Subsec. (f) re disclosure of information concerning a child who has escaped or for whom an arrest warrant has been issued, adding Subsec. (g) re exchange of information between certain employees of the Judicial Department and the Division of Criminal Justice, and redesignating former Subsec. (c) re disclosure of information by a state's attorney to the defendant or his counsel as Subsec. (h) and amended said Subsec. to make technical changes; P.A. 95-0254 amended Subsec. (a) by applying provisions to records of appeals from probate brought to Juvenile Court pursuant to Sec. 45a-186(b) and to add provision making such records available to court of probate from which such appeal was taken; P.A. 95-0261 would have amended Subsec. (a) specifying Office of Adult Probation and Office of the Bail Commission as agencies which may obtain delinquency records where previous availability was limited to adult probation officers, but failed to take effect, P.A. 95-225 having repealed language on which the changes relied; P.A. 96-0246 added Subsec. (a)(3) re psychological evaluations being available to Commissioner of Children and Families for purposes of diagnosing, caring for or treating child; P.A. 98-0070 amended Subsec. (a) by deleting "concerning delinquent children" and adding "delinguency" and by deleting former Subdiv. (3) and adding availability of records to attorney, including public defender, for child or youth, parents or guardian, employees of Division of Criminal Justice, employees of judicial branch, another court, the subject of the record, provided subject provides proof of identity and has reached the age of majority or is emancipated, and the Department of Children and Families; amended Subsec. (b) by deleting "concerning delinguent children" and adding "delinguency"; amended Subsec. (c) by providing availability of records re delinquency proceedings to judicial branch employees, employees and certain authorized agents of state or federal agencies, including Division of Public Defender Services, Office of Adult Probation, Office of Bail Commissioner,

Board of Parole and agencies under contract with Office of Alternative Sanctions, to parent or guardian, to the subject of the record upon proof of identity and reaching age of majority and to a state or federal agency providing funding to support needs of eligible juveniles, and by adding provision re disclosure in connection with bail or sentencing reports; amended Subsecs. (d) and (e) by deleting "concerning a delinguent child" and adding "delinguency"; and amended Subsec. (g) by deleting "as a juvenile prosecutor, inspector or investigator"; P.A. 99-0185 amended Subsec. (a)(2) by changing reference to Sec. 46b-111 to Sec. 46b-115j(d), effective July 1, 2000; P.A. 02-0132 amended Subsec. (c) by replacing "Office of Adult Probation, the Office of the Bail Commissioner" with "Court Support Services Division", replacing "Office of Alternative Sanctions" with "Judicial Department" and making a technical change; P.A. 03-0202 added new Subsec. (a) defining "records of cases of juvenile matters", redesignated existing Subsecs. (a) to (h) as Subsecs. (b) to (i), replaced references to "Judicial Department" with references to "judicial branch" and made technical and conforming changes; P.A. 04-0234 replaced Board of Parole with Board of Pardons and Paroles, effective July 1, 2004; P.A. 05-0152 amended Subsec. (a) by inserting "juvenile" in reference to "probation officers", amended Subsec. (b) by making technical changes and adding Subdiv. (3) re records concerning youth in crisis made available to Department of Motor Vehicles, and added Subsec. (j) re information obtained during mental health screening or assessment of a child; P.A. 06-0187 amended Subsec. (b)(2) by adding Subpara. (I) permitting records of cases of juvenile matters to be made available to employees of Commission on Child Protection in performance of duties requiring access to such records; June Sp. Sess. P.A. 07-0004 amended Subsec. (b)(3) to insert "was issued prior to January 1, 2010," and delete reference to Sec. 46b-150f(c)(1), effective January 1, 2010; Jan. Sp. Sess. P.A. 08-0001 amended Subsec. (d) to delete officials of Board of Pardons and Paroles from list of employees and authorized agents to whom records are available and add clause (vi) re availability of records to members and employees of Board of Pardons and Paroles and employees of Department of Correction, effective January 25, 2008; P.A. 08-0086 amended Subsec. (j) to add provisions re information obtained during the provision of services pursuant to Sec. 46b-149(b) or performance of an educational evaluation pursuant to Sec. 46b-149(e); P.A. 10-0032 made a technical change in Subsec. (b), effective May 10, 2010; P.A. 10-0043 amended Subsec. (d) to delete advocate appointed pursuant to Sec. 54-221 for victim of a crime committed by the child from list of employees and authorized agents to whom records are available and make technical changes; June Sp. Sess. P.A. 10-0001 added Subsec. (k) re disclosure of delinquency conviction for violation of enumerated sections to Department of Motor Vehicles for administrative use re child's license, effective July 1, 2010; P.A. 11-0051 amended Subsec. (b)(2)(I) to substitute "Division of Public Defender Services" for "Commission on Child Protection" and add "related to Division of Public Defender Services assigned counsel" re duties, effective July 1, 2011; P.A. 11-0157 amended Subsecs. (e) and (f) to add "except as specifically authorized by a subsequent order of the court", and amended Subsec. (k) to add reference to Sec. 14-224(a); P.A. 12-0082 added Subsec. (I) re confidentiality of records of cases of juvenile matters involving adoption proceedings; P.A. 12-0133 amended Subsec. (d) to add Subdiv. (2)(D) re availability of records to persons involved in delivery of court diversionary programs and add "community-based youth service bureau officials" as persons to whom records are made available; P.A. 14-0104 amended Subsec. (b) to delete former Subdiv. (1) re records of matter transferred from court of probate or appeal from probate, redesignate existing Subdivs. (2) and (3) as Subdivs. (1) and (2), add Subdiv. (1)(J) re judges and employees of Probate Court who require access to records in performance of their duties, and add provision re disclosure of records as otherwise provided by law, amended Subsec. (d) to add new Subdiv. (2) re judges and employees of Probate Court who require access to records in performance of their duties, redesignate existing Subdiv. (2) as Subdiv. (3), and add provision re records disclosed may be further disclosed as otherwise provided by law, added new Subsec. (i) re nothing in section to be construed to

prohibit timely objection to admissibility of evidence or timely motion to seal record, redesignated existing Subsecs. (i) to (I) as Subsecs. (j) to (m), and made technical changes throughout; P.A. 14-0173 amended Subsec. (b) to delete former Subdiv. (1) re records of matter transferred from court of probate or appeal from probate, redesignate existing Subdivs. (2) and (3) as Subdivs. (1) and (2), add Subdiv. (1)(J) re judges and employees of Probate Court who require access to records in performance of their duties, and add provision re disclosure of records as otherwise provided by law, amended Subsec. (d) to add new Subdiv. (2) re judges and employees of Probate Court who require access to records in performance of their duties, redesignate existing Subdiv. (2) as Subdiv. (3), and add provision re records disclosed may be further disclosed as otherwise provided by law, added new Subsec. (g) re information concerning child who is the subject of an order to take into custody or other process entered into central computer system, redesignated existing Subsecs. (g) and (h) as Subsecs. (h) and (i), added new Subsec. (j) re nothing in section to be construed to prohibit timely objection to admissibility of evidence or timely motion to seal record, redesignated existing Subsecs. (i) to (I) as Subsecs. (k) to (n), and made technical changes throughout; P.A. 16-0147 amended Subsec. (l) to add provisions re detention screening, effective January 1, 2017.

Note: This section is set out twice. See also 46b-124, effective until 7/1/2019.

Case Notes:

Annotation to former section 17-57a:

Cited. 33 CS 599.

Annotations to present section:

Cited. 195 C. 303; 211 C. 151; 214 C. 454. History and policy discussed; confidentiality statute cited. 216 C. 563. Cited. 221 C. 447; 227 C. 641; 229 C. 691; 235 C. 595; 237 C. 364.

Cited. 21 CA 654; 36 CA 345. Section provides an exception to confidentiality provision for child's parent but only until the child reaches the age of majority; while statute does not create a statutory privilege against disclosure of juvenile records for family members of child who is the subject of proceedings in juvenile matters, it is appropriate to consider the nature of the information generally contained in juvenile records to decide whether the records should remain confidential. 76 CA 730. Although protection of statute, which provides in general for confidentiality of records in delinquency proceedings and directs that any records released by court not be further disclosed, may be waived by juvenile, the record here was unclear as to whether respondent in fact had done so given certain procedural irregularities that occurred at trial regarding trial court's appointment of guardians ad litem for the three minor children, it being unclear from the record whether those guardians had standing to object to the requested disclosure and whether they had objected to the disclosure on basis of best interests of the children or on their interpretations of statute; accordingly, case was remanded for further proceedings to determine whether respondent waived protections of statute. 88 CA 511.

Cited. 36 CS 352; 40 CS 316; 41 CS 23; ld., 145; ld., 229; ld., 505; 42 CS 562; 43 CS 38; ld., 108; ld., 211; ld., 367; 44 CS 101; ld., 235; ld., 437; ld., 468; ld., 527; ld., 551.

Subsec. (a):

Cited. 215 C. 739.

Cited. 1 CA 584; 45 CA 508. Court abused its discretion by ordering that attachment of a copy of its memorandum of decision in a termination of parental rights case be appended to any future requests by child's foster parents for a restraining order to prevent respondent father from contacting them. 56 CA 55.

Subsec. (b):

With respect to private and sensitive health information, a just and rational result in reconciling highly protective state and federal statutes with disclosure provisions in Subsec. requires that statutes be read together and construed harmoniously; trial court erred by not providing respondent a full hearing re claims that his and his children's privacy interests were being violated by disclosure of court-ordered psychological evaluation report to juvenile probation officer under Subdiv. (1)(E) and by allowing juvenile probation officer to retain copies of the evaluation report. 162 CA 811.

Subsec. (d):

Victim not permitted to use actual documents released by juvenile court in civil action for damages but may use information in documents to uncover admissible evidence. 45 CS 315.

Subsec. (e):

Extent to which court may release juvenile records to victim of a delinquent act and whether child required to be adjudicated a delinquent before victim entitled to release of information. 45 CS 315.

§ 10-233h. Arrested students. Reports by police, disclosure, confidentiality. Police testimony at expulsion hearings.

Connecticut Statutes

Title 10. EDUCATION AND CULTURE

Chapter 170. BOARDS OF EDUCATION

Current through the 2018 Regular Session

§ 10-233h. Arrested students. Reports by police, disclosure, confidentiality. Police testimony at expulsion hearings

If any person who is at least seven years of age but less than twenty-one years of age and an enrolled student is arrested for a violation of section 53-206c, a class A misdemeanor or a felony, the municipal police department or Division of State Police within the Department of Emergency Services and Public Protection that made such arrest shall, not later than the end of the weekday following such arrest, orally notify the superintendent of schools of the school district in which such person resides or attends school of the identity of such person and the offense or offenses for which he was arrested and shall, within seventy-two hours of such arrest, provide written notification of such arrest, containing a brief description of the incident, to such superintendent. The superintendent shall maintain such written report in a secure location and the information in such report shall be maintained as confidential in accordance with section 46b-124. The superintendent may disclose such information only to the principal of the school in which such person is a student or to the principal or supervisory agent of any other school in which the superintendent knows such person is a student. The principal or supervisory agent may disclose such information only to special services staff or a consultant, such as a psychiatrist, psychologist or social worker, for the purposes of assessing the risk of danger posed by such person to himself, other students, school employees or school property and effectuating an appropriate modification of such person's educational plan or placement, and for disciplinary purposes. If the arrest occurred during the school year, such assessment shall be completed not later than the end of the next school day. If an expulsion hearing is held pursuant to section 10-233d, a representative of the municipal police department or the Division of State Police, as appropriate, may testify and provide reports and information on the arrest at such hearing, provided such police participation is requested by any of the following: The local or regional board of education, the impartial hearing board, the principal of the school or the student or his parent or quardian. Such information with respect to a child under eighteen years of age shall be confidential in accordance with sections 46b-124 and 54-76l, and shall only be disclosed as provided in this section and shall not be further disclosed.

Cite as Conn. Gen. Stat. § 10-233h

Source:

P.A. 94-0221, S. 10; P.A. 95-0304, S. 7, 9; P.A. 97-0149, S. 1, 2; P.A. 11-0051, S. 134; 11-0157, S. 2.

History. Amended by P.A. 11-0157, S. 2 of the the 2011 Regular Session, eff. 10/1/2011.

Note: P.A. 95-0304 applied provisions of the section to persons arrested for class A misdemeanors, effective July 1, 1995; P.A. 97-0149 deleted language limiting the applicability of the section to arrests during the school year and specified the time frame for assessments applied to arrest during the school year, made the section applicable to

arrests for violations of Sec. 53-206c, changed the time frame for oral notification from the end of the "next school day" to the "weekday" following the arrest, and added provision concerning testimony and the provision of reports and information at expulsion hearings by representatives of the municipal police department and the Division of the State Police, effective July 1, 1997; pursuant to P.A. 11-0051, "Department of Public Safety" was changed editorially by the Revisors to "Department of Emergency Services and Public Protection", effective July 1, 2011; P.A. 11-0157 required notification to superintendent of school district in which person "attends school", changed "sixteen years" to "eighteen years" of age re confidentiality of information, and provided that information be confidential in accordance with Sec. 54-76I.

§ 10-15b. Access of parent or guardian to student's records. Inspection and subpoena of school or student records.

Connecticut Statutes

Title 10. EDUCATION AND CULTURE

Chapter 164. EDUCATIONAL OPPORTUNITIES

Part I. GENERAL

Current through the 2018 Regular Session

§ 10-15b. Access of parent or guardian to student's records. Inspection and subpoena of school or student records

- (a) Either parent or legal guardian of a minor student shall, upon written request to a local or regional board of education and within a reasonable time, be entitled to knowledge of and access to all educational, medical, or similar records maintained in such student's cumulative record, except that no parent or legal guardian shall be entitled to information considered privileged under section 10-154a. Nothing in this section shall be construed to limit a parent who is incarcerated from being entitled to knowledge of and access to all educational, medical or similar records maintained in the cumulative record of any minor student of such incarcerated parent, except that such incarcerated parent shall not be entitled to such records if (1) such information is considered privileged under section 10-154a, (2) such incarcerated parent has been convicted in this state or any other state of a violation of section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, or (3) such incarcerated parent is prohibited from knowledge of or access to such student's cumulative record pursuant to a court order.
- (b) The parent or legal guardian with whom the student does not primarily reside shall be provided with all school notices that are provided to the parent or legal guardian with whom the student primarily resides. Such notices shall be mailed to the parent or legal guardian requesting them at the same time they are provided to the parent or legal guardian with whom the child primarily resides. Such requests shall be effective for as long as the child remains in the school the child is attending at the time of the request.
- (c) If any private or public school is served with a subpoena issued by competent authority directing the production of school or student records in connection with any proceedings in any court, the school upon which such subpoena is served may deliver such record or at its option a copy thereof to the clerk of such court. Such clerk shall give a receipt for the same, shall be responsible for the safekeeping thereof, shall not permit the same to be removed from the premises of the court and shall notify the school to call for the same

when it is no longer needed for use in court. Any such record or copy so delivered to such clerk shall be sealed in an envelope which shall indicate the name of the school or student, the name of the attorney subpoenaing the same and the title of the case referred to in the subpoena. No such record or copy shall be open to inspection by any person except upon the order of a judge of the court concerned, and any such record or copy shall at all times be subject to the order of such judge. Any and all parts of any such record or copy, if not otherwise inadmissible, shall be admitted in evidence without any preliminary testimony, if there is attached thereto the certification in affidavit form of the person in charge of such records indicating that such record or copy is the original record or a copy thereof, made in the regular course of the business of the school, and that it was the regular course of such business to make such record at the time of the transactions, occurrences or events recorded therein or within a reasonable time thereafter. A subpoena directing production of such school or student records shall be served not less than eighteen hours before the time for production, provided such subpoena shall be valid if served less than eighteen hours before the time of production if written notice of intent to serve such subpoena has been delivered to the person in charge of such records not less than eighteen hours or more than two weeks before such time for production.

Cite as Conn. Gen. Stat. § 10-15b

Source:

P.A. 73-74; P.A. 78-218, S. 12; P.A. 85-554, S. 4, 6; P.A. 86-223; P.A. 06-0115, S. 2; P.A. 07-0217, S. 41. History. Amended by P.A. 17-0068, S. 4 of the Connecticut Acts of the 2017 Regular Session, eff. 7/1/2017.

Note: P.A. 78-218 substituted "board of education" for "school board"; P.A. 85-554 added Subsec. (b) establishing procedures for inspection and subpoena of school or student records; P.A. 86-223 required serving of subpoena at least 18 hours before time for production of records rather than 24 hours before as was previously required; P.A. 06-0115 added new Subsec. (b) re school notices to the parent or guardian with whom the student does not primarily reside and redesignated existing Subsec. (b) as Subsec. (c), effective July 1, 2006; P.A. 07-0217 made a technical change in Subsec. (c), effective July 12, 2007.

Case Notes:

Cited. 211 C. 555; 230 C. 43.

ETHICS

MATERIALS

• Connecticut Rules of Professional Conduct (CT R RPC Rules 1.7, 4.2)

Rule 1.7. Conflict of Interest: Current Clients.

Connecticut Rules - Practice Book

Connecticut Rules of Professional Conduct

CLIENT LAWYER RELATIONSHIPS

As amended through January 1, 2018

Rule 1.7. Conflict of Interest: Current Clients

- (a) Except as provided in subsection (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
 - (1) the representation of one client will be directly adverse to another client; or
 - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- (b) Notwithstanding the existence of a concurrent conflict of interest under subsection (a), a lawyer may represent a client if:
 - (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law;
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or the same proceeding before any tribunal; and
 - (4) each affected client gives informed consent, confirmed in writing.

Cite as Conn. R. Prof'l. Cond. 1.7

History. P.B. 1978-1997, Rule 1.7. Amended June 26, 2006, to take effect Jan. 1, 2007.

Note:

COMMENTARY: **General Principles.** Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific Rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For definitions of "informed consent" and "confirmed in writing," see Rule 1.0(f) and

(C)

Resolution of a conflict of interest problem under this Rule requires the lawyer to:

1) clearly identify the client or clients;

2) determine whether a conflict of interest exists;

3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and

4) if so, consult with the clients affected under subsection (a) and obtain their informed consent, confirmed in writing. The clients affected under subsection (a) include both of the clients referred to in subsection (a) (1) and the one or more clients whose representation might be materially limited under subsection (a) (2).

A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of subsection (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and nonlitigation matters the persons and issues involved. See also Commentary to Rule 5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Commentary to Rule 1.3 and Scope.

If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of subsection (b). See Rule 1.16. Where more than one client is involved, whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. See Rule 1.9; see also the next paragraph in this Commentary and the first paragraph under the "Special Considerations in Common Representation" heading, below.

Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. See Rule 1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. See Rule 1.9(c).

Identifying Conflicts of Interest: Directly Adverse. Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as advocate in one matter against a person the lawyer represents in some other matter, even when the matters are

wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

Directly adverse conflicts can also arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

Identifying Conflicts of Interest: Material Limitation. Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

Lawyer's Responsibilities to Former Clients and Other Third Persons. In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 1.9 or by the lawyer's responsibilities to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor or corporate director.

Personal Interest Conflicts. The lawyer's own interests must not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it maybe difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients; see also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to other lawyers in a law firm).

When lawyers representing different clients in the same matter or in substantially related matters are closely related

by blood or marriage, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer, e.g., as parent, child, sibling or spouse, ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See Rule 1.10.

A lawyer is prohibited from engaging in a sexual relationship with a client unless the sexual relationship predates the formation of the client-lawyer relationship. See Rule 1.8(j).

Interest of Person Paying for a Lawyer's Service. A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See Rule 1.8(f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of subsection (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

Prohibited Representations. Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in subsection (b), some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.

Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under subsection (b) (1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).

Subsection (b) (2) describes conflicts that are nonconsentable because the representation is prohibited by applicable law.

Subsection (b) (3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or the same proceeding before any tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0 [n]), such representation may be precluded by subsection (b) (1).

Informed Consent. Informed consent requires that each affected client be aware of the relevant circumstances and of

the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 1.0(f) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See second and third paragraphs under the "Special Considerations in Common Representation" heading in this Commentary, below (effect of common representation on confidentiality).

Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

Consent Confirmed in Writing. Subsection (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. See Rule 1.0(c) ; see also Rule 1.0(o) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. See Rule 1.0(c) . The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Revoking Consent. A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other clients and whether material detriment to the other clients or the lawyer would result.

Consent to Future Conflict. Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of subsection (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future conflicts that might arise and the actual and reasonably foreseeable adverse consequences of those conflicts, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material

risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e.g., the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under subsection (b).

Conflicts in Litigation. Subsection (b) (3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by subsection (a) (2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of subsection (b) are met.

Ordinarily, a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters.

When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying subsection (a) (1) of this Rule. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter.

Nonlitigation Conflicts. Conflicts of interest under subsections (a) (1) and (a) (2) arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see second paragraph under "Identifying Conflicts of Interest: Directly Adverse" heading in this Commentary, above. Relevant factors in determining whether there is significant risk of material limitation include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See first paragraph under "Identifying Conflicts of Interest: Material Limitation" heading in this Commentary, above.
For example, conflict questions may also arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate administration, the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

Whether a conflict is consentable depends on the circumstances. For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. The lawyer seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them.

Special Considerations in Common Representation. In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

A particularly important factor in determining the appropriateness of common representation is the effect on clientlawyer confidentiality and the attorney-client privilege.

As to the duty of confidentiality, continued common representation will almost certainly be inappropriate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and the lawyer should inform each client that each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. See Rule 1.4. To that end, the lawyer must, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client

decides prior to disclosure that some matter material to the representation should be disclosed to the lawyer but be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See Rule 1.2(c).

Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in Rule 1.16.

Organizational Clients. A lawyer who represents a corporationor other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.

A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as a director or might require the lawyer's firm to decline representation of the corporation in a matter.

Conflict Charged by an Opposing Party. Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility. In a criminal case, inquiry by the court is generally required when a lawyer represents multiple defendants. Where the conflict is such as clearly to call in question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with

caution, however, for it can be misused as a technique of harassment.

Rule 4.2. Communication with Person Represented by Counsel.

Connecticut Rules - Practice Book

Connecticut Rules of Professional Conduct

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

As amended through January 1, 2018

Rule 4.2. Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so. An otherwise unrepresented party for whom a limited appearance has been filed pursuant to Practice Book Section 3-8(b) is considered to be unrepresented for purposes of this Rule as to anything other than the subject matter of the limited appearance. When a limited appearance has been filed for the party, and served on the other lawyer, or the other lawyer is otherwise notified that a limited appearance has been filed or will be filed, that lawyer may directly communicate with the party only about matters outside the scope of the limited appearance without consulting with the party's limited appearance lawyer.

Cite as Conn. R. Prof'l. Cond. 4.2

History. P.B. 1978-1997, Rule 4.2. Amended June 14, 2013, to take effect Oct. 1, 2013.

Note:

COMMENTARY: This Rule does not prohibit communication with a party, or an employee or agent of a party, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Also, parties to a matter may communicate directly with each other and a lawyer having independent justification for communicating with the other party is permitted to do so. Communications authorized by law include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.

In the case of an organization, this Rule prohibits communications by a lawyer for one party concerning the matter in representation with persons having a managerial responsibility on behalf of the organization, and with any other person whose act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization. If an agent or employee of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. (Compare Rule 3.4).

This Rule also covers any person, whether or not a party to a formal proceeding, who is represented by counsel concerning the matter in question.

RELEVANT CASES

CASE INDEX

Due Process – 14th Amendment

- Goss v. Lopez, 419 U.S. 565 (1975): Several students brought a class action under 42 U.S.C. § 1983 claiming that an Ohio law permitting schools to suspend students for up to 10 days without notice or an opportunity to be heard violated their due process rights under the 14th Amendment. Court held that a child's public education is a property right created by state law. Students are entitled to due process before being deprived of their right to a public education as a result of disciplinary action by school officials. Due process includes notice and some level of an opportunity to be heard, depending on the duration of the suspension and/or expulsion.
- E.K. v. Stamford Bd. Of Educ., 557 F. Supp. 2d 272 (D. Conn. 2007): Admission of hearsay evidence at high school student's expulsion hearing without allowing him to confront student witnesses, and limitation of student's cross-examination of board of education witness did not violate student's right to due process, where risk of erroneous deprivation through procedures provided was low, school had strong interest in protecting student witnesses, and procedures provided complied with board's administrative regulation and state law.

Due process does not afford high school students the right to confront and cross-examine student witnesses or accusers at expulsion hearings.

Equal Protection – 14th Amendment

Rossi v. West Haven Board of Education, 359 F. Supp. 2d 178 (D. Conn. 2005): Student arrested for stealing, possessing and distributing controlled substances (Xanex, Vicoden and Valium) both on and off school grounds was expelled for 180 days. Student challenged the severity of his punishment under a "class of one" 14th Amendment equal protection argument, claiming that other similarly situated students received less severe punishments. Court granted defendant's motion for summary judgment on grounds that student had failed to show any similarly situated students (i.e. students subject to the mandatory expulsion provisions of Conn. Gen. Stat. § 10-233d), and that in any event, there was no question that the Board had a "rational basis" for expelling the student for 180 days.

Conduct Off School Grounds

Packer v. Board of Education of the town of Thomaston, 246 Conn. 89 (1998): Student arrested off school grounds for possession of marijuana was expelled for remainder of fall semester, and excluded from extracurricular activities for remainder of school year. Student sought an injunction enjoining the Board from implementing the expulsion on the grounds that Connecticut's expulsion statute (Conn. Gen. Stat. § 10-233d) allowing exclusion for conduct occurring off school grounds was unconstitutionally vague, the expulsion violated his due process and equal protection rights, and that the Board did not have a publicized policy against use of illegal drugs off school grounds. The court upheld the expulsion statute itself as constitutional, but found that its application in this case was unconstitutional. The court held that to expel a student for conduct occurring off school grounds, the Board must show that the student 1) violated a school policy, and 2) that the conduct was "seriously disruptive of the education process" in that it "markedly interrupts or severely impedes the day-to-day operation of the school." The court further held that the fact of the violation of school policy off school grounds does not, by itself, show a serious disruption of the educational process.

Evidence – Hearsay

- DeJesus v. Penberthy, 344 F. Supp. 70 (1972): Student was expelled for punching another student without provocation. Student sought injunction enjoining implementation of expulsion on grounds that his 14th Amendment due process rights were violated because only evidence presented was school administrator reading portions of statements made by the alleged victim and another witness. Student admitted punching victim, but claimed that it was in response to provocation. Court held that where there is a factual dispute on critical issues that will the propriety of an expulsion, due process requires that, in the absence of any extenuating circumstances, readily available testimony must be presented to the fact-finders in person, and should be taken in the presence of the accused and subject to cross-examination.
- Carlson v. Kozlowski, 172 Conn. 263 (1977): The plaintiff's operator's license was suspended by an administrative hearing officer. The only evidence pointing to the plaintiff's culpability was contained in affidavits of four witnesses to the accident who were not present at the hearing. The general rule is that hearsay evidence, in the form of written affidavits, may be allowed in administrative proceedings. Such statements are inadmissible hearsay when it is found to be: untrustworthy, the weight afforded the hearsay testimony might be considerably affected by cross-examination, and the hear-say evidence is concerned directly with the matter at issue and not an incidental aspect of the case. In order for hearsay evidence to be trustworthy, the Court relied upon the standard outlined by the United States Supreme Court in <u>Richardson v. Perales</u>, 402 U.S. 389. The <u>Richardson</u> test established that in order for written affidavits to be ad-

missible hearsay the declarants must be unbiased and not have an interest in the outcome, and the weight accorded the declarant's testimony cannot be considerably affected by cross-examination. It is for these reasons and that the hearsay evidence was concerned directly with the matter at issue, that the Supreme Court of Connecticut found such written affidavits introduced at a motor vehicle administrative hearing by a police officer to be inadmissible hearsay.

Balbi v. Ridgefield Public Schools, 2000 WL 1228690 (Conn. Super. 2000): Student was expelled for 180 days for possession of a deadly weapon and dangerous instrument on school grounds after allegedly threatening another student. Regarding evidentiary issues, the Superior Court of Connecticut held that although an administrative tribunal is not strictly bound by the rules of evidence, and that the APA does not prohibit the receipt of hearsay evidence, hearsay, in order to be admissible, must be reliable and probative. Where a testifying police officer refuses to reveal the names of the witnesses upon whose testimony he relied, and refuses to produce their written statements, this standard is not met, as any attempt at meaningful cross-examination would be futile. The Court held that conclusions supported exclusively by the police officer's hearsay testimony must be disregarded.

Evidence – Search and Seizure

- New Jersey v. T.L.O., 469 U.S. 325 (1985): Student accused of smoking was brought to school office. School administrator opened student's purse and found cigarettes, and searched further finding drugs, money and a list of students owing her money all evidence which ultimately lead to a criminal conviction. The New Jersey Supreme Court reversed the conviction, finding the search to be unreasonable, but the United States Supreme Court reversed that decision, finding the search reasonable, and setting forth the standard for searches by school officials in the school setting. The Court held that the 4th Amendment does apply to school officials, but that a warrant is not required prior to searching a student. The court further held that only "reasonable cause," as opposed to "probable cause," is necessary to conduct a search, as measured by 1) whether the search was reasonable at its inception (i.e. believed to produce evidence that school rule and/or law was broken), and 2) whether the scope of the search was reasonably related to the purpose of the search and not excessively intrusive.
- Thompson v. Carthage School District, et al., 87 F.3d 979 (1996): Student was expelled from school after school found crack cocaine in his coat pocket while looking for weapons reported to be on school grounds. District court awarded \$10K in \$1983 damages for "wrongful expulsion" because the search had violated student's 4th Amendment rights. 8th Circuit appellate court reversed and remanded district court's opinion holding that 1) exclusionary rule did not apply to the high school student's

§1983 wrongful expulsion action, and 2) principal's decision to undertake a generalized search in which all male students from grades six to 12 were searched for dangerous weapons by emptying their pockets and being patted down if metal detector sounded did not violate student's Fourth Amendment rights. The court noted that a student's legitimate expectations of privacy are somewhat limited at school and the 4th Amendment when applied to school official searches stops short of probable cause. Additionally, the court stated that individualized suspicion is not always required for school searches and the fact that the coat's pockets were emptied after the metal detector did not go off and the student had placed his jacket on a table was not constitutionally significant.

- Burbank et al. v. Canton BOE (unpublished), 109 LRP 67733 (2009): warrant-less, suspicion less sweeps of cars in school parking lot and unattended lockers, per school policy, do not amount to searches under the 4th Amendment. "A student simply does not have a reasonable expectation of privacy in the smells emanating from his locker or car." Appeal dismissed on grounds that claims mooted by child's graduation, 11 A.3d 658 (2011), 111 LRP 7392.
- Of cell phones:
 - <u>Riley v. California</u>, 573 U.S. (2014): police must obtain a warrant to search data on a cell phone confiscated incident to an arrest
 - <u>G.C. v. Owesboro Public Schools</u>, 711 F.3d 623 (6th Cir. 2013): "using a cell phone on school grounds does not automatically trigger an essentially unlimited right enabling a school official to search any content stored on the phone that is not related either substantially or temporally to the infraction"

Decisions – Specificity of Grounds & Notice

Dejesus v. Penberty, 344 F. Supp. 70 (1972): Student was expelled for punching another student without provocation. Student sought injunction enjoining implementation of expulsion on grounds that his 14th Amendment due process rights were violated because grounds on which student was ultimately expelled were not specified in the decision, and the student did not have notice or an opportunity to be heard on ground listed. The court held that where a student's expulsion notice indicates that he was being expelled for assault, but where the Board in its executive session then expels the student for "incorrigibly bad conduct" based upon his prior record without specifying the grounds for such decision violates the student's due process rights because the student had neither notice nor an opportunity to defend.

Special Education Issues

- Balbi v. Ridgefield Public Schools, 2000 WL 1228690 (Conn. Sup. Crt. 2000): Student was expelled for 180 days for possession of a deadly weapon and dangerous instrument on school grounds after allegedly threatening another student. The Superior Court of Connecticut held that the student's expulsion be expunged because the school failed to hold a manifestation PPT prior to expulsion, as required by the IDEA and correlating state law. The student had been identified as needing special education services since the fourth grade. Although he was not technically identified as a special education student in the school year from which he was expelled, the court found that his current conduct, the previous identification, the fact that the Board had failed to affirmatively change his classification, and the fact that there had not been a change in circumstances to warrant his removal from the special education program all sufficient to invoke the protections requiring a manifestation PPT prior to expulsion. The Court also cited Conn. Agency Regulations 10-76d-7, and found that the school has an affirmative duty to make a prompt referral to a PPT for a child whose behavior, attendance or progress in school is considered unsatisfactory.
- Stuart v. Nappi, 443 F. Supp. 1235 (1978): Special education student who was involved in "school-wide disturbances" was suspended for 10 days and received notice of a pending expulsion hearing. Court held that preliminary injunction would issue to enjoin the school from conducting a hearing to expel plaintiff and require an immediate review of the student's special education program. The Court found that student was able to show probable success on the merits by arguing that she had been denied her right to a Free Appropriate Public Education entitled under the Handicapped Act (now Individuals with Disabilities Education Act) in that a) a PPT had ordered evaluations which were not done in a timely manner, b) her IEP which was appropriate at one time and was enabling her to progress in her education was not changed when her attendance dropped, and c) the school's handling of plaintiff may have contributed to her disruptive behavior; and found the probability of irreparable harm on the grounds that a) she would suffer irreparable harm in that a) she would be without any educational program, b) an expulsion would preclude her from taking part in any special education programs offered at the school, and c) homebound tutoring would only serve to hinder plaintiff's social development and to "perpetuate the vicious cycle in which she was caught." The court stated that "the use of expulsion proceedings as a means of changing the placement of a disruptive handicapped child contravenes the procedures for the Handicapped Act. After considerable reflection the Court is persuaded that any changes in plaintiff's placement must be made by a PPT after considering the range of available placements and plaintiff's particular needs."
- Honig v. Doe, 484 U. S. 305 (1988): Seminal case leading to Congress' amendments to IDEA's disciplinary provisions, discusses Interim Alternative Education Setting and stay put provisios.

First Amendment

- <u>Morse v. Frederick</u>, 551 U.S. 393 (2007)
- <u>Tinker v. Des Moines Indep. Cnty Sch. Dist.</u>, 393 U.S. 503 (1969)
- <u>Bethel Sch. Dist. v. Fraser</u>, 478 U.S. 676 (1986)
- Hazelwood Sch. Dist. V. Kuhlmeier, 484 U.S. 260 (1988)
- School violence/threats to safety:
 - o Wynar v. Doughlas County Sch. Dist. 728 F. 3d 1062 (9th Cir. 2013)
 - o Dariano v. Morgan Hill Unified Sch. Dist., 745 F.3d 354 (9th Cir. 2014)

<u>GUIDANCE on</u> VIDEO EVIDENCE/FERPA

- The Family Educational Rights and Privacy Act (FERPA) 20 U.S.C. § 1232g. Regulations: 34 CFR Part 99.
- Letter to Wachter, 12/7/17: regarding video of hazing incident involving six students who were discipline, 2 victims and several bystanders, maintained by school administration (not school's law enforcement unit): "The parents of the alleged perpetrators to whom the video and witness statements are directly related...would have the right under FERPA to inspect and review information in the video and witness statements that are about the alleged perpetrator, even though they also contain information that is also directly related to other students, so long as the information in these records cannot be segregated and redacted without destroying its meaning." https://students%29_0.pdf
- Letter to Soukup, 2/9/2015, 115 LRP 18668: parent of harassment victim has right to know disciplinary outcome of harasser if sanction directly relates to victim, e.g., "harasser is prohibited from attending school" or "an order that harasser stay away from the harassed student" <u>https://www2.ed.gov/policy/gen/guid/fpco/doc/letter-college-legalservices-california.pdf</u>
- FAQs on Photos and Videos under FERPA, US Dept of Ed, <u>https://studentpri-vacy.ed.gov/faq/faqs-photos-and-videos-under-ferpa</u>
- Letter of Technical Assistance to School District re: Disclosure of education records containing information on multiple students (10/31/03) <u>1 https://www2.ed.gov/policy/gen/guid/fpco/ferpa/library/1031.html</u>
- Health & Safety exceptions: schools may release confidential educational records or identifiable information to law enforcement if school has reasonable grounds to suspect there is a "articulable and significant threat" to student or others. 34 CFR § 99.36

Letter to Anonymous, <u>115 LRP 33141</u>, 18 FAB 50 (FPCO 2015) Letter to Anonymous, <u>111 LRP 64574</u>, 14 FAB 42 (FPCO 2011) Letter to Anonymous, <u>53 IDELR 235</u> (EDU 2008).

ADDITIONAL RESOURCES

- Office of Special Education Programs Policy Letter, 49 IDELR 227 (2007) A district can hold an expulsion hearing even if a due process hearing is pending on issue of whether or not the district had knowledge that the student may be disabled; the question was not raised by the parent until after the misconduct occurred; if the hearing officer later finds that the student is disabled, could order the district to conduct a Manifestation Determination Review ("MDR").
- Articles of Interest:
 - Peter Murphy and Linda Yoder, *Courtroom Rules Don't Apply in Expulsion Hearings*, CT Law Tribune, August 9, 2010, Vol. 36 No. 32, at 1.
 - Anna Stolley Persky, A Painful Case: Do Parent's Need lawyers in School Disciplinary Hearings?, ABA Journal, July 2011, at 16.
- Expulsion Pamphlet, UNDER REVISION, <u>www.ctlawhelp.org</u>
- CT SDE, Understanding School Expulsions PowerPoint, <u>https://portal.ct.gov/-/me-dia/SDE/Board/Boardmaterials120617/Understanding_School_Expulsions_in_Connecti-cut.pdf</u>
- Standards For Educational Opportunities For Students Who Have Been Expelled <u>https://portal.ct.gov/-/media/SDE/Publications/Standards-for-Expelled-Students.pdf?la=en</u>
- Guidance Regarding Student Expulsions, <u>https://portal.ct.gov/-/media/SDE/Digest/2018-19/Expulsions-Guidance-August-2018.pdf</u>
- Alternative Education Opportunities for Students who have been Expelled, <u>https://por-tal.ct.gov/-/media/SDE/Discipline/Best_Practice_Guidelines_Students_Expelled.pdf</u>
- American Bar Association Formal Opinion 97-408
- <u>A Practical Guide to Connecticut School Law</u>, 9th ed., Thomas Mooney, Shipman & Goodwin, LLP (2014) (reprinted with permission)

<u>A Practical Guide to Connecticut School</u> <u>Law</u>, 9th ed., Thomas Mooney, Shipman & Goodwin, LLP (2014) (reprinted with permission).

A PRACTICAL GUIDE TO



EIGHTH EDITION THOMAS B. MOONEY Shipman & Goodwin LLP

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		d.	Student expulsion
		ų.	a. Procedures
			b. Mandatory expulsion
			1. On-campus conduct
			2. Off-campus conduct
			3. Conduct on - or off - campus
			c. Alternative educational programs
			1. Students under sixteen years of age
			2. Students ages sixteen to eighteen
			3. Students ages sixteen to eighteen and older
			4. Special education students
		e.	Criminal conduct and reporting obligations
		e. f.	Special education students
		ı. g.	General matters
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students must have notice of the rule, and there must be a rational relationship between the rule and its purpose. Thus, there is no question, for example, that school officials may prohibit students from listening to their iPods in class. However, if the rule were more broadly written to be a blanket prohibition against bringing iPods to school, school officials may be called upon to establish the educational rationale for that far-reaching rule (e.g., concern for cheating or for theft and related need for investigation).

The regulation of such devices is evolving along with their growing ubiquity in the school setting. In adopting related rules, school officials should remember that students may have privacy interests in their smart phones or other devices. See Section E(2)(c)(3), below.

C. Student Discipline

The authority to discipline students derives from the *in loco parentis* authority of school officials to supervise and control students, as well as from the overarching responsibility to maintain a safe school environment for all students. Notably, there is no provision in Connecticut law for corporal punishment of students as a disciplinary tool. Rather, the allowable disciplinary interventions are removal, in-school suspension, suspension and expulsion, as described below.

In 1975, the United States Supreme Court decided that students are entitled to due process before being deprived of educational opportunities as a result of disciplinary action by school officials. Goss v. Lopez, 419 U.S. 565 (1975). In Goss, the Court distinguished between short exclusions (of up to ten days), for which only basic due process is necessary, and longer exclusions (in excess of ten days), for which more formal procedures are required.

Following the Goss case, the General Assembly rewrote the statutes governing student discipline to make them consistent with constitutional requirements. The statutes describe various levels of disciplinary action, and each carries with it specific requirements and limitations. Conn. Gen. Stat. § 10-233a et seq. Boards of education must inform all students and their parents or guardians (including surrogate parents) annually of any board policies governing student conduct and discipline, and they must also provide an effective means of notifying parents within twenty-four hours of any disciplinary action taken against their children. Conn. Gen. Stat. § 10-233e.

As with all aspects of school life, student discipline must be imposed without discrimination on the basis of any protected characteristic, and a

failure to do so will constitute a violation of Title IV or Title VI, federal statutes that prohibit discrimination on the basis of race, color or national origin. The Office for Civil Rights (OCR) of the United States Department of Education enforces these statutes. OCR has warned that disciplinary policies that have a disparate impact on students of different races may be illegally discriminatory, even if there was no intent to discriminate, unless there is a compelling need for such policies and no way to address that need without such disparate impact. See Department of Education, Office for Civil Rights, "Dear Colleague" Letter dated January 8, 2014.

1. <u>Corporal punishment</u>

The United States Supreme Court has ruled that corporal punishment of students may be imposed without violating the Eighth Amendment, which prohibits cruel and unusual punishment. Ingraham v. Wright, 430 U.S. 651 (1977). However, in Connecticut, such action would be taken at the teacher's peril because the teacher could be committing an assault. A teacher or other person entrusted with the care and supervision of a minor for school purposes who uses reasonable physical force is not guilty of assault only if that person reasonably believes that such force is necessary to (1) protect himself or others from immediate physical injury, (2) to obtain possession of a dangerous instrument or controlled substance, (3) to protect property from physical damage, or (4) to restrain a minor student or to remove a minor student to another area to maintain order. Conn. Gen. Stat. § 53a-18. If the teacher or other person who uses force on a student cannot point to one of these provisions, or if the force used exceeds what is reasonable, the teacher may be guilty of assault under this statute.

In addition, a teacher who uses excessive force on a student may also face abuse charges or civil liability for any injuries caused by such conduct. See Sansone v. Bechtel, 180 Conn. 96 (1980). While the indemnity statute, Conn. Gen. Stat. § 10-235, will generally protect teachers from liability for injuries they cause in the scope of their employment, this protection does not apply to conduct that is "wanton, reckless or malicious." An extreme use of excessive force may fall within this exception and be outside the scope of the indemnity statute.

2. <u>Off-campus conduct and school authority</u>

Student misconduct off-campus has long been a concern for school officials. In 1925, the Connecticut Supreme Court held that school officials could discipline a student who was hassling other children on their way

home, even though he was at his own home at the time. O'Rourke v. Walker, 102 Conn. 130 (1925). More recently, many school boards have included in their disciplinary codes provision for discipline of students for conduct offcampus. Such provisions can be valid when there is a direct connection between the conduct and legitimate school concerns.

a. Jurisdiction

In 1989, the Connecticut Attorney General advised the Commissioner of Education that school districts may take disciplinary action against students for off-campus conduct in certain situations. Opinions of the Attorney General 89-23 (August 22, 1989). In 1996, the General Assembly amended the suspension and expulsion statutes so that they permit discipline for off-campus misconduct. Conn. Gen. Stat. § 10-233c (suspension) and Section 10-233d (expulsion) now both expressly provide that students may be disciplined for off-campus conduct, but only if both of two conditions are met. First, the conduct must violate a publicized policy of the board of education. Second, the conduct must be seriously disruptive of the educational process.

When the conduct in question is directly related to school, it is easy to meet these requirements. A student who disrupts students engaged in a school activity off campus can expect to face the music in school the next day. Similarly, if a student engages in off-campus conduct that is directly related to the school, school officials have jurisdiction. For example, a student who bullies another student off-campus (through the Internet or otherwise) is now subject to school discipline. See Conn. Gen. Stat. § 10-222d, discussed at Section B(2)(c), above. Similarly, a student who engages in misconduct in writing an underground newspaper that one reasonably forecasts will come onto the campus may be disciplined (subject, of course, to his/her constitutional right of free speech). Thomas v. Board of Education, Granville Central School District, 607 F.2d 1043 (2d Cir. 1979) (underground newspaper subject to the Tinker standard). In sum, where misconduct is directly related to school, disciplinary action may be taken (subject to constitutional protections) when such conduct violates school rules and is seriously disruptive of the educational process.

Where the conduct is not so directly related to the school, school officials must be cautious in asserting jurisdiction to impose discipline. In *Packer v. Thomaston*, 246 Conn. 89 (1998), a student successfully challenged his expulsion for possession of marijuana off-campus. After the ruling of the trial court, both the suspension and expulsion statutes were amended to

provide that, in considering whether off-campus conduct was seriously disruptive of the educational process, school officials and boards of education may consider (but their consideration is not limited to) the following factors in determining whether conduct is "seriously disruptive of the educational process": (a) whether the incident occurred within close proximity of a school, (b) whether other students from the school were involved or whether there was any gang involvement, (c) whether the conduct involved violence, threats of violence or the unlawful use of a weapon as defined in Conn. Gen. Stat. § 29-38, and whether any injuries occurred, and (d) whether the conduct involved the use of alcohol.

In addition to inviting this statutory change, the *Packer* case is significant because the decision of the Connecticut Supreme Court validated the broad principle that students may be disciplined for off-campus conduct. In so ruling, the Court provided further guidance as to when a student may be expelled for conduct that occurs off-campus. The Court stated that the phrase "seriously disruptive of the educational process" has a core meaning of sufficient clarity because the legislature intended the phrase "to mean conduct that markedly interrupts or severely impedes the day-to-day operation of a school." 246 Conn. at 119.

When the off-campus conduct in issue has such a direct impact on the operation of the school, school officials are authorized to bring expulsion proceedings related to that conduct. See, also, The Administration of the Trumbull Public Schools and Christopher Weiner, Hearing Officer Decision dated November 6, 1998 (Eagan, Hearing Officer) (student was convicted of sexually assaulting a fellow student and, given the evidence of disruption and distraction, there was a sufficient nexus between this conduct and the operation of the school to warrant expulsion). Note, however, that this issue arises when the expulsion is discretionary. In cases of mandatory expulsion for conduct off-campus, discussed in Section C(1)(b), the offenses requiring expulsion are specified in the statute, obviating the need for further consideration of whether the conduct disrupted the educational process.

b. The Internet

The Internet poses special challenges for school officials because disciplinary action often requires consideration both of school authority and of free speech rights. Online conduct may now subject a student to discipline for bullying conduct. See Section B(2)(c), above. Other online conduct can be criminal (e.g., threats) or simply obnoxious. It is not always clear when school officials have the authority to regulate student online conduct. See

discussion in Section C(2)(a) above. However, if a student misuses school equipment or engages in computer misconduct on school property or if the student engages in computer conduct with technology provided by the school, he or she is clearly subject to normal disciplinary action. Indeed, bullying conduct using school-provided equipment is considered "on-campus" conduct wherever it occurs.

With increasing frequency, the problem is that students are posting insulting or offensive material using social media or elsewhere off-campus. School officials are often inclined to judge such conduct harshly, as they would judge such conduct in the school setting. However, applying the *Tinker* standard to such student speech, the courts have frequently ruled against school officials in such cases because it is very difficult for them to show that the students' speech off-campus will substantially disrupt or materially interfere with the educational process. *See Beussink v. Woodland R-IV School District*, 30 F. Supp. 2d 1175 (E.D. Mo. 1998).

Vulgarity is often a concern with such online, off-campus conduct, but such vulgarity is typically not disruptive. In one case, a student created a satirical website that parodied one of the school's assistant principals harshly, including suggestions that he supported book burning, was a spokesman for Viagra, and even engaged in sex with livestock. The court granted summary judgment for the student because, in its opinion, the school district failed to prove that the student's website caused a serious disruption to the educational process. *Beidler v. North Thurston School District No. 3*, (No. 99-00236, Wash. Super. Ct. July 18, 2000). The student was later awarded \$10,000 in damages, plus attorneys' fees. <u>Education Week</u>, February 28, 2001, at 4. *See also Killion v. Franklin Regional School District*, 136 F. Supp. 2d 446 (W.D. Pa. 2001) (student emailed Top Ten list to friends regarding size of athletic director's stomach and genitals; free speech under *Tinker* because student's off-campus actions were not disruptive).

A notable exception to this general rule is Doninger v. Niehoff, 527 F.3d 41 (2d Cir. 2008). There, a student who was frustrated over the scheduling of Jamfest, a student event, wrote on her publicly-accessible blog that the superintendent and principal were "douchebags" and that students should email the superintendent to protest the cancellation of Jamfest to "piss her off more." The school administration determined that the student would not be permitted to run for class secretary (after her having served in that role for the three previous years), and she and her mother sought an injunction against this action. The lower court denied this request, holding that she did not demonstrate a sufficient likelihood of success on the merits,

514 F. Supp. 2d 199 (D. Conn. 2007), and the Second Circuit Court of Appeals affirmed. *Doninger v. Niehoff*, 527 F.3d 41 (2d Cir. 2008).

The appellate court relied upon *Tinker* and found that school officials reasonably forecast substantial disruption of the school because "given the circumstances surrounding the Jamfest dispute, Avery's conduct posed a substantial risk that LMHS administrators and teachers would be further diverted from their core educational responsibilities by the need to dissipate misguided anger or confusion over Jamfest's purported cancellation." Moreover, the court rejected the student's argument that school officials lacked the authority to regulate her speech because it was off campus. Given that the comments were directly related to a school activity (indeed the student was advocating that students contact school administrators), school administrators had the authority to regulate the speech (subject to the *Tinker* standard). Doninger v. Niehoff, 527 F.3d 41 (2d Cir. 2008).

The denouement of the Doninger case played out in 2011. After the Second Circuit affirmed the district court decision to deny an injunction, the lower court ruled on the merits. Doninger v. Niehoff, 594 F. Supp. 2d 211 (D. Conn. 2009). The district court granted summary judgment for the school district on the student's various claims, except for her claim that school officials violated free speech rights when they prohibited students from wearing "Team Avery" T-shirts at the election for class officers. On appeal, the Second Circuit dismissed all claims. Doninger v. Niehoff, 642 F.3d 334 (2d Cir. 2011). It held that the law was not clearly established to support a claim on constitutional violation on either issue in dispute, *i.e.* the decision not to permit her to run for class secretary or the prohibition against wearing the "Team Avery" T-shirts. Given that the law was unclear when school officials made these decisions, they were entitled to qualified good faith immunity, and Ms. Doninger's constitutional claims were thus moot. The United States Supreme Court decided in October 2011 not to accept the student's appeal, and this storied case is now finally over.

The result in the *Doninger* case was based on the likelihood that school officials could show disruption caused by the Internet posting. More often, school officials are not able to show disruption and thus discipline is not permitted for such student postings, even those that are very vulgar. For example, in 2011 the Third Circuit (sitting *en banc* with all fourteen active judges participating) issued two rulings on student speech off-campus, and both held that school officials exceeded their authority in disciplining students for vulgar MySpace.com parody profiles of their respective principals.

In Layshock v. Hermitage School District, 650 F.3d 205 (3d Cir. 2011), cert. denied 132 S.Ct. 1097 (2012), the student created a parody profile of his principal wherein he supposedly described himself as a big drinker, smoking a big "blunt," and being on steroids, among other things. The student shared the profile with other students by making them "friends" of the profiled principal, and he accessed the parody profile from a school computer and showed friends. Other students subsequently made even more vulgar parody profiles of the principal. When the principal determined that the student had created the parody profile, the student was suspended for ten days and then reassigned to an alternative program for the rest of that school year. When the parents sued, alleging violation of the student's free speech rights, the district court agreed. School officials were not able to show any disruption of the educational process, and thus the Tinker rule (permitting school discipline when student speech causes material disruption or substantial with the educational process) did not apply. Moreover, the trial court ruled (affirmed by the Third Circuit) that school officials do not have authority to discipline students for off-campus speech, even when that speech relates to the school.

In J.S. v. Blue Mountain School District, 650 F.3d 915 (3d Cir. 2011), cert. denied 132 S.Ct. 1097 (2012), the Third Circuit took the principle of student free speech a step further. Again, a student created a fake profile of her principal on MySpace, but the vulgarity was extreme, suggesting even that the principal wanted sex with children. The lower court had found that school officials had reasonably forecast significant disruption of the educational process, given the very offensive content of the posting. The Third Circuit, however, reversed. It held that the posting could not be forecast as disruptive because its content was so outrageous that no reasonable person could have taken it seriously. Accordingly, the court ruled that school officials violated the rights of the student author when they suspended her for her actions.

c. Threats

While threats can occur on-campus (and as such are simply subject to regulation), many threats are made away from school. Given the concern for student safety following a number of shootings across the country, courts have been willing to grant school districts some latitude in addressing student threats, notwithstanding the protections of *Tinker*. Some threats are direct, and as such have no First Amendment protection. One student, for example, wrote a female student a note that included a rap song with words

such as "you better run bitch, cuz I can't control what I do." The Arkansas Supreme Court held that this note did not have First Amendment protection because it was a "true threat." Jones v. State, 347 Ark. 455, 65 S.W.3d 402 (2002). See also D.J.M. v. Hannibal Public School District # 60, 647 F.3d 754, 766 (8th Cir. 2011) (student's instant messages to a friend about getting a gun and shooting students was "true threat" and thus not protected by the First Amendment); In the Interest of A.S., 243 Wis. 173, 626 N.W.2d 712 (Wis. 2001) (detailed threats against authority figures found to be criminal acts); Riehm v. Engelking, 538 F.3d 952 (8th Cir. 2008). A divided Eighth Circuit had previously struggled with the discipline of a student for writing a threatening letter in his home that another student brought to the attention of school authorities, and ultimately it upheld the student's expulsion. Doe v. Pulaski County Special School District, 306 F.3d 616 (8th Cir. 2002); but see Porter v. Ascension Parish School Board, 393 F.3d 608 (5th Cir. 2004) (drawing made off-campus not a threat and was entitled to First Amendment protection; given uncertainties, however, principal entitled to qualified immunity).

Even when the student does not make a true threat, the courts may find that school discipline is warranted for inappropriate threatening speech. In Lovell v. Poway United School District, 90 F.3d 367 (9th Cir. 1996), for example, the court permitted discipline of an exasperated student who said that she would shoot her guidance counselor if she did not let the student change her schedule. See also In re Douglas D., 243 Wis. 204, 626 N.W.2d 725 (Wis. 2001) (creative writing assignment that refers to beheading a teacher not a "true threat;" criminal adjudication vacated but school discipline for crude and repugnant writing permitted); S.G. v. Sayreville Board of Education, 333 F.3d 417 (3d Cir. 2003) (upholding three day suspension of kindergarten student for saying "I'll shoot you"). Similarly, a fifth grade student in New York State was suspended for three days for completing an assignment to write about a wish by writing "Blow up the school with the teachers in it." His parents brought suit, claiming that the discipline violated the student's First Amendment rights, but citing Tinker, the Second Circuit ruled that school officials reasonably forecast disruption and were within their rights to impose discipline. Cuff v. Valley Central School District, 677 F.3d 109 (2d Cir. 2012).

Threats often occur on the Internet, and, subject to the limitations discussed above, discipline can be imposed for such threats. In *Wisniewski v. Board of Education of Weedsport Central School District*, 494 F.3d 34 (2d Cir. 2007), *cert. denied*, 128 S. Ct. 1741 (2008), the Second Circuit rejected a free speech claim brought by a middle school student who was expelled. The

student had created an instant messaging icon that was a small drawing of a pistol firing a bullet at a person's head, with dots representing splattered blood and the words "Kill Mr. VanderMolen," referring to one of his teachers. Even though the icon was created off-campus and another student had brought it to the attention of school authorities, the student was expelled for one semester. The parents sued, claiming that his free speech rights were violated. However, the district court dismissed the claim, and the Second Circuit affirmed. It ruled that the hearing officer had made a factual determination that the icon was a true threat, and that such speech is not protected by the First Amendment.

In another case, one student created a Website called "Teacher Sux," in which he set out a picture showing violence against his algebra teacher and asked the question, "why should she die?" The student was permanently expelled (which apparently is permissible in Pennsylvania), and the court rejected his claims on appeal. The Pennsylvania Supreme Court found that, while the comments did not constitute a "true threat," the impact on the teacher (who missed the rest of the year) and school community was a serious educational concern that justified the expulsion. J.S. v. Bethlehem School District, 807 A.2d 847 (Pa. 2002). But see Mahaffey v. Aldrich, 236 F. Supp. 2d 779 (E.D. Mich. 2002) (improper to suspend student who created "Satan's Website," including list of "people I wish would die").

Other threats are indirect, but even here the courts often rule in favor of school officials. In one case, a student distributed an anonymous pamphlet that included an essay in which the author "wondered what would happen" if he shot the principal, teachers or other students. The district searched the student and had him arrested. His subsequent claim that his constitutional rights were violated was dismissed by the court. Cuesta v. School Board of Miami Dade County, 285 F.3d 962 (11th Cir. 2002).

In another case, an eleventh grade student presented a poem, "Last Words" to his English teacher, which poem included the words, "I drew my gun and, threw open the door, Bang Bang, Bang-Bang/When it was all over, 28 were, dead." The student was promptly referred to the police and to mental health professionals, but they found no cause for involuntary commitment. The next day, however, the principal invoked state procedures for emergency expulsion. The student later sued, claiming a violation of his First Amendment rights. The trial court agreed with the student, but the Ninth Circuit reversed in part. It held that school officials had reasonable cause for their actions. Given that it was later established that the student was not a threat, however, the appellate court agreed with the trial court that the record of the expulsion should be expunged. Lavine v. Blaine School District, 257 F.3d 981 (9th Cir. 2001), rehearing denied, 279 F.3d 712 (9th Cir. 2001), cert. denied, 536 U.S. 959 (2002). See also Boim v. Fulton County School District, 494 F.3d 978 (11th Cir. 2007) (no free speech violation to expel student for writing essay about shooting teacher); Ponce v. Socorro Independent School District, 508 F.3d 765 (5th Cir. 2007) (no free speech violation for disciplining student for threatening entries in personal journal).

When student writing raises issues of a potential threat, expulsion is a possibility, and may be advisable, given the responsibility for the safety of all students. The threat of disciplinary action, however, need not always be carried out. It can be appropriate to inform the parents of the district's concerns and discuss psychiatric evaluation as an alternative to expulsion. The important thing is that school officials cannot ignore facts that would cause a reasonable person concern. Appropriate action to assure student safety, however, is not necessarily disciplinary action, and it is often possible to work with parents either to rule out a concern or to get the troubled student the help s/he needs.

3. <u>Authorized disciplinary interventions</u>

Given that boards of education are creatures of statute, they have only those powers that are conferred upon them by statute. The General Assembly has specified four permissible disciplinary actions school officials may take, and by logical inference, it is clear that other disciplinary actions, such as community service, may not be imposed unilaterally. However, school officials may offer to moderate authorized disciplinary interventions in exchange for agreement to participate in alternative disciplinary activities (e.g., a two-month expulsion is converted to a one-month expulsion along with fifty hours of community service). Such arrangements are common, but only by mutual agreement between school officials and parents or guardians.

The four disciplinary interventions that school officials may impose unilaterally are removal, in-school suspension, suspension and expulsion. We will look at each of these actions separately.

a. Removal

Boards of education can authorize their teachers to remove a student from class when the student deliberately causes a serious disruption within the classroom, *i.e.* to send the student to the office. There are limitations on such action. The teacher is required to inform the building principal or

designee of the action immediately, along with the reasons for the action. Also, such "removals" should not occur more than twice in a week or six times during a school year without an informal hearing before the administration, as would occur in cases of suspension. Conn. Gen. Stat. § 10-233b.

b. In-school suspension

Boards of education can also authorize the administration to impose in-school suspension on students. Such in-school suspensions are defined as an exclusion from regular classroom activity for no more than ten consecutive school days. Conn. Gen. Stat. § 10-233a(c). Before imposing an in-school suspension, administrators are required to provide the student with the same type of informal hearing that is required for suspensions generally. Also, no student may be placed on in-school suspension more than fifteen times during a school year, or for a total of more than fifty days, whichever is less. Conn. Gen. Stat. § 10-233f. There is also a limit for the number of external suspensions (no more than ten times or fifty days of suspension in a year per Conn. Gen. Stat. § 10-233a(a)). In considering these limitations, one may ask whether in-school and out-of-school suspensions should be considered together. There are no court decisions interpreting these statutes in this regard. Since the limits are set forth separately in separate statutes, it is reasonable to conclude that the limits on in-school and out-of-school suspension may be kept separate. However, given the high numbers of either or both these limitations, it is likely that recurring misconduct would result in a recommendation for expulsion before these limitations are met.

In 2007, in-school suspension was given new importance, when the General Assembly amended Section 10-233c (the statute on regular suspension) to establish a presumption in favor of having students serve suspensions in school, as described above. The concern was that students, particularly in urban districts, were being excluded from school too frequently. Since 2007, the statute has been amended several times, but the essential thrust remains the same -- a suspension should be in-school unless an out-of-school suspension can be justified. See Connecticut State Department of Education, Guidelines for In-School and Out-of-School Suspension, Revised December 2010. Given that the presumption in favor of in-school suspension was codified in Section 10-233c (the suspension statute) instead of the in-school suspension statute (Section 10-233f), however, we will review the statutory presumption in the discussion of suspension, below.

There is, however, one point of uncertainty to note here. When students are suspended or expelled, notice of the suspension and the conduct

for which the student was suspended or expelled must be maintained in the student's cumulative record. There is no similar requirement for including notice of an in-school suspension in the student's cumulative record. Accordingly, when the presumption is applied to impose an in-school suspension, it appears that there is no requirement to include notice of such action in the cumulative record. However, school officials certainly may include such notice in the student's cumulative record if they so choose.

Finally, the in-school suspension statute also provides that a reassignment of a student from one school to the regular classroom program in another school shall not be considered either a suspension or an expulsion. Conn. Gen. Stat. § 10-233f(b). The statute is not clear whether such a reassignment would be considered a disciplinary action, but an informal hearing similar to that before in-school suspension is advisable, given that the authority for such reassignments is set forth in the in-school suspension statute.

c. Suspension

A suspension is any exclusion from school privileges for no more than ten school days for conduct that endangers persons or property, is seriously disruptive of the educational process, or violates a publicized policy of the board of education. The statutes provide that the board of education may authorize its administration to suspend, and such authorization should be contained in board policy. Conn. Gen. Stat. § 10-233c.

A suspension is limited to no more than ten school days at a time, and it may not extend beyond the end of the school year in which it is imposed. Conn. Gen. Stat. § 10-233a(d). In addition, school administrators may not suspend students more than ten times in a school year or for a total of more than fifty days without following the more formal procedures required for an expulsion. Conn. Gen. Stat. § 10-233c. As with expulsions, special rules may apply for children with disabilities, especially where there is more than one suspension. While there is no prohibition against suspending children with disabilities, as long as procedures are followed prior to the imposition of such discipline to ensure that the conduct is not a manifestation of the child's disability, districts must take care not to impose suspensions that, when taken together, in effect constitute a change in placement. Also, depending upon the nature of the student's disability and the length and number of suspensions, such actions with regard to children with disabilities can result in a claim of discrimination on the basis of disability. See Chapter Five, Section C.

The procedural rights of students facing suspension are modest in comparison to those that apply in cases of expulsion. Goss v. Lopez, 419 U.S. 565 (1975). Prior to imposing a suspension, school administrators simply must inform the student of the reasons for the disciplinary action and give him or her an opportunity to explain the situation. There is no duty to give students a Miranda warning, and school administrators may conduct the required informal hearing with students without their parents being present. Doe v. Cortright, 2008 Conn. Super. LEXIS 827 (Meriden Superior Court, April 2, 2008). Moreover, school officials need not permit students to have counsel at such hearings; in Goss, the Supreme Court had this to say on that:

> We stop short of construing the Due Process Clause to require, countrywide, that hearings in connection with short suspensions must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident. Brief disciplinary suspensions are almost countless. To impose in each such case even truncated trialtype procedures might well overwhelm administrative facilities in many places and, by diverting resources, cost more than it would save in educational effectiveness.

As long as such modest due process is provided, the courts will not review the underlying factual issues. *McDonald v. Sweetman*, 2004 U.S. Dist. LEXIS 5558 (D. Conn. 2004); *Risica v. Dumas*, 2006 U.S. Dist. LEXIS 84116 (D. Conn. 2006); *Jennings v. Wentzville R-IV School District*, 397 F.3d 1118 (8th Cir. 2005).

Unless an emergency exists, this informal hearing must be held before the suspension is imposed. In determining the length of any suspension, the administration has long been authorized to consider evidence of past disciplinary problems that have led to previous disciplinary actions of removal, suspension, or expulsion. Conn. Gen. Stat. § 10-233c(b). However, now administrators must also consider whether the suspension being considered should be imposed as an in-school suspension.

Specifically, Section 10-233c(g) now provides that suspensions under Section 10-233c "shall be in-school suspensions, unless . . . (1) the administration determines that the pupil being suspended poses such a danger to persons or property or such a disruption of the educational process that the pupil shall be excluded from school during the period of suspension,

or (2) the administration determines that an out-of-school suspension is appropriate for such pupil based on evidence of (A) previous disciplinary problems that have led to suspensions or expulsion of such pupil, and (B) efforts by the administration to address such disciplinary problems through means other than out-of-school suspension or expulsion, including positive behavioral support strategies."

The statute thus now requires that school officials impose in-school suspension except for two different situations. First, external suspension is still permitted if the student's conduct is "such a danger" or "such a disruption of the educational process" that external suspension is justified. Of course, that provision leaves room for judgment, and there is no ready mechanism for challenging that determination.

Second, school officials may now decide to impose an out-of-school suspension based on evidence of past disciplinary problems that have led to prior suspensions or expulsions. That addition is logical; an out-of-school suspension may be an appropriate heightened response to continuing misconduct. Indeed, the suspension statute has long provided that in determining the length and conditions of suspension, school officials may consider "past disciplinary problems which have led to removal from a classroom, suspension or expulsion of such pupil." Conn. Gen. Stat. § 10-233c(b). However, curiously the General Assembly further provided that, in considering past disciplinary problems, school officials must also consider efforts to address such problems through other means, including "positive behavioral support strategies." While such considerations are logical in general, it is not at all clear how such broad strategies are relevant in considering the disciplinary sanction to be imposed against an individual student for a specific act of misconduct.

When the law was first amended, the Commissioner of Education was charged with the duty to provide guidance, and he did so -- expansively. The resulting Guidelines are forty-six pages long, and are available by clicking this link, Connecticut State Department of Education, Guidelines for In-School and Out-of-School Suspension, Revised December 2010. These Guidelines merit review, but the decision on whether and when to impose out-of-school suspension remains vested in school officials.

Given the predictable increase in in-school suspensions and the attendant need to supervise such students, questions reasonably arose concerning where such suspensions could be served. Conn. Gen. Stat. § 10-233c(g) now clarifies that "an in-school suspension may be served in the

school that the pupil attends, or in any school building under the jurisdiction of the local or regional board of education, as determined by such board." However, when an in-school suspension is imposed in a different school building, the school district remains responsible for providing reasonable transportation to such new site.

The statutes impose other requirements on school administrators in cases of suspension. As with all disciplinary action, the parents of the student should be notified within twenty-four hours of the suspension. Moreover, the student has the right to make up any work he or she missed during the period of suspension, including any examinations. Conn. Gen. Stat. § 10-233c(c) and (d). In addition, as with expulsions, notice of any suspension and the conduct for which the pupil was suspended must also be included in the student's cumulative educational record. Notice of suspension is to be expunged upon high school graduation. Conn. Gen. Stat. § 10-233c(e). However, if the presumption described above results in a decision to impose in-school suspension, no such notification in the cumulative file is required. Moreover, for students who are suspended for the first time, the statute authorizes school officials to shorten or waive the period of suspension and/or to expunge notice of the suspension if the student completes a program specified by the administration and/or meets other conditions specified by the administration. However, school officials must be prepared to pay for any program they specify, because the statute also provides that the student may not be required to pay for any such program.

Finally, school boards in Connecticut may also authorize the administration to suspend transportation services only to students whose conduct while receiving or awaiting transportation endangers persons or property or violates a publicized policy of the board. Such action is limited to a maximum of ten consecutive school days, and, since this authority appears in the suspension statute, Conn. Gen. Stat. § 10-233c, it appears to be covered by the overall limitation of ten suspensions for not more than fifty days per year (at least not without more formal "expulsion" procedures).

In considering this option, it is advisable for school administrators to assure that alternative arrangements are made with the parents for the safe transportation of the student to school and, if no such arrangements can be made, to consider other alternatives to such disciplinary action. There is risk in simply suspending such services without making such arrangements. If a student were then injured on the way to school, he or she could claim that the board had acted unreasonably in expecting the child to get to school on his or her own.
d. Student expulsion

Expulsion is authorized if a student's conduct on campus or at a school-sponsored activity violates a publicized rule of the board of education, seriously disrupts the educational process or endangers persons or property. Conn. Gen. Stat. § 10-233d. Expulsion is defined as any exclusion from school privileges for more than ten days up to one calendar year. See Rosa R. v. Connelly, 889 F.2d 435 (2d Cir. 1989) (three month postponement of hearing by mutual agreement does not reduce the length of permissible expulsion, then 180 days). An expulsion is also defined as exclusion from the school to which a student was assigned at the time of the disciplinary action. Conn. Gen. Stat. § 10-233a(e). Reassignment of a student to a regular classroom program in another school in the district, however, does not constitute either a suspension or an expulsion. Conn. Gen. Stat. § 10-233f(b).

The decision of a board of education concerning a proposed expulsion is final. The expulsion statute incorporates certain provisions of the Uniform Administrative Procedures Act, but it does not incorporate the provisions governing appeal of administrative decisions. Roach v. North Haven Board of Education, 2002 Conn. Super. LEXIS 4028 (Conn. Super. 2002); Lebron v. Bridge Academy, 2002 Conn. Super. LEXIS 3927 (Conn. Super. 2002). Accordingly, the courts will not generally entertain parent or student challenges to an expulsion decision, even when they allege collateral matters, such as breach of contract. Lotto v. Hamden Board of Education, 2006 Conn. Super. LEXIS 599 (Conn. Super, 2006).

Given that there is no direct right of appeal, sometimes parents seek review of an expulsion decision by alleging that the disciplinary action taken by a board of education violated the constitutional rights of the student. However, such challenges will be dismissed unless the parent can establish a violation of constitutional rights. See Lotto v. Hamden Board of Education, 400 F. Supp. 2d 451 (D. Conn 2005) (dismissing federal challenge to expulsion decision, given that parents had stipulated to expulsion); Rossi v. West Haven Board of Education, 359 F. Supp. 2d 178 (D. Conn. 2006), aff'd, 259 Fed. Appx. 415 (2d Cir. 2008) (no equal protection violation).

a. Procedures

Only the board of education has the legal authority to expel students. The statute provides that any recommendation for expulsion must be heard by the board of education in a formal hearing consistent with the

requirements of the Uniform Administrative Procedures Act. Conn. Gen. Stat. § 10-233d, *citing* 4-176e to 4-180a, inclusive, and 4-181a. Such requirements include providing written notice including a "short and plain statement of the matters asserted," maintaining a record (either stenographic or tape recording), permitting the student to appear with counsel and to offer evidence and argument, permitting cross-examination of witnesses, assuring an impartial decision-maker, and providing a final decision. Such notice must also provide parents with "information concerning legal services provided free of charge or at a reduced rate that are available locally and how to access such services." Conn. Gen. Stat. § 10-233d(a)(3). Such notification may read: "Very low income families may be able to obtain free advice or legal representation through Statewide Legal Services, Inc. ("SLS"). To apply for such assistance, those families should contact SLS immediately at 1-800-453-3320."

In addition, Section 10-233d requires that at least three board of education members sit on an expulsion hearing. From this provision it is fair to infer that a board of education can delegate the responsibility to conduct an expulsion hearing to less than a quorum of the board, as long as at least three members are present. Even if fewer members than a quorum meet, however, an expulsion hearing is a "hearing or other proceeding" under the Freedom of Information Act. Gulash v. Board of Education, Trumbull Public Schools, Docket # FIC 2000-158 (Nov. 29, 2000). Such hearings, therefore, must be posted, and while the hearing can be conducted in executive session, the vote must be taken in open session, as discussed below.

Section 10-233d also requires that there be at least three affirmative votes in order for an expulsion to be effective. Consequently, depending upon the number of board members present, the vote required for an expulsion must be unanimous if only three members are present.

School boards have another option with regard to conducting expulsion hearings. The statute authorizes school boards to appoint an impartial hearing officer to hear expulsions. The only restriction is that such hearing officers may not be members of the board of education that appoints them. If appointed, such hearing officers have full authority to decide expulsion cases, including whether provision will be made for an alternative educational program. There is no provision for such decisions to come back to the board of education for approval. Conn. Gen. Stat. § 10-233d(b).

Expulsion hearings must be held within ten school days of any suspension unless there is an emergency; any ongoing exclusion from school

for longer than ten school days would itself be an "expulsion." Such hearings generally begin with the presentation by the administration of the underlying facts. The student and his or her representative have the right to cross examine any witnesses. After the administration has presented its evidence and testimony, the student and his or her representatives have the right to present evidence and testimony, and the administration similarly has the right to conduct cross examination. The members of the board of education are also free to ask questions, though it often makes sense to let the parties present their cases first, because the parties may answer any such potential questions in their presentations. At the conclusion of the evidence, both parties typically present argument to the board of education, which must then decide whether the facts established at the hearing warrant expulsion.

Some boards deliberate and make this determination before proceeding to hear the recommendation of the superintendent concerning expulsion. Other boards of education continue with the hearing and hear the recommendation before making a decision on the facts of the case. Either approach is appropriate, though a bifurcated hearing on (1) the facts and (2) the recommendation may be preferable. The board is authorized to receive and consider evidence "of past disciplinary problems which have led to removal from a classroom, suspension or expulsion of such pupil" expressly for the purpose of considering the length of an expulsion and any alternative educational opportunity to be offered. Conn. Gen. Stat. § 10-233d(c). It is therefore not appropriate to consider past conduct in determining whether the student committed the offense alleged. A bifurcated hearing keeps the two issues separate.

In conducting such hearings, school boards (or impartial hearing officers) have some discretion. The formal rules of evidence do not apply, and it is not necessary to adopt rigid procedures for hearing such cases. However, it is essential that the student in question have a fair hearing. School board members should not discuss the case outside the hearing with the superintendent or others, and they must make their decision on the evidence presented at the hearing. In addition, the same lawyer may not represent the board and the administration. There is no requirement that either the administration or the board be represented by counsel, but if they are, it cannot be the same lawyer, because the courts have held that such joint representation impairs the board's ability to decide the case impartially.

Police officials are sometimes reluctant to provide records and to cooperate in the presentation of evidence of misconduct, because juvenile records are by law subject to special confidentiality provisions. Conn. Gen.

Stat. § 10-233h, however, makes clear that police officers may provide such records at expulsion hearings:

If an expulsion hearing is held . . . a representative of the municipal police department or the division of state police, as appropriate, may testify and provide reports and information on the arrest at such hearing, provided such police participation is requested by any of the following: the local or regional board of education, the impartial hearing board, the principal of the school or the student or his parent or guardian. Such information with respect to a child under eighteen years of age shall be confidential in accordance with sections 46b-124 and 54-76*l*, and shall only be disclosed as provided in this section and shall not be further disclosed.

On rare occasions, police representatives and prosecutors resist providing such information, based on the position that the statute permits but does not mandate the release of such information. That reading ignores the fact that this provision is found in statutory provisions that impose affirmative duties upon the superintendent to expel students for off-campus conduct. Fortunately, such officials generally cooperate with school requests for such information, which can be critically important in determining the facts at a student expulsion hearing.

The critical procedural question is whether the student facing expulsion has a fair opportunity to be heard and defend him- or herself. To ensure that an expulsion hearing is fair, it is important to avoid reliance on hearsay testimony if possible. Hearsay evidence is evidence concerning statements made by persons not present at the hearing that is offered to establish the truth of such statements. For example, it would be hearsay if a school administrator testified at an expulsion hearing that Student A told him that he saw Student B (the subject of the hearing) with a weapon in school, if that testimony were offered to prove that Student B did have the weapon. If that were the only "evidence" before the board of education, it may not be proper to expel the student, because the student facing expulsion could not effectively cross-examine the administrator in the example above, because he did not himself see the weapon.

Generally speaking, in the interest of fairness (and thus of due process), boards of education should avoid relying upon hearsay testimony alone in deciding whether the student in question violated school rules. A federal court in Connecticut found that a board of education violated the due

process rights of a student by relying on hearsay in imposing a thirty-day expulsion. DeJesus v. Penberthy, 344 F. Supp. 70 (D. Conn. 1972). See also In the Matter of the Expulsion of E.J.W., 632 N.W.2d 775 (Minn. Ct. App. 2001). However, specific circumstances, e.g., concern for student safety or for discouraging students from reporting problems, may warrant providing student statements or other hearsay information in support of a recommendation for expulsion. See E.K. v. Stamford Board of Education, 2008 U.S. Dist. LEXIS 42853 (D. Conn. 2008); Bogle-Assegai v. Bloomfield Board of Education, 467 F. Supp. 2d 236 (D. Conn. 2006); Danso v. University of Connecticut, 50 Conn. Supp. 256 (Conn. Super. 2007). Similarly, recent court decisions in other jurisdictions have also held that due process concerns do not require that a student facing expulsion have the right to cross examine witnesses, especially those providing corroborating information. Coronado v. Valleyview Public School District, 537 F.3d 791 (7th Cir. 2008); Schneider v. Board of School Trustees, Fort Wayne Community Schools, 255 F. Supp. 2d 891 (N.D. Indiana 2003) (expulsion for inappropriate sexual conduct upheld despite hearsay testimony and even though student not entitled to crossexamine witnesses). See also Watson v. Beckel, 242 F.3d 1237 (10th Cir. 2001); Brown v. Plainfield Community Consolidated District 202, 500 F. Supp. 2d (E.D. Ill. 2007); Hinds County School District Board of Trustees v. D.L.B., 2008 WL 5174068 (Miss. 2008).

Once the board of education has heard all of the evidence, it must make a decision on the recommendation for expulsion and on the recommendation, if any, for an alternative educational program. While the deliberations can be conducted in executive session, the vote on the expulsion itself must be held in open session, typically in a format that sets forth the necessary information while protecting the confidentiality of the student's name and any other personally identifiable information, such as:

> Moved: that the Board finds that Student ID # _____ engaged in [describe misconduct] and therefore is hereby expelled from [Name] School and all school activities and all property of the [Name] Public Schools for __ days.

The motion may also describe provisions for an alternative educational opportunity. The board of education must describe the misconduct so that its findings are clear. It must make a judgment, however, concerning the level of detail in its decision. A description of conduct that resulted in an expulsion may serve as a warning to other students. It may also be on the evening news ("Student attempts to poison teacher!!").

Finally, when a student is expelled, the expulsion and the conduct for which the student was expelled must be noted on the student's cumulative educational record. The statute does not define the "cumulative educational record," and it does not require that such a notation be included on the student's transcript. In any event, the law requires that this notation be expunged from the cumulative record upon graduation from high school. Notation of expulsion, however, may not be expunged in cases of a mandatory expulsion in grades nine through twelve based on possession of a firearm or deadly weapon. Conn. Gen. Stat. § 10-233d(f).

Boards of education frequently tailor expulsion decisions to the particular facts and provide for early return from expulsion on a probationary basis if certain conditions are met. In 2007, the statute was amended expressly to provide for a waiver or shortening of expulsion periods, but only for students who have never previously been suspended or expelled. Now, except for students who are expelled for possession of firearm or deadly weapon, an expulsion may be shortened or waived for a student never previously suspended or expelled if the student participates in a program or complies with conditions specified by the board of education (or committee or hearing officer). Conn. Gen. Stat. § 10-233d(c)(2). The student may not be required to pay to participate in any such specified program, but the statute is silent on who may be required to pay to meet conditions specified by the board, such as drug testing. Similarly, the statute provides for boards of education to permit early readmission from a period of expulsion, which authority the board of education can delegate to the superintendent. Conn. Gen. Stat. § 10-233d(j) The statute does not set forth a procedure for making such requests, and presumably parents can simply ask. In responding to such requests, boards of education (or superintendents) presumably can condition such early readmission on the student's meeting prescribed return criteria.

This flexibility now extends to the expunging of notification of expulsion as well. Public Act 14-229. The board (or committee or hearing officer) may agree that the notification of expulsion otherwise required in the cumulative record until high school graduation may be expunged in two different situations:

• in the case of a pupil being expelled for the first time and for whom the board of education shortens the length of the expulsion period or waives the expulsion period, the board may determine that an expungement is warranted at the time such pupil completes the

board-specified program and meets any other conditions required by such board, or

• the pupil has demonstrated to such board that the conduct and behavior of such pupil in the years following such expulsion warrants an expungement.

The statute is not clear when and how boards of education would consider expungement under the second option, and presumably a parent can simply ask. *Compare* Conn. Gen. Stat. § 10-223d(j) (providing that expelled students may apply for early readmission, again without any process specified in the statute). In any event, in considering whether to expunge the expulsion notification under the second option, a board of education may receive and consider evidence of any subsequent disciplinary problems that have led to removal from a classroom, or suspension or expulsion of such pupil. Conn. Gen. Stat. § 10-233d(f)(2). The second option, added by P.A. 14-229, is significant because now students who were previously suspended or expelled have an opportunity to request that notice of their expulsion be expunged even if the expulsion occurred years prior.

b. Mandatory expulsion

The United States Congress and the Connecticut General Assembly have both enacted legislation mandating expulsion of students for certain misconduct that is considered to be especially dangerous. The federal legislation, the Gun-Free Schools Act, imposes obligations on the states to require that local school districts expel students from school for bringing guns and certain other weapons to school. The General Assembly amended the student discipline statutes to address the need to comply with this federal law. It also further expanded the state law that requires expulsion in a number of situations that go beyond the provisions of federal law.

The Gun-Free Schools Act, which was recodified as Section 4141 of the No Child Left Behind Act, obligates state educational agencies that receive federal funds to require that local educational agencies expel students who bring a "weapon" to school for not less than one calendar year, subject to exceptions on a case-by-case basis. The law defines "weapon" as a firearm as defined in 18 U.S.C. § 921(a), summarized as follows:

> any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of such a weapon;

- any firearm muffler or firearm silencer;
 - any explosive, incendiary, or poison gas, including
 - (1) a bomb,
 - (2) a grenade,
 - (3) a rocket having a propellant charge of more than four ounces,
 - (4) a missile having an explosive or incendiary charge of more than one-quarter ounce.
 - (5) a mine, or
 - (6) a similar device.

The statutory definition also includes any combination of parts designed or intended for use in readily constructing a "weapon" as defined above. The definition of a "weapon" under the Gun-Free Schools Act, however, does not include rifles intended for sporting, recreational, or cultural purposes (*e.g.*, a musket brought during the unit on the Revolutionary War) or knives.

The Act requires that students who bring such weapons to school be expelled for one calendar year. It permits the chief executive officer of the school district to make case-by-case exceptions in writing. The Department of Education, however, has issued guidelines to make clear that such exceptions should be rare, and would typically result from the operation of other laws, such as the federal special education laws, which prohibit the expulsion of a student whose expellable conduct was the manifestation of his or her disability. OSEP Memorandum 95-16 (April 26, 1995), 22 IDELR 531 (1995). See Chapter Five, Section C, for a more detailed explanation of the application of these requirements to special education students.

Mandatory expulsion in Connecticut was first introduced in 1994, and the provisions concerning mandatory expulsion were amended in 1995 and again in 1996. The law now provides that students must be expelled in the following three situations.

1. On-campus conduct

First, if the superintendent has reason to believe that a student was in possession of a firearm (described with reference to the Gun-Free Schools Act, above), deadly weapon, dangerous instrument, or martial arts weapon on school property or at a school sponsored activity, he or she must recommend expulsion. Each of these terms is defined in Conn. Gen. Stat. § 53a-3:

Deadly weapon	any weapon, whether loaded or unloaded, from which a shot may be discharged, or a switchblade knife, gravity knife, billy, blackjack, bludgeon, or metal knuckles.
Dangerous instrument	any instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious injury, and includes a 'vehicle' as that term is defined in this section and includes a dog that has been commanded to attack (except police dogs on duty).
Martial arts weapon	a nunchaku, kama, kasari-fundo, octagon sai, tonfa, or Chinese star.

A common question relates to pellet (or BB) guns. The Connecticut Supreme Court has ruled that a pellet gun can be a "deadly weapon" under Conn. Gen. Stat. § 53a-3(6), and therefore pellet guns trigger (no pun intended) the mandatory expulsion provisions. State v. Hardy, 278 Conn 113 (2006). Similarly, in State v. Grant, 294 Conn. 139 (2009), the Connecticut Supreme Court ruled that a BB-gun can be a "firearm" under Conn. Gen. Stat. § 53a-3(19), which also then triggers mandatory expulsion under Conn. Gen. Stat. § 10-233d(a). But see State v. Hart, 118 Conn. App. 763 (2010) (not all pellet guns are "firearms"). As to martial arts weapons, the definitions are not terribly helpful, and you may need pictures from the local police department to know what a martial arts weapon is. If the board of education finds that the student possessed any of these objects on school property or at a school sponsored activity, it must expel the student. The statute further provides that a mandatory expulsion for such conduct must be for one calendar year, subject to modification by the board of education or hearing board on a caseby-case basis. Conn. Gen. Stat. § 10-233d(a)(2).

2. Off-campus conduct

If conduct occurs "off campus" (neither on school property nor at a school sponsored activity), the rules are different. Expulsion is required if the student possesses off-campus a "firearm" under federal law (described with reference to the Gun-Free Schools Act, above) in violation of Conn. Gen.

Stat. § 29-35 (which sets out the permit requirement for carrying a firearm). See State v. Hopes, 26 Conn. App. 367 (1992) (possessing a weapon without a permit violates Section 29-35; transportation of the weapon is not required). Expulsion is also mandatory if a student possessed and used such a "firearm" or a deadly weapon, dangerous instrument, or martial arts weapon (as defined above) off-campus in the commission of a crime listed as an offense in the Penal Code, Connecticut General Statutes, § 53a-24 et seq. As above, if the board of education finds that the student engaged in such conduct, the statute directs that the board expel the student for one calendar year, with the right to modify the period of expulsion on a case-by-case basis.

3. Conduct on- or off-campus

Expulsion is also mandatory whenever a student is found to have engaged in the sale or distribution of drugs, whether that conduct occurred on school property, at a school sponsored activity, or off of school property. As with other mandatory expulsion situations, the statute directs the board to expel the student for one calendar year, with the right to modify the period of expulsion on a case-by-case basis. The drug in question must be a "controlled substance" as defined in Conn. Gen. Stat. § 21a-240, the sale, distribution, etc. of which is subject to criminal penalties under Conn. Gen. Stat. § 21a-277 or Conn. Gen. Stat. § 21a-278. These statutes include the various substances that we think of as "drugs," including marijuana, cocaine, heroin, and hallucinogenic substances. While these statutes also set out minimal quantities that trigger the mandatory minimum sentences in these statutes as establishing the categories of substances that will trigger mandatory expulsion without regard to the amount possessed.

The scope of the state law requirement for mandatory expulsion for one calendar year is significantly broader than the federal statute. For example, under state law a pellet gun or a BB gun may be considered a "deadly weapon," since these weapons discharge a shot. Conn. Gen. Stat. § 53a-3. Such weapons are not covered by the federal statute, because they do not discharge a shot by means of an explosive, as is included in the federal definition of a "weapon." Similarly, there is no provision in federal law for a mandatory expulsion for the sale or distribution of drugs or for possession of a gravity knife, a switchblade knife, a billy, a bludgeon or metal knuckles, a dangerous instrument, or a martial arts weapon.

In imposing a period of expulsion on a student in a mandatory expulsion situation, boards of education may wish to differentiate between

expulsions required under state law and those required under the federal Gun-Free Schools Act. The state law incorporates the provision from the federal Gun-Free Schools Act permitting exceptions on a case-by-case basis. Such exceptions, however, should not be applied in a way that eviscerates the requirement for a calendar year expulsion, at least when the federal law applies. The Office of Special Education Programs of the United States Department of Education has advised school districts that such exceptions are to be limited to compelling circumstances, such as when an expulsion is not permitted because the misconduct is a manifestation of the student's disability. OSEP Memorandum 95-16 (April 26, 1995), 22 IDELR 531 (1995). The State Department of Education has not provided any similar guidance regarding how boards of education should exercise their discretion in modifying the period of expulsion under the state law.

c. Alternative educational programs

School districts must provide an alternative educational opportunity to many of the students who are expelled, as described below. With one exception, the statutes do not define the "alternative education opportunity" that school districts must provide. The one definition that exists was added to the law in 1995. Conn. Gen. Stat. § 10-233d(d) provides that "such alternative may include, but shall not be limited to, the placement of a pupil who is at least sixteen years of age in an adult education program" More generally, districts are guided by the provisions in the state education regulations concerning homebound tutoring, which provide that homebound students at the secondary level are entitled to ten hours of tutoring per week. Conn. St. Reg. § 10-76d-15. In any event, school districts have significant discretion in deciding what sort of alternative educational opportunity to provide. Indeed, in 1995 the General Assembly clarified that school districts have the authority to provide alternative educational opportunities even when they are not obligated to do so. Conn. Gen. Stat. § 10-233d(d). Accordingly, parent attempts after the fact to attack the sufficiency of an alternative educational opportunity to date have been unsuccessful. See Lotto v. Hamden Board of Education, 2007 Conn. Super. LEXIS 424 (Conn. Super. 2007) (stipulation for expulsion may be contract obligation, not education program); Lotto v. Hamden Board of Education, 2008 Conn. Super. LEXIS 160 (Conn. Super. 2008) (claim dismissed upon showing that services were provided). See also Pelletier v. Southington Board of Education, 2010 Conn. Super. LEXIS 2749 (Conn. Super. 2010) (alleged breach of stipulation not actionable because there was no contract with the board of education).

By contrast, the statutes are much more prescriptive in describing students entitled to an alternative educational opportunity, as follows.

1. Students under sixteen years of age

For students who are under sixteen years of age, the duty to provide an alternative educational opportunity is unconditional. Moreover, school districts may not impose the costs of such an alternative program on the student or his or her family, because such an alternative program is the "school accommodations" to which the student is entitled.

2. Students ages sixteen to eighteen

For students ages sixteen to eighteen, the duty to provide an alternative educational opportunity depends upon the nature of the misconduct, and the recent increase in the mandatory school age to eighteen did not change these provisions. Generally, a student between sixteen and eighteen is entitled to an alternative educational program, as long as "he or she complies with conditions established by his or her local or regional board of education." Conn. Gen. Stat. § 10-233d(d). However, school districts have the option not to provide an alternative educational opportunity to such students in various situations.

First, school districts are not obligated to provide an alternative educational opportunity to students ages sixteen to eighteen who have been expelled previously. This provision applies even if a prior expulsion occurred before the student was sixteen years of age. Conn. Gen. Stat. § 10-233d(d).

Second, school districts are not obligated to provide an alternative educational opportunity to students ages sixteen to eighteen if they are expelled for possessing a firearm (as defined under federal law), deadly weapon, dangerous instrument, or martial arts weapon on school property or at a school-sponsored activity. Each of these terms is defined in Conn. Gen. Stat. § 53a-3, quoted above. It is important to note that this limitation on the duty to provide an alternative educational program applies only if the conduct occurs on campus or at a school-sponsored activity. For example, a student who used a gun in an armed robbery would be subject to mandatory expulsion. He or she would still be entitled to an alternative educational program if under eighteen, however, if this conduct did not occur at school or at a school sponsored activity.

Third, a student between sixteen and eighteen is not entitled to an alternative educational program when he or she is expelled for offering a controlled substance for sale or distribution on school property or at a schoolsponsored activity. Where expulsion is for sale or distribution of drugs, the district is also required to refer the pupil to an appropriate state or local agency for rehabilitation, intervention, or job training. Again, however, the student remains entitled to an alternative educational program if the proscribed conduct occurs off-campus.

Conn. Gen. Stat. § 10-233d provides that the notice of hearing shall include a statement that the district is not obligated to provide an alternative educational opportunity to such students who have engaged in the conduct described above. This notice requirement applies in all cases, and a failure to provide such notice may prevent the board of education from deciding not to provide an alternative educational opportunity in an appropriate case.

3. Students eighteen years of age and older

For students who are over eighteen, there is no duty at all to provide an alternative program (except for special education students). Boards of education often choose, however, to provide an alternative educational opportunity (which may include adult education). Providing such opportunities, even when not required, is authorized by Conn. Gen. Stat. § 10-233d(d). Such action often is good public policy, given the alternative of having the student return at the end of the expulsion period no closer to high school graduation.

4. Special education students

Special education students are not subject to these rules. Students eligible for special education under the IDEA remain entitled to an appropriate program regardless of their age or their misconduct up to age twenty-one or high school graduation. Prior to the expulsion of a special education student, school districts must convene a planning and placement team (PPT) meeting to determine whether the student's misconduct was a manifestation of the student's disability. The conditions for making this determination under the IDEA are described in detail in Chapter Five, Section C(1)(b)(2). If the misconduct is determined to be causally related to the disability, the PPT must review and modify the student's individualized education plan to address the misconduct and to ensure the safety of the other children and staff in the school. Even when the misconduct was not caused by the disability, school districts are required in all cases to provide

special education students with "an alternative educational opportunity consistent with such child's educational needs." Conn. Gen. Stat. § 10-233d(i).

e. Criminal conduct and reporting obligations

When a student between the ages of seven and twenty-one is arrested for a felony or a Class A misdemeanor, the municipal police department or division of the state police that made the arrest must orally notify the superintendent of schools of the district where the student resides or attends school not later than the end of the weekday following the arrest, with written notification to follow within seventy-two hours of the arrest. Conn. Gen. Stat. § 10-233h. The superintendent is to keep such information confidential, but may disclose the information to the principal of the school that the student attends. The principal may in turn disclose it to special services staff members for the purposes of assessing the risk of danger posed by the student to himself of herself, to other students, or to staff. School district personnel must conclude any such assessment not later than the next school day following notification. This law also provides procedures for coordination between the school superintendent and the courts in matters of probation and school attendance. Id. This same statute also provides that police officials may testify and disclose juvenile arrest records in student expulsion proceedings, as quoted in Section C(1)(a), above.

Reporting obligations go both ways. When a student is expelled for possession of a firearm or deadly weapon, the board of education must report the violation to the local police department. Conn. Gen. Stat. § 10-233d(e). Also, if a teacher or other school employee files with the school principal a written report concerning an assault on him or her in the performance of his or her duties, the principal must report that assault to the local police authority. Moreover, the statute further provides that no school administrator may interfere with the right of a teacher or other school employee to file a report with the local police concerning threats of assault or actual assault by a student. Conn. Gen. Stat. § 10-233g. Finally, the 2011 amendments to the bullying statute require that the school principal or his/her designee must report to the police if during the course of a bullying investigation, he/she believes that the perpetrator's conduct constitutes criminal conduct. Conn. Gen. Stat. § 10-222d.

The statutes address serious juvenile offenders in three ways. First, it established an alternative to criminal adjudication for such juvenile offenders. If a child is charged with an offense involving the use or

threatened use of physical violence in or on the real property comprising a public or private elementary or secondary school or at a school sponsored activity, upon motion, the court may order the suspension of further delinquency proceedings for up to one year and order the child to participate in a school violence prevention program. Conn. Gen. Stat. § 46b-133e. If the child completes the program successfully, he or she will not be subject to further delinquency proceedings. Conditions for participation in the program include (1) no previous participation in the program, (2) participation in no less than eight group counseling sessions (at parent cost), (3) compliance with any other orders of the court, and (4) certification by the child and his or her parents (or guardian) that to the best of their knowledge neither they nor the child possess any firearms, dangerous weapons, controlled substances, or other property or materials the possession of which is prohibited by law.

Second, Conn. Gen. Stat. § 10-233k requires that DCF notify the superintendent of schools if DCF officials believe that there is risk of imminent personal injury from a child who has been adjudicated a serious juvenile offender. As with Conn. Gen. Stat. § 10-233h, the superintendent must then notify the principal, who can make further disclosure of such information only to special services staff as is necessary to assess the risk of danger posed by the student. In 2001, the law was clarified to provide that DCF and the Judicial Department must also provide to the superintendent "any educational records" in their custody, and the superintendent is authorized to release these records to the principal, who may disclose the records to "appropriate staff" members who are responsible for the education or care of the student. In addition, DCF and the Judicial Department must require that any contracting agency that holds such records provide them to the superintendent. Conn. Gen. Stat. § 10-233k.

Third, Conn. Gen. Stat. § 10-2331 provides that students who are committed to a juvenile detention center, the Connecticut Juvenile Training Center or a residential placement for a criminal offense may be expelled, but any expulsion must run concurrently with the period of commitment to such a facility. The law further provides that, if the student has not been expelled, upon release the student must be readmitted to school and may not be expelled for some further period at that point. This statute poses practical problems, given that a school district may not know about a student's commitment and/or there may be due process issues in conducting an expulsion hearing while a student is in lock-up. Prompt action, therefore, is advised as soon as school officials learn that a student has been so committed, and presumably noticing the expulsion hearing and then granting

a request for postponement, if requested, will preserve the school district's right to expel for such conduct.

f. Special education students

The "stay-put" and other rights of students who have disabilities can complicate or even prohibit an expulsion. However, significant changes made in 1997 and 2004 make it easier for school officials to take such action when necessary. Chapter Five, Section C sets forth the special rules that apply when considering the expulsion of a child identified as having a disability under either the IDEA or Section 504.

g. General matters

As reviewed at the beginning of this Section, expulsion decisions are final. There is no provision in Connecticut law for the appeal of expulsion decisions. For the procedure at the hearing, the statute incorporates selected provisions of the Uniform Administrative Procedures Act, but not the provision for appeal of administrative rulings. Conn. Gen. Stat. § 10-233d. The only way for parents to have judicial review of such decisions, therefore, is by making a constitutional claim in an independent legal action. See, e.g., Packer v. Thomaston Board of Education, 246 Conn. 89 (1998); Rossi v. West Haven Board of Education, 359 F. Supp. 2d 178 (D. Conn. 2006) affd 2008 WL 89669 (2d Cir. 2008).

Now, boards of education (or committees or hearing officers) may make special arrangements concerning first-time offenders. If a student has never previously been suspended or expelled, the decision-maker may shorten or waive a period of expulsion (even mandatory expulsion) if the student completes a board-specified program and/or meets other conditions that the board (or committee or hearing officer) may impose. It is not clear whether this statutory change was necessary, because boards of education have long made such decisions. However, the law now specifies that the student may not be required to pay to participate in any such board-specified program. In addition, now the board (or committee or hearing officer) has the express authority to provide that the notification of expulsion that must be included in the student's cumulative record will be expunged upon the completion of such program or conditions.

Conn. Gen. Stat. § 10-233d(j) provides that a student may apply for early readmission following an expulsion, even when such opportunity is not offered through the expulsion decision. Any such readmission is at the

discretion of the board of education, which can delegate the authority to act on such requests to the superintendent. In any event, there is no duty to convene a hearing on the request. Moreover, the board or the superintendent, as appropriate, may impose conditions on any readmission. Such readmission decisions are not subject to appeal to Superior Court.

Finally, the General Assembly has addressed the problem of students moving from one district to another in two ways. First, if a student is expelled by one school district and then seeks admission to a second school district, the "receiving" district may adopt the decision of the first school district and expel the student without conducting a full hearing on the facts of the matter. The scope of the second hearing, rather, is limited to a determination of whether the misconduct established in the hearing in the first district would warrant expulsion under the board policies in the second. This hearing is therefore not an opportunity to retry the case. In any event, the second district must provide an alternative educational opportunity during the period of expulsion to the same extent as in other cases. Conn. Gen. Stat. § 10-233d(g).

Second, if a student withdraws from school when an expulsion hearing is "pending," the school district that scheduled the hearing must (1) note the pending expulsion hearing on the student's cumulative educational record, and (2) conclude the hearing and render a decision. The term "pending" is not defined in the statute, but it is reasonable to conclude that an expulsion is "pending" if notification of the proposed expulsion hearing has been provided to the student and/or parent. If the student enrolls in another district after receiving such notification, this statutory provision applies. The receiving district may suspend the student and either wait for the first district to conclude the ongoing hearing, or it may conduct its own expulsion hearing. If the second district decides to wait, it can then adopt the decision made by the prior district in accordance with Section 10-233d(g), described above. Unless an emergency exists, however, any such suspension must not exceed ten days. Conn. Gen. Stat. § 10-233d(h). It thus may be necessary for the receiving school district to take action.

D. Student Records

Under federal law, parents and students have extensive rights with regard to student records. These rights may be exercised by the parents while the students are children, and these rights transfer to the students themselves when they reach the age of eighteen (which makes them "eligible students" under the law). The law, the Family Educational Rights and

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as a child with an intellectual disability, it is unlikely that the child would be considered a Section 504 child. Similarly, a student with psychological problems may have a DSM IV diagnosis, but may not meet the standards for "serious emotional disturbance" under IDEA. In enacting IDEA, the Congress identified the conditions that substantially inhibit students from learning. Section 504 identification is not, and should not be a "consolation prize" for students who do not meet the eligibility requirements of the IDEA.

C. Student Discipline

Discipline of students with disabilities presents special concerns for school districts. An expulsion, for example, is considered a change in placement for a student with a disability. Discipline short of expulsion can also affect the right of a student with disabilities to receive appropriate educational services, and it may operate to discriminate against that student. Issues thus arise under both IDEA and Section 504.

1. <u>IDEA issues</u>

In the reauthorization of IDEA in 1997 and again in 2004, Congress tackled the thorny issue of student discipline. Some were concerned that the provisions of the IDEA did not provide school officials enough authority and discretion to deal with student misconduct. Others asserted, however, that the restrictions in the IDEA on disciplinary action are necessary to protect the rights of children with disabilities to receive an appropriate educational program. Congress started its review of these problems even before the IDEA Reauthorization in 1997. In 1994, Congress amended the stay-put provision of the IDEA in the Gun-Free Schools Act, otherwise known as the "Jeffords Amendment." This law amended the stay-put provision to permit school officials unilaterally to place a student who brought a gun to school in an interim alternative educational setting for not more than forty-five calendar days. This concept was later incorporated into the IDEA, as discussed below.

a. IEP requirements

The IDEA requires that school officials be proactive, *i.e.* they must take action to reduce the need for disciplinary action. Accordingly, the IEP Team is required to consider "positive behavioral interventions, supports and strategies to address that behavior" for a child whose behavior impedes his or her learning. This requirement also applies if the child's behavior impedes the learning of other children. 34 C.F.R. § 300.324(a)(2). In addition, the role of the regular education teacher, who must now participate in the

development of the IEP if the student will be receiving services in regular education, includes consideration of behavior issues. The regular education teacher must assist in the development of "appropriate positive behavioral interventions and supports and other strategies for the child." 34 C.F.R. § 300.324(a)(3).

From these requirements, we see that the IEP should address student behavior if that behavior is identified as a potential problem in planning an appropriate education. In order to determine whether behavior is a concern, the PPT may decide to conduct a functional behavioral assessment (sometimes called "FBA"). From that assessment, the team will develop "interventions, supports and strategies" to address the behavior as appropriate. Any such plan is part of the IEP as "the behavioral intervention plan" (sometimes called "BIP"). Significantly, whether a BIP will be required depends on the needs of the child, regardless of disability category. Notably, as discussed below, school districts must make a manifestation determination whenever a student's placement is changed due to a disciplinary incident . 34 C.F.R. § 300.530(e) If a PPT determines that a student's conduct was a manifestation of the student's disability, the PPT must conduct a functional behavior assessment or review the FBA if one has already been conducted. 34 C.F.R. § 300.530(f) The PPT must also implement a behavior intervention plan or review the plan if one has already been completed. Id. Students whose conduct is not found to be a manifestation of a disability may also receive, as appropriate, an FBA and BIP to prevent recurrence of the behavior.

Neither the IDEA nor the implementing regulations specify how an FBA should be conducted or what a behavior intervention plan should contain. The PPT may therefore determine how best to meet these responsibilities based on the unique circumstances of the particular case. Whether the district will require consent to conduct a functional behavior assessment will depend on the circumstances. Such an assessment does not require parental consent as an evaluation if it is a review of existing data or administering of tests given to all children. 34 C.F.R. § 300.300(c)(2)(d). However, if an FBA is undertaken to review the functioning of an individual student, it will be considered a "reevaluation" requiring parental consent in accordance with 34 C.F.R. § 300.300(c). Letter to Christiansen, 48 IDELR 161 (OSEP 2007).

b. Disciplinary action

Extensive amendments to the IDEA in both 1997 and 2004 made significant changes in the area of student discipline. Those revisions clarified that children with disabilities may be disciplined in the same manner as their non-disabled peers. 34 C.F.R. § 300.530. For discipline that is a removal that is in excess of ten consecutive schools days or that otherwise constitutes a change in placement, however, the PPT must determine whether the misconduct was a manifestation of the child's disability. 34 C.F.R. § 300.530(e) Moreover, district personnel must assure that, irrespective of any removal, children with disabilities continue to receive an appropriate educational program. Finally, IDEA 2004 significantly revised change of placement and stay-put requirements, providing school officials and hearing officers increased authority to remove students to alternative settings, particularly for certain, more dangerous conduct. These rules are complicated, and are sorted out below.

1. Short term suspensions

School officials have always been free to suspend children with disabilities for up to ten consecutive school days. In such cases, the child is not entitled to any services except as would be the case for children without disabilities. 34 C.F.R. § 300.530(d)(3).

The IDEA specifies that children who are suspended for more than ten days cumulatively over the course of a school year are entitled to services. 34 C.F.R. § 300.530(b) The obligation to provide such services, however, does not begin until the eleventh day of exclusion. At that point, the PPT must convene to make a manifestation determination, as discussed below. 34 C.F.R. § 300.530(c) If no manifestation is found, for such short-term suspensions, "school personnel, in consultation with at least one of the child's teachers," may determine the services that are necessary to enable the child appropriately to progress in the general curriculum and appropriately advance toward achieving the goals set in the IEP. 34 C.F.R. § 300.530(d)(4). Such services, however, need not duplicate all elements of the IEP.

A difficult question for school officials has been when are suspensions in excess of ten days cumulatively a change of placement. The answer to that question is important because a change of placement triggers procedural requirements and the duty to conduct a manifestation determination. Regulations adopted pursuant to IDEA after the 2004 amendments provide additional guidance in making this determination. 34 C.F.R. § 300.536 states

that disciplinary exclusions for more than ten days cumulatively may constitute a change in placement based on consideration of (1) whether the behavior for which the student was disciplined is substantially similar to the conduct that resulted in prior removals, and (2) other factors, such as length of each removal, total time the student has been removed, and the proximity of removals to each other.

2. Long term suspensions or expulsions

Under Connecticut law, any exclusion from school privileges for more than ten consecutive school days is an expulsion, which may only be imposed by the board of education after a formal hearing, as discussed above in Chapter Four. Conn. Gen. Stat. § 10-233d. Moreover, since 1995 Connecticut law has provided that, before any expulsion of a child with disabilities, the PPT must convene to determine whether the student's misconduct was "caused" by his or her disability. Conn. Gen. Stat. § 10-233d(i).If it is not, the child may be expelled. If it is, the student may not be expelled, and the PPT is required to reevaluate the child for the purpose of modifying the IEP to address the misconduct and to ensure the safety of other children and staff in the school. *Id.*

The IDEA similarly provides that certain children with disabilities may not be expelled, but it frames the question not as one of "causation," but rather as one of whether the misconduct was a manifestation of disability, (defined and discussed below). 34 C.F.R. § 300.530(c). If the misconduct is a manifestation of the child's disability, the child may not be expelled (although the PPT may determine that a change of placement is appropriate, and in some circumstances as described below, may be able to change the placement unilaterally). 34 C.F.R. § 300.530(e). If the misconduct is not a manifestation of the child's disability, the child may be expelled. The IDEA specifies, however, that even children with disabilities who are expelled continue to be entitled to a "free appropriate public education," as that term is specially defined for this situation. In such cases, the FAPE to which the child is entitled is comprised of the services that are necessary to enable the child to appropriately progress in the general educational curriculum (although in another setting) and appropriately progress toward the goals set in the IEP, as determined by the IEP Team. 34 C.F.R. § 300.530(d)(5).

a. Manifestation determination

The IDEA and the implementing regulations set forth specific requirements concerning the standards for making a manifestation

determination. The standard as revised in 2004 makes it more difficult to argue that misconduct is the manifestation of a disability.

i.

Definition

The IEP Team must consider all relevant information, including evaluation and diagnostic results, information provided by the parents, observations of the child and the child's IEP and placement. Based on the consideration of all of this information, the IEP Team must determine (1) whether the conduct was caused by, or had a *direct and substantial relationship to*, the child's disability; or (2) if the conduct in question was the *direct result* of the LEA's (local educational agency/school district's) failure to implement the IEP. 34 C.F.R. § 300.530(e). If either condition is met, the IDEA requires that school personnel consider the misconduct to be a manifestation of disability. 20 U.S.C. § 1415(k)(1)(E), 34 C.F.R. § 300.530.

ii. When required

School personnel must conduct a manifestation determination whenever a change in placement is proposed, including situations when a pattern of exclusions constitute a change in placement, as discussed above. 34 C.F.R. § 300.536. This determination must be made no later than ten school days after the decision to take the action that triggered the duty to conduct the manifestation determination. 34 C.F.R. § 300.530(e). Also, parents must be notified no later than the date on which the decision to take such action is made, and the district must provide them with a copy of the procedural safeguards at that time. 20 U.S.C. § 1415(k)(1)(H).

iii. Impact of determination

If the IEP Team finds that the misconduct is a manifestation of the disability, school personnel may not discipline the student for the misconduct. 34 C.F.R. § 300.530(f). Rather, the IEP Team is responsible for reviewing the child's IEP to determine whether and how to modify the program to address the problem behavior, and to provide for the safety of the student, other students and staff. At a minimum, the IEP Team must conduct a functional behavior assessment and implement a behavioral intervention plan (or, if one has already been developed, review and revise the plan as necessary to address the behavior). Id.

If the IEP Team finds that the misconduct is not a manifestation of the disability, school personnel may discipline the student in the same

manner as non-disabled students are disciplined, including an expulsion for up to one calendar year. 20 U.S.C § 1415(k)(1)(C); Conn. Gen. Stat. § 10-233d(i). There is, however, a significant difference. The rights of the nondisabled students during any expulsion are a function of state law. As outlined in Chapter Four, when students sixteen to eighteen years of age are expelled, the school district may not have any responsibility for providing an alternative educational program, depending on the offense committed. Conn. Gen. Stat. §§ 10-233d(d)-(e). Furthermore, there is no requirement at all for students eighteen and older. *Id.* By contrast, when a child with a disability is expelled, the school district must assure that the student continues to receive a free appropriate public education. The regulations define FAPE for this purpose to be the services that are necessary to enable the child to appropriately progress in the general educational curriculum (although in another setting) and appropriately progress toward the goals set in the IEP, as determined by the IEP Team. 34 C.F.R. § 300.530(d)(1), (5).

b. Stay-put

When students engage in misconduct that puts themselves or others at risk, there is often concern that the child's placement should be changed, typically to a more restrictive setting. Under IDEA in 1997, a parent who disagreed with a proposed change in placement could file for a due process hearing and invoke stay-put, thus requiring the district to return the student to his or her "pre-disciplinary" placement. As of 2004, however, significant changes were made in IDEA to the concept of stay-put in the disciplinary context. Now, whether or not misconduct is a manifestation of disability, a student remains in his or her interim alternative educational placement, or disciplinary placement, pending the resolution of the dispute. 34 C.F.R. § 300.533. Despite this change though, the IEP Team continues to be responsible for recommending a program and placement that provides the student with FAPE, even in the designated alternative setting.

i. The general rule

In 1988, the United States Supreme Court addressed the question of expulsion of students receiving special education services under the IDEA. *Honig v. Doe*, 484 U.S. 305 (1988). In this case, the Court dealt with two students who had assaulted other students in school. John Doe, an emotionally disturbed student, choked another student. Jack Smith, also emotionally disturbed, had a history of physical and verbal assaults on other students, and after stealing, extorting money and making sexual comments

to female students, he too was expelled. Both sued their respective districts, claiming that the "stay-put" provision entitled them to stay in school.

The United States Supreme Court agreed, and it held that the expulsions did in fact violate the rights of the students. Writing for the majority, Justice Brennan stated that an exclusion in excess of ten consecutive school days is a change of placement. The number ten as the threshold for a change in placement comes from Goss v. Lopez, 419 U.S. 565 (1975). In Goss, the Court held that an exclusion of more than ten days implicates significant due process concerns. In Honig v. Doe, the Court held that any such exclusion (an expulsion under Connecticut law) over parent objection violates the IDEA, even when the district has acted out of concern for the safety of other students:

The language of Section 1415(e)(3) [the stay-put provision now set forth at Section 1415(j)] is unequivocal. It states plainly that during the pendency of any proceedings initiated under the Act, unless the state or local educational agency and the parents or guardian of a disabled child otherwise agree, "the child *shall* remain in the then current educational placement."

(Emphasis in original). In reaching this decision, the Court rejected the argument made by the California Commissioner of Education that school officials must have the right to act unilaterally when students pose a danger.

In Honig v. Doe, the Court recognized that there will be situations in which school officials must act to protect the safety of the other students, even over parent objection. In such situations, the Court held, school officials still may not act unilaterally. Rather, it is necessary in such cases to seek judicial intervention, specifically an injunction. When maintaining the student in the current placement during due process review would involve inappropriate risk to the student or others, the court will provide injunctive relief and change the placement:

> The burden in such cases, of course, rests with the school to demonstrate the futility or inadequacy of administrative review. [The law] effectively creates a presumption in favor of the child's current educational placement which school officials can overcome only by showing that maintaining the child in his or her current placement is substantially likely to result in injury either to himself or herself, or to others.

Honig, 484 U.S. at 327-28. Given this high standard, typically such relief will be difficult to obtain, available only when there are compelling issues of safety or disruption.

ii. The exceptions

The stay-put provision was first changed in 1994 as part of the Gun-Free Schools Act (also known as the "Jeffords Amendment"), and again in both 1997 and 2004, giving both school officials and hearing officers increased rights to unilaterally remove a student in certain, limited situations.

First, school personnel can unilaterally place a child in an interim alternative educational setting for up to forty-five school days if the child (1) knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or at a school function, or (2) carries or possesses a "weapon" to school or to a school function, or (3) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function. 20 U.S.C. § 1415(k)(1)(G). Such a placement can be made whether or not the behavior is determined to be a manifestation of the child's disability. 34 C.F.R. § 300.530(g).

The IDEA provides definitions applicable to each of these situations. It defines "illegal drug" as "a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority [under 21 U.S.C. § 801 et seq.] or any other provision of Federal law." 20 U.S.C. § 1415(k)(7)(B). It defines "controlled substance" as "a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. § 812(c))." 20 U.S.C. § 1415(k)(7)(A). It defines "weapon" in accordance with 18 U.S.C. § 930(g)(2), i.e. "a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length." 20 U.S.C. § 1415(k)(7)(C). Finally, it defines "serious bodily injury" in accordance 18 U.S.C. § 1354(h)(3), i.e. "a bodily injury which involves: (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty."

In any of these three situations, the IEP Team may unilaterally move the child to an appropriate interim alternative educational setting for the same amount of time a child without a disability would be subject to discipline, but not for more than forty-five school days. 20 U.S.C. § 1415(k)(1)(G). Any interim alternative education setting must be determined by the IEP Team, and it must be selected to enable the child to progress in the general curriculum (although in another setting), and to continue to receive the services set out in the IEP to enable the child to meet the IEP goals. 34 C.F.R. § 300.530(d).

In addition, when school personnel believe that returning a child to the current placement is substantially likely to result in injury to the child or others, they may request that a hearing officer order a change in a child's placement to an appropriate interim alternative educational placement, notwithstanding the provisions of "stay put." Similar to the other exceptions to stay put, such an interim alternative educational setting is limited to fortyfive school days. 20 U.S.C. § 1415(k)(3)(B). However, the regulations provide that the procedure can be repeated if school personnel continue to believe that it would be dangerous to return the student to the prior placement. 34 C.F.R. § 300.532(b)(3).

At the end of the forty-five school day period, the child must be returned to the prior, pre-disciplinary setting unless school personnel and parents agree to continue the alternative educational setting, agree to a different placement, or a hearing officer orders otherwise. 20 U.S.C. § 1415(k)(4). If immediate action is necessary, therefore, school personnel may still seek a *Honig* injunction.

iii. Expedited hearings

The IDEA requires that states establish procedures for expedited hearings for parents who wish to challenge a manifestation determination or the choice of an interim alternative educational setting. Such expedited hearings are also available for school districts that claim that maintaining the student in the current educational setting is substantially likely to result in injury to the child or others. 20 U.S.C. § 1415(k)(4). Such hearings are to be conducted on an expedited timeline. Within seven calendar days of receiving notice of the filing of a due process complaint, the school district must hold a resolution session, unless the parents and the school district agree in writing to waive the resolution session or agree to pursue mediation. The resolution period lasts for fifteen calendar days from the date of the filing of the due process complaint. The resolution period cannot be extended. The

expedited due process hearing must commence within twenty days of the date when the hearing was requested, unless the matter is resolved within the resolution period. The hearing officer must issue a decision within ten school days after the hearing. 34 C.F.R. § 300.532(c). The date on which a decision is due cannot be extended. When a request for an expedited due process hearing is filed over the summer or when school is not in session, the expedited hearing timelines do not begin until school is back in session.

c. Children not yet identified

When expulsion of a regular education student is proposed, parents sometimes object on the basis that the child should have been identified under IDEA and thus should have the protections that apply to children with disabilities. These claims, sometimes called "hidden disabilities," previously caused confusion under IDEA, and amendments in both 1997 and 2004 have addressed this issue.

The IDEA provides that children do have such protections if, prior to the student's misconduct, the school district "had knowledge" that the child should have been identified under the IDEA. The law and the implementing regulations provide that such "knowledge" will be presumed if:

- the parent of the child had expressed concern in writing to administrative or supervisory personnel of the district, or to the child's teacher, that the child is in need of special education and related services, unless the parent is illiterate or has a disability preventing such written expression;
- the parents had previously requested an evaluation of the child; or
- the teacher of the child or other district personnel had expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education or to supervisory personnel.

20 U.S.C. § 1415(k)(5). If none of these bases for "knowledge" exists, the child may be disciplined in the same manner as other children. Also, the child may be disciplined in the same manner as other children if one of these circumstances did apply and (1) the parent refused an evaluation or refused or revoked consent for special education services, or (2) the district conducted an evaluation and determined that the child is not eligible for special education services and notified the parents of that determination. 20 U.S.C. § 1415(k)(5)(C).

If the parents contest the finding of school personnel that none of these grounds for "knowledge" apply, they may request a hearing. Moreover, if the parents request an evaluation during any period of exclusion, such evaluation must be conducted on an expedited basis. 20 U.S.C. § 1415(k)(5)(D). The child will remain where placed by the district pending the results of the evaluation. If the child is then determined to require special education and related services, however, he or she shall receive such services and will be afforded all the applicable procedural protections. Id.

3. Reporting crimes by students with disabilities

School districts and other agencies may report crimes committed by children with disabilities, and such children may be prosecuted. If a school district or other agency reports a crime committed by a child with disabilities, however, IDEA provides that school personnel must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime. 20 U.S.C. § 1415(k)(6). Neither the statute nor the regulations define the records to be sent. It would be reasonable, therefore, to send the disciplinary records, and the most recent IEP and related meeting notes. A further complication, however, is that any such transmission of student records must be authorized under FERPA. 34 C.F.R. § 300.535. Accordingly, the district must have written parent permission to transmit the records or otherwise be able to establish authority for the release of the records, such as a subpoena related to the criminal proceedings. Given the affirmative obligation to "ensure" that such records are provided, it is advisable, if need be, to ask parents to provide written consent to the release of such records when reporting a crime. The parents may decline to provide consent, but then they may not complain if the records are not provided.

2. Section 504 issues

As reviewed above, Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against students on the basis of their disabilities. This prohibition can be relevant in matters of student discipline, because misconduct can be caused by a disability. For example, a student with Tourette Syndrome may exhibit involuntary tic behavior, which can include muttering swear words and other bizarre behavior. It is clear that it would

not be appropriate to impose discipline in such cases. Moreover, any such discipline would violate that student's rights under Section 504 because the conduct is a manifestation of the disability.

The situation is less clear in cases where a student with disabilities engages in misconduct that would typically lead to serious disciplinary consequences. If a regular education student comes to school with a firearm or dangerous weapon, he or she must be expelled. Conn. Gen. Stat. § 10-233d. What about the emotionally-disturbed child? Was the misconduct, bringing the weapon to school, a manifestation of the disability? If so, can the student be expelled? What about the student with learning disabilities?

For children who are identified under the IDEA, the complicated rules above give us answers (if not solutions). When a student is identified as having a disability solely under Section 504, however, such as attention deficit disorder, these new rules do not apply. School districts must avoid taking disciplinary action that discriminates against a student on the basis of his or her disability, even if the disability is not recognized under the IDEA. To meet this obligation, school districts presumably must determine whether the misconduct is a manifestation of the disability. The Section 504 regulations, however, do not provide guidance on when and how such a determination must be made. Moreover, while the standards for a manifestation determination under the IDEA provide an analogy for such determinations, it is not clear that the standards adopted for a manifestation determination under the IDEA are the same under Section 504. Significantly, neither Congress nor the United States Department of Education has seen fit to adopt requirements under Section 504 similar to those under the IDEA. It is reasonable, therefore, for the Section 504 team to consider these issues from a factual, rather than procedural perspective.

These questions are, of course, impossible to answer in the abstract and are very difficult in the concrete. However, the key is that they must be addressed. When a Section 504 student has engaged in misconduct that could lead to expulsion, a Section 504 team must be convened to consider the relationship, if any, between the disability and the misconduct. Under the Section 504 regulations, evaluation is required before any significant change in placement, and a manifestation determination would be an appropriate review prior to the significant change in placement of expulsion. If the team finds no manifestation, the student may be expelled, even if the parent disagrees with that finding, because there is no stay-put under Section 504. Even when misconduct will not lead to an expulsion, the Section 504 team should convene whenever serious disciplinary action (either in severity or frequency) is contemplated. If it appears that there is a causal connection between the conduct and the disability, the Section 504 team must assure that discrimination against the student does not occur on the basis of his or her disability. Accordingly, the PPT or Section 504 team should review the situation whenever there is a pattern of misconduct and suspension. It may be that (1) the misconduct is related to the disability and/or (2) the program is not appropriate to meet the student's needs, and in such situations, it may be necessary to change the student's placement. See Memorandum to OCR Senior Staff from LeGree Daniels dated October 28, 1988, EHLR Special Report, Supplement 233 (January 27, 1989).

3. <u>Disciplining students with disabilities</u>

After considering the impact of both the IDEA and Section 504, some generalizations are possible.

First, it is possible to discipline students who have disabilities. Discipline short of a ten day exclusion does not operate as a change in placement and, where appropriate, it may be imposed. Even where the district may find it appropriate to convene a PPT, a temporary suspension while awaiting the PPT will be appropriate.

Second, it is important to exercise the right to suspend students prudently and to maintain accurate related records. After a student has been suspended for a total of ten days in any school year, continued services are required. School personnel, in consultation with at least one of the student's teachers, must determine what services are necessary during any subsequent suspension to enable the student to progress in the general curriculum and to appropriately advance toward his or her IEP goals. Moreover, if a series of short term suspensions (each less than ten days) comprises a "pattern," even short term suspensions will be a change in placement, requiring that the PPT conduct a manifestation determination and consider the services that are necessary under the standard above.

Third, it is important to keep the provisions of Section 504 in mind. While IDEA requirements do not apply, students identified only under Section 504 have rights as well. Before a student with a disability under Section 504 may be expelled, a Section 504 team must convene to make a causal relationship determination. Such an evaluation is necessary to satisfy the requirement of Section 504 that there be an evaluation prior to any

significant change in placement. 34 C.F.R. § 104.35(a). If there is no causal relationship, expulsion will not discriminate against the student in violation of Section 504. If there is a causal relationship, however, the district must find an alternative means for dealing appropriately with the misconduct, including provision for the safety of other students and staff.

Fourth, where a student with disabilities engages in conduct that is disruptive or puts other students at risk, it may be necessary to modify or even change his or her placement. When the PPT determines that there is a causal relationship between the misconduct and the disability, the law specifies that the PPT must evaluate the child for the purpose of modifying the child's IEP to address the misconduct and to ensure the safety of other children and staff in the school. Such modifications may include a change to a more restrictive setting.

Fifth, understandably parents are not always cooperative when the expulsion of their child is proposed, notwithstanding the mandatory expulsion provisions in the law. However, as described above, school officials may unilaterally change a student's placement to an interim alternative educational setting for a maximum of forty-five school days under narrow circumstances involving weapons, drugs or serious bodily injury. Also, hearing officers may override stay-put for forty-five school days if school personnel show that it is substantially likely that maintaining the student in the stay-put placement will result in injury to the student or to others. These provisions are limited, however, and school districts may still have major problems with stay-put in particular cases.

Finally, whether or not a child receiving special education services is expelled, it is clear under state and federal law that he or she will continue to be entitled to educational services. Conn. Gen. Stat. § 10-233d(i) provides that a special education student who has been expelled shall be provided "an alternative educational opportunity consistent with the child's educational needs" during the period of expulsion. Similarly, during any period of expulsion, special education students are entitled to receive appropriate 34 C.F.R. § 300.530(d). The IDEA and the educational services. implementing regulations have clarified that students excluded for more than ten school days for conduct that is not a manifestation of their disability are not entitled to the full "free appropriate public education" that must generally be provided to children with disabilities. 34 C.F.R. § 300.530. However, they are entitled to services in an alternative educational setting that will permit them to progress in the general curriculum and to advance toward achieving the goals in the IEP. Id.

SAMPLE DOCUMENTS
EXPULSION CASE CHECKLIST

Meet with parent and child to gather facts and information.

- Interview parent and child.
- Ask the parent and child if there were witnesses to the alleged incident, including co-defendants. Ask for names and phone numbers.
- Ask the parent and child if there are any character witnesses who might be willing to testify on the child's behalf. Ask for names, phone numbers and relationship to the child.
- Find out if there are any newspaper articles relating to the incident.
- Have all necessary releases (school/therapist/probation officer/public defender/etc.) signed (if not already done by pro bono intake coordinator).
- Request a postponement/continuance of the expulsion hearing from the Board's attorney so that you have time to review the record. You should do this at the same time that you request the expulsion record from the Board's attorney.
- ____ Request a copy of the expulsion record from the Board's attorney including any written statements by any witnesses to the incident, and the witnesses that the Board intends to call at the expulsion hearing.
- ____ Request a copy of the entire school record (including the complete disciplinary record and any special education or 504 records) from the school principal, and "cc" the special education director, the superintendent and the Board's attorney.
- ____ Request a copy of the Board's discipline policy and the Student Handbook from the parent or the Board's attorney.
- ____ Request a copy of the police records, if applicable.
- ____ Review the expulsion record and ensure that all procedural safeguards have been followed.

- _____ Review the school record to screen for potential special education issues.
- _____ Meet with the client after reviewing the record to prepare for the hearing.
- ____ Contact other witnesses. If the witness is a co-defendant, ask his/her attorney for an opportunity to meet and discuss the case with them present.
- Contact character witnesses (including teachers) that will be able to testify to the fact that this is a good student who should not be expelled and prepare to call them as witnesses.
 If the witnesses are unable to attend, attempt to obtain a notarized statement/affidavit regarding the good character of the student.
- ____ Speak with the public defender who is representing the child in the criminal/juvenile case and discuss whether or not the student should testify (if criminal/delinquency charges related to the expellable offense are pending.)
- ____ Prepare for the hearing: opening, cross-examination, direct examination, closing. Be mindful that only Constitutional issues can be raised on appeal to the Superior Court, and make a clear record.

EDUCATION CASE INTAKE SHEET

1. Background Information

Name of Child:d.o.b.:age:Phone:Name of Parent(s):Address:Phone:Absent Parent:Address:Phone:Name of Guardian:Address Phone:Current School:Previous School(s):

2. DCF Involvement

Nature of DCF Involvement: n/a Name of caseworker: Phone: Has a surrogate parent been appointed? no If yes, name of surrogate: Phone:

3. Court Involvement

Has your child been arrested?no Charge(s):Date of incident:Incident for arrest related to expulsion: noHas your child been referred to Court for truancy (missing school)?noHave you or the school filed a Family with Service Needs (FWSN) petition? noAttorney for the Child:Phone:Probation Officer:Phone:Next Court date:Location of Court:Court ordered evaluation:When:Hospitalization:Where:

4. **Expulsion Information**

School District: Name of School: Child's Grade: Did you receive notice of an expulsion: When: How: What is the date, time, and location of the expulsion hearing? Why is your child being expelled? Does the alleged offense involve: drugs: gun: knife: other dangerous weapon: Did the alleged incident take place on school property? Where? During school hours? At a school sponsored event? Were other students involved? Parent's Names: Names: Are there witnesses? Please provide name and phone number: Has your child been expelled before? Please explain:

5. Special Education or 504 Student

Special Education Student? Date Found Eligible?

Is there a 504 Plan? Date Found Eligible?

6.

Primary Disability: Intellectual Disability (Mental Retardation):		
Hearing Impairment: Speech or Language Impairment: Visual Impairment:		
Emotional Disturbance: Orthopedic Impairment:		
Other Health Impairment (including ADHD/ADD): Specific Learning Disability:		
Neurological Impairment: Deaf-Blindness: Multiple Disabilities: Autism:		
Traumatic Brain Injury: Developmental Delay (ages 3-5 only):		
Other: please explain		
What type of Special Education Services is your child receiving? Please check:		
special education class(es) for <u>all</u> academic subjects		
""""""""""""""""""""""""""""""""""""""		
speech/language therapy		
social work services (counseling with school social worker)		
Occupational therapy		
physical therapy		
Other—please explain:		
Date of the last "PPT" meeting or 504 meeting concerning your child?		
What was the reason for the meeting?		
Was there a PPT meeting to discuss an alleged suspension or expulsion incident?		
What did the school recommend at the PPT meeting?		
Did you agree with this recommendation? Why or why not?		
(please provide a copy of the PPT records that you have)		
Current medications:		
Names of doctors: Address: Last Seen:		
General Education Concerns		
Please explain:		
Have you told the school about your concerns? Who did you tell?		
How and when did you tell them?		
Have school personnel recommended that your child obtain services?		
Who recommended them and why?		
Has your child failed any subjects in the last marking period?		
Which classes?		
Has your child been held back? What grade(s)?		
Has your child received counseling or therapy? 🗌 Is s/he currently in counseling?		
Where? Why?		
Who is the therapist/counselor?		
Is your child taking any medication? What, and what for?		
Has your child had any behavior problems in school? please describe:		
Has your child been suspended? When and Why?		
How often does behavior affect school?		
Is your child currently receiving homebound services?		
If your child has a disability, is s/he receiving the services that are in the Individu-		
alized Education Plan (IEP)? What services are missing?		

Are the assignments being provided to your child? What assignments are missing?

Any additional information that would be useful:

SENT BY FAX AND BY MAIL

DATE [SUPERINTENDANT'S NAME] XXX Board Of Education School Street XXX, CT 06----Fax:

Re: **DOCUMENT AND SCHOOL RECORDS REQUEST** [CHILD'S NAME] [CHILD'S D.O.B.]

Dear Dr. [SUPERINTENDANT'S NAME],

Please be advised that XXX. is representing Ms. [CHILD'S NAME] in the hearing to consider the recommendation of her expulsion. Attached is a copy of an authorization for release of records executed by [PARENT'S NAME].

Pursuant to Connecticut General Statutes §4-177c, I am writing to request that the following information be provided as soon as possible, in advance of the hearing:

(1) Copies of any and all documents that will be presented by the Board at an expulsion hearing;

(2) Names of any and all witnesses who will be called by the Board at the expulsion hearing;

(3) Copies of any and all written statements made by any and all witnesses who will be called by the Board at the expulsion hearing;

(4) Copies of any and all incident reports related to the events underlying the expulsion hearing; and

(5) Copies of any and all Board policies regarding student conduct, including but not limited to that which is alleged to have been violated by xxx.

Pursuant to 20 U.S.C. §1232g(a)(1)(A) [and Regs. Conn. State Agencies §10-76d-18(b)(2) if applicable because student is special education student], I also request a complete copy of [CHILD'S] regular and special education records, including but not limited to permanent record card, report cards and progress reports, all evaluations and sub-test scores, and all disciplinary records.

Thank you for your attention to this matter. In light of the pending expulsion hearing currently scheduled for [DATE], I would appreciate receiving these documents and school records as soon as possible. [IF SPECIAL EDUCATION STUDENT, THEN ADD: We expect to receive the requested school records at least within **10 days** as required by Connecticut State Regulations 10-76d-18(b)(2).] They can be mailed to my attention to XXXX If you have any questions, please do not hesitate to contact me at XXXX.

Very truly yours,

xxx Esq.

Cc: [PARENT] [IF STUDENT IS SPECIAL EDUCATION, THEN ALSO COPY DIRECTOR OF PUPIL PERSONNEL SERVICES/SPECIAL EDUCATION FOR THE DISTRICT]

Enc: Release

VIA FACSIMILE ONLY

DATE

Attorney XXX Xxx Street Xxxx, CT 06----

Re: Student Name, DOB Xxxx Public Schools

Dear Attorney xxx:

This office has been retained to represent XXXXXX, a third grade student at xxx School, xxxx Public Schools, at his expulsion hearing. It is my understanding that an expulsion hearing is already scheduled for tomorrow, Thursday, May 22, 2008 at 3:30 p.m. I am not available at that time and am writing to request a postponement of the hearing. Please contact me at xxx, to reschedule the hearing at a mutually convenient time.

In addition, we are sending the enclosed letter to xxxx, Director of Special Education, requesting a PPT meeting. We hope the Board will agree to postpone the hearing as requested in our letter.

Thank you for your consideration.

Sincerely,

xxx Attorney at Law

Enc (1)

VIA FACSIMILE

DATE

Director of Special Education And Student Services Xxx Street xxx, CT 06---

Re: Student Name, DOB

Dear Ms. xxx:

On behalf of XXXXX and her son, XXXXXXXX, and pursuant to State Regulations §10-76d-7, I am requesting that a Referral Planning and Placement Team (PPT) meeting be scheduled as soon as possible to discuss social and emotional issues related to XXXXXXX's education.

XXXXXX is a nine year old, third grade student at xxx School. An expulsion hearing is scheduled for tomorrow, xxx, 2008 at xx p.m. Because Ms. XXXXXXX asked the principal for a PPT meeting prior to the alleged incident which prompted the expulsion hearing, I am asking that the hearing be postponed until after a PPT meeting can be conducted. XXXXXXX has mental health issues that should be taken into account and it needs to be determined whether the alleged incident has anything to do with his disabilities.

I am requesting that any evaluations necessary in order to determine XXXXXX's eligibility for special education and/or Section 504 services be conducted expeditiously. If it is determined that XXXXXX meets the eligibility criteria for special education and/or Section 504 services, we expect that this program will be implemented within 45 days of the parent's initial request for a PPT meeting.

Based on the foregoing, I am asking that the expulsion hearing scheduled for xxx, 2008 be postponed pending the results of evaluations.

Sincerely,

Attorney at Law

cc: Attorney xxx Enc: Release

VIA FAX AND MAIL

DATE

Dr. xxx, Superintendent xx Board of Education xxxAvenue xxx, CT 06--Fax:

RE: XXXXXXX, Dob xxxx

Dear Dr. xxx,

Please be advised that Ms. XXXXX has contacted me regarding the free appropriate public education of her daughter, XXXXX, and the pending recommendation for her expulsion.

This letter is to request that xxx Schools follow proper procedures pursuant to federal and state law and postpone the expulsion hearing currently scheduled for Wednesday, May 4, 2005 until a Placement and Planning Team (PPT) meeting is properly convened to determine XXXX's eligibility for special education.

According to the federal Individuals with Disabilities in Education Act (IDEA) and corresponding state law, when a child with a disability has been recommended for expulsion, the local education agency (LEA) must first determine whether the alleged conduct was a manifestation of the child's disability. In cases involving children not yet identified as having a disability, a parent has the right to assert the same procedural protections prior to the district taking disciplinary action, such as expulsion, if the LEA "had knowledge" that the child had a disability prior to the occurrence of the behavior in question. 20 U.S.C. § 1415(k)(5); 34 C.F.R. § 300.527. The LEA is deemed to have knowledge of a child's disability if, prior to the behavior underlying the disciplinary action, 1) the parent expresses a concern in writing to the child's teacher or school supervisory or administrative staff that the child may be in need of special education services, 2) the parent requested an evaluation of the child for purposes of referral for special education services, or 3) the teacher of the child, or other school personnel, has expressed specific concerns about a pattern of behavior to the director of special education or other supervisory personnel. 20 U.S.C. 1415(k)(5)(B); 34 C.F.R. §§ 300.527(b)(1)&(2). Under these circumstances, prior to proceeding with an expulsion hearing, the LEA is required to convene a PPT meeting to determine the child's eligibility for special education, to conduct expedited evaluations if necessary, and, if the child is eligible, to determine whether the alleged conduct was a manifestation of the child's disability. 20 U.S.C. § 1415(k)(5)(A); 34 C.F.R. §§ 300.523-24 & 300.527.

Here, XXXX was diagnosed with clinical depression following a suicide attempt on xxx,

20---..¹ XXXX was treated at xxx Hospital, and then admitted to xxx Hospital where she received in-patient treatment from March 7, 2005 through March 15, 2005. xxx Hospital discharged XXXX with a prescription for Prozac and referred her to an out-patient program, the start of which was delayed approximately five (5) weeks due to insurance complications.² In the meantime, XXXX returned to xx Public Schools following a re-entry meeting on March 21, 2005. Upon XXXX's return to school, the school psychologist and the school guidance counselor were fully informed by Ms. XXXX of XXXX's diagnosis and pending treatment, and as a result, modified XXXX's school schedule. On either April 6, 2005 or April 7, 2005, Ms. XXXX spoke with the school psychologist and the school guidance counselor, and inquired about special education services for XXXX. Ms. XXXX's request, however, was dismissed without convening a PPT meeting to consider her eligibility and/or the need for further evaluation.³ In addition, XXXX's school performance has significantly deteriorated since the first marking period of this year.

Therefore, because school personnel were informed of XXXX's diagnosis of depression,⁴ because Ms. XXXX inquired about XXXX's eligibility for special education services,⁵ and because both XXXX's performance (deteriorating grades) and behavior (suicide attempt) demonstrated the possible need for these services, the LEA had knowledge of XXXX's disability prior to the alleged April 11, 2005 behavior that is the subject of the expulsion hearing. Under these circumstances, the school district, prior to proceeding with an expulsion hearing, is required by state and federal law to determine XXXX's eligibility for special education, to conduct evaluations if necessary, and, if XXXX is found to be eligible, to determine whether the alleged conduct was a manifestation of her disability.

If you have any questions or concerns regarding the above, I can be reached at (203) 348-9216 ext. 103. Thank you for your cooperation on this matter.

Very truly yours,

Attorney

Cc:xxxx

¹<u>See</u> letter of xxx, 20--5 from XXXX, M.D. attached hereto as Exhibit A. XXXX has suffered several traumatic experiences in the past year and a half.

² XXXX was on waitlists for the out-patient programs at xxx Hospital and xxx Hospital, and was finally enrolled in the xxx out-patient program on April 22, 2005 upon resolution of the insurance issues.

³ Under applicable state law, the board of education is required to accept and process a referral from a child's parent in order to determine the child's eligibility for special education and related services. Conn. Agencies Regs. § 10-76d-7; see also 34 C.F.R. § 300.125 ("child find" requirements).

⁴ Pursuant to 34 C.F.R. §§ 300.7(4) & (9), depression is considered a disability.

⁵ Although Ms. XXXX's request was not in writing, she clearly expressed a concern that XXXX may be in need of special education services.

MOTION FOR STAY

The minor child, XXXXXXXXXX, and his mother, XXXXXXX, by their undersigned attorney, hereby respectfully move for a stay of the expulsion hearing which is scheduled for today, xxx, 2009, until a determination is made pursuant to the Individuals with Disabilities Education Act as to whether this child is a child with a disability and, if so, whether the child=s behavior as alleged by the Board was a manifestation of his disability.

In support of this motion, the child and his parent represent:

1. The child is 16 years old and a 10thgrade student at xxxx High School in xxx.

2. During the current academic year, the child has been suspended out of school five (5) times for a total of forty-one (41) days.

3. In addition, the child has struggled academically receiving failing grades in

4. On xx, 2009, at an Attendance Hearing, Ms. XXXXXXXXXX requested that the school evaluate her son given his academic and behavioral concerns. She also informed the school that XXXXXXX had been diagnosed with Depression. Her request for evaluations was denied.

5. Based on the child=s pervasive behavioral problems and academic difficulties as documented by the school, the Board should be deemed to have knowledge that this child is a child with a disability, pursuant to 20 U.S.C. ' 1415(k)(5), thus giving rise to the procedural protections afforded disabled children. 6. Pursuant to 20 U.S.C. ' 1415(k), the child should be evaluated on an expedited basis, and a Planning and Placement Team should then determine whether or not the child has a disability which manifested itself in the alleged behavior, prior to the commencement of this expulsion hearing.

WHEREFORE, the child and his parent/guardian request a stay of the expulsion hearing.

BY:_____

<u>ORDER</u>

The foregoing having been presented to and heard by this officer, it is hereby ORDERED:

Hearing Officer

CERTIFICATION

This is to certify that on the xxth day of xx, 2009, a copy of the foregoing was faxed and hand-delivered to Principal xxx, xxx Road, xx, CT 06-- (fax: xxx) and faxed to xxx High School xm (fax: xxx).

Commissioner of Superior Court

Public Schools

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NOTICE OF EXPULSION HEARING FORM



January 10, 2018



Dear Parent:

Please be informed that the Superintendent of Schools has requested that the **Manual Plant** Board of Education schedule a hearing for the purpose of considering the expulsion of **Constant Plant** from the **Manual Plant** Public Schools for a period of up to one (1) calendar year.

In this regard, a hearing has been rescheduled for <u>January 26, 2018</u> 1:30 p.m. At the <u>Offices of the second second of Education</u>.

Connecticut. This hearing is being held pursuant to Section 10-233d of the Connecticut General Statutes and in accordance with the requirements for a formal hearing as enumerated in Section 4-176e to 4-180a and Section 4-181a of the Connecticut General Statutes.

The reason for the request for an expulsion hearing involves an incident on in which **Compared** was found to allegedly have committed harassment on a student which is in violation of school rules and regulations. By his behavior on **Compared to the state of the sta**

disruption to the educational process.

You are hereby requested to attend this hearing. You will have an opportunity to speak and to present relevant testimony and other evidence at the hearing. You may be represented by an attorney if you so desire. Attached you will find information regarding Pro Bono School Expulsion Project (Legal Assistance). If you will be represented by an attorney, please contact my office at the second s

Please be advised that if a student expelled from school is under the age of sixteen (16) years, or if the student requires special education services, the Board will supply an alternative educational opportunity during the period of expulsion. However, if the student is between the

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ages of sixteen (16) and eighteen (18) years of age and is expelled for certain offenses which endanger persons, such as possession of a firearm, deadly weapon, dangerous instrument or martial arts weapon on school grounds or at a school-sponsored activity, or offering a controlled substance for sale or distribution on school grounds or at a school sponsored activity, the Board is not required to provide the student with an alternative educational opportunity during the period of expulsion. The Board is not required to provide an alternative educational opportunity for most students over the age of eighteen (18) years, or for students between the ages of sixteen (16) and eighteen (18) years of age who have previously been expelled from school.

If, due to extenuating circumstances, it becomes necessary for you to request postponement of this hearing, please notify us as soon as possible **approximately** allow for consideration of your request for postponement. If you do not provide reasonable notice to my office that you are requesting postponement or do not present a good reason for the request, the hearing may proceed in your absence.

If you require a translator, please contact my office at **the second sec**

Thank you for your attention to this matter.

Sincerely,

Department of Student Services

Attachment:

Superintendent of XXXXX

DATE

Dear Ms. XXXX

Enclosed, please find the Impartial Hearing Officer's expulsion decision for XXXX.

Based on this decision, XXXX will be expelled from:

Thursday, February 18, 20xx to Wednesday, June 8, xx

XXXX may return to school on First Day of School August 20xx.

XXXX may not attend his/her regular school during the time of his expulsions. Also, he/she is not allowed on any XXXX grounds and/or activities, events, or functions, such as field trips, sports events or competitions, school performances or dances, prom, graduation, etc.

Your child may attend the XXXX Program (XXXX Public Schools alternative education program) during the period of his/her expulsion. In order for him/her to attend the XXXX Program, the parent and the student must appear in person to register at XXXX.

If your child receives special education services or has a 504 Plan, his/her regular school will contact you to schedule a PPT or 504 meeting as soon as possible. Pending the PPT placement decision, you can have

XXXXX register for and attend the XXXX Program (XXXX alternative education program).

Enclosed, you will also find the Early Readmission Guidelines which may entitle your child to cut the length of his/her expulsion in half and return early to his/her home school.

For additional information or questions regarding the XXX Program or the Early Readmission Guidelines, please call 860-695-8960.

Sincerely,

XXXX

STIPULATED AGREEMENT

XXXX, Superintendent of the XXXX ("the District") and XXXX, the mother of XXXX, and XXXX, (the "Student") a student enrolled at XXXX, referred to collectively as "the parties," agree as follows with respect to the Superintendent's request that the Student be expelled from school:

A. Stipulation as to the Facts

The parties agree to the following facts:

On November X, 2017, an incident occurred where Student engaged in behavior that violated a publicized policy of the school and disrupted the educational process.

B. Stipulation Regarding the Expulsion Recommendation:

Subject to the approval of the Board-appointed Hearing Officer, the parties make the following recommendation regarding the expulsion of the Student:

- The Student shall be expelled from school for 15 school days, effective February X, 2018 through March X, 2018 (the "period of expulsion"). The Student shall be allowed to return to school on March X, 2018. For every day that school is cancelled, the Student's date of return shall be pushed back by one day.
 - a. During the period of expulsion, the Board will provide the Student with an alternative educational opportunity (AEO). The AEO will be in the form of 10 hours per week of one-to-one tutoring for the Student. The school will provide the tutor with school work so that the Student may keep current with his classes during the period of expulsion.
 - b. The District agrees to proceed with evaluations as agreed to at a placement and planning team (PPT) meeting on January X, 2018. As soon as those evaluations are completed, the District will reconvene the PPT to determine the Student's eligibility under the Individuals with Disabilities in Education Act (IDEA). If the Student is not eligible for special education services under the IDEA, the District will convene a Section 504 meeting to discuss an accommodations plan for the Student.
 - c. During the period of expulsion, the Student will not be permitted to be in the buildings or on the grounds of XXXX or at any school-sponsored activity, whether held on or off school grounds, with the exception of his participation in the alternative educational opportunity and the evaluations described above.
- 2. All parties to the Agreement request that the Agreement be presented to the designated Hearing Officer for consideration, in lieu of the submission of any other evidence by the Superintendent and/or his designee or the Student, his representatives, or his mother. The Student and his mother enter into this Agreement voluntarily and willing. All parties understand that the Hearing Officer may accept

or reject this Agreement. If the Hearing Officer rejects this agreement, the student shall have the opportunity to have a full expulsion hearing in order to be able to offer and refute evidence in this case.

- 3. Upon approval by the Hearing Officer of this Stipulated Agreement, the Student and his mother agree to withdraw the pending due process hearing and 504 hearing without prejudice.
- 4. The parties agree that this expulsion shall be expunged from the Student's record no later than June 30, 2018.

Principal	Date	
Superintendent	Date	
Parent/Guardian of Student	Date	
Student	Date	

Probationary Stipulation Language

1. The Board shall not convene an expulsion hearing in connection with a disciplinary incident involving the Student at XXXX High School on January X, 2016. However, the Student shall not be permitted in the buildings or on the grounds of the XXXX Public Schools for the remainder of the 22014-2015 school year.

2. For the remainder of the 2014-2015 school year, the Student shall be provided with 10 hours of tutoring per week. ("the tutoring program")

3. Upon the Student's return to the XXXX Public Schools at the beginning of the 2016-2015 school year, her attendance shall be on a probationary basis. If, in the sole discretion of the Administration, the Student commits any suspendible offenses pursuant to the Code of Conduct between the date of her return to the XXXX Public Schools and January X, 2015, the Student shall return to the tutoring program until January X, 2015, and shall not be permitted in the buildings or on the grounds of the XXXX Public Schools until January X, 2015.

4. If, in the sole discretion of the Administration, the Student commits any expellable offenses pursuant to the Code of Conduct between the date of her return to the XXXX Public Schools and January X, 2015, the District shall have two options, to be exercised in its discretion. First, the district shall have the option of pursuing an expulsion hearing in connection with this offense, subject to any rights the Student may have pursuant to Section 504 or the IDEA at the time of the offense. Second, in the alternative, the district may require the Student to return to the tutoring program until January X, 2015, and to be barred from the buildings and the grounds of the XXXX Public Schools until January X, 2015.

District Policies

Student discipline policies and parent/student handbooks are typically available on school district's website.

Discipline polices are often located under Board of Education headers, under "Policies" tab, "Students" section.

Parent/student handbooks are often found under a "Parents" header.

See, e.g.,

o <u>https://www.easthartford.org/page.cfm?p=12230</u>

https://www.easthartford.org/page.cfm?p=11727

 http://www.enfieldschools.org/UserFiles/Server_899572/File/5131%20Student%20Discipline%20-%2006-28-16.pdf

https://enfieldhigh.sharpschool.com/about_ehs/student_handbook

- http://cdn.fairfieldschools.org/boe/policies/5000/5114%20-%20Students%20Suspension%20and%20Expulsion%20Repl%205119%20May%2017%202016.pdf
 http://fairfieldschools.org/schools/flhs/content/uploads/2013/10/FLHS-Stu-Prnt-Hndbook-2013-14-FINAL-7-31-131.pdf
- <u>https://www.hartfordschools.org/wp-content/uploads/2018/01/5000_Series_Students_Up-dated_01232018.pdf</u>

SCHOOL EXPULSION HEARINGS: THE NUTS & BOLTS

September 20, 2018 @ Connecticut Bar Association Prepared by Connecticut Legal Services, Greater Hartford Legal Aid & New Haven Legal Assistance

What is an Expulsion?

 Exclusion from school & school privileges for more than 10 consecutive school days up to one calendar year.

 The exclusion includes all activities within the entire school district.

• C.G.S. § 10-233d

Framework for Expulsion

Administrative Hearing

- CTUAPA, C.G.S. §§ 4-166, 4-176e to 4-180a and 4-181a
- C.G.S. § 10-233d(3)
- Decision maker
 - Impartial Hearing Officer OR
 - Board of Education members

Framework: Participants' Roles

- Unbiased decision maker is full or partial Board of Education or its designated hearing officer
- Administration is responsible for "prosecuting" the expulsion
- Student is respondent

Framework

- Style conference, hearing
- Bifurcated hearing
 - Adjudication: was an expellable offense committed?
 - Disposition: will the student be expelled & for how long?
- Exhibits
- Witnesses
- Record

Framework - Appeal

- No automatic right to appeal
- <u>Constitutional violation</u> is *only* entry into court

Expulsion – Statutory Analysis

Discretionary v. Mandatory

- Discretionary C.G.S.§10-233d(a)(1): grades 3-12
 - Student engaged in conduct that:
 - May result in a recommendation for expulsion
 - May be cause for expulsion
- Mandatory C.G.S.§10-233d(a)(2): grades K-12
 - Student engaged in conduct that:
 - · Must result in a referral to a hearing and
 - Must require a recommendation for a full year expulsion

Expulsion – DISCRETIONARY

- <u>On school grounds</u> or at a school-sponsored activity student engaged in conduct that is:
 - (1) violative of a publicized school policy
 - (2) seriously disruptive of the educational process OR
 - (3) endangers persons or property
- <u>Off school grounds student engaged in</u> conduct that is:
 - (1) violative of publicized school policy <u>AND</u>
 - (2) seriously disruptive of the educational process

Violative of School Policy

- Check Student Handbook (online)
- Check BOE Discipline Code (online)
- Policies must be disclosed annually

Seriously disruptive to the educational process

For on-school grounds or at schoolsponsored activity:

"could be any activity that causes a serious disorder, confusion, interruption or impediment to the operation of a class, study hall, library, assembly, program or other gathering involving pupils or staff."

Guidelines for In-School and Out-of-School Suspensions, revised December 2010, CT SDE, https://portal.ct.gov/-/media/SDE/Press-Room/Files/In_School_Suspension_Guidance.pdf

Seriously disruptive....

- Considerations for off-school behaviors:
 - Proximity to school
 - Other students from school involved
 - Gang involvement
 - Conduct involved violence, threats of violence or unlawful use of weapon and whether any injuries occurred
 - Involved use of alcohol

*Violation of school policy alone off-school grounds not enough to show seriously disruptive. See, Packer v. BOE of Thomaston, 246 Conn. 89 (1998) *

Repeated disruptive acts

- Each need not be serious in nature
- BUT "recurring or cumulative disruptive acts by the same pupil may rise to the level of requiring the application of additional weight. After deliberation, a determination of a serious disruption by the administration may be found."
- "The following factors should be considered when applying additional weight:
 - • frequency of the same offense;
 - • number of different offenses; and
 - • intensity of any or all offenses."

Guidelines for In-School and Out-of-School Suspensions, revised December 2010, CT SDE, https://portal.ct.gov/-/media/SDE/Press-Room/Files/In_School_Suspension_Guidance.pdf

Threats/Cyber threats

- 1st Amendment implications
- Student speech may not be suppressed unless speech will "materially and substantially disrupt the work and discipline of the school."
 - <u>Tinker v. Des Moines Indep. Ctny Sch. Dist.</u>, 393 U.S. 504 (1969)
- Threat of school violence or expressive conduct that impends violence likely to be "seriously disruptive of educational process"
 - See, e.g., <u>Wynar v. Douglas Cty Sch. Dist.</u>, 728 F.3d 1062 (9th Cir. 2013), <u>Diariano v. Morgan Hill Unif. Sch.</u> <u>Dist.</u>, 745 F.3d 354 (9th Cir. 2014)

Endangerment to Persons or Property

- "Any activity that exposes a pupil or property to damage or injury, peril, risk, hazard or any harmful situation."
- "For example, fighting resulting in serious injuries, possession of weapons or controlled substances, sexual harassment, bullying or damage to personal property could be considered endangering activities."

Guidelines for In-School and Out-of-School Suspensions, revised December 2010, CT SDE, https://portal.ct.gov/-/media/SDE/Press-Room/Files/In_School_Suspension_Guidance.pdf

Expulsion – MANDATORY PROCEEDINGS

- When <u>on school grounds or at a school</u> <u>sponsored activity</u>, a student:
 - Possessed a firearm, deadly weapon, dangerous instrument or martial arts weapon
 - When off school grounds, a student:
 - Possessed a firearm without a permit,
 - Possessed and used firearm, weapon or instrument in commission of crime
"Firearms"

- C.G.S. § 29-27: "Pistol" and "revolver" defined. The term "pistol" and the term "revolver", as used in sections 29-28 to 29-38, inclusive, mean any firearm having a barrel less than twelve inches in length
- C.G.S. § 53a-3 (19): "Firearm" means any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded from which a shot may be discharged
- 18 U.S.C. § 921: "Firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm, muffler, or firearm silences; or (D) any destructive device. Such term does not include an antique firearm.

"Weapons"

C.G.S. § 29-38:

The word "weapon", as used in this section, means any BB gun, any blackjack, any metal or brass knuckles, any police baton or nightstick, any dirk knife or switch knife, any knife having an automatic spring release device by which a blade is released from the handle, having a blade of over one and one-half inches in length, any stiletto, any knife the edged portion of the blade of which is four inches or more in length, any martial arts weapon or electronic defense weapon, as defined in section 53a-3, or any other dangerous or deadly weapon or instrument.

"Electronic Defense Weapon"

C.G.S. § 53a-3(20):

"Electronic defense weapon" means a weapon which by electronic impulse or current is capable of immobilizing a person temporarily, but is not capable of inflicting death or serious physical injury, including a stun gun or other conductive energy device

"Dangerous Instrument"

C.G.S. § 53a-3 (7):

"Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury, and includes a "vehicle" as that term is defined in this section and includes a dog that has been commanded to attack....

"Deadly Weapon"

C.G.S. § 53a-3(6):

"Deadly weapon" means any weapon, whether loaded or unloaded, from which a shot may be discharged, or a switchblade knife, gravity knife, billy, blackjack, bludgeon, or metal knuckles

Martial Arts Weapon

C.G.S. § 53a-3(21):

"Martial arts weapon" means a nunchaku, kama, kasari-fundo, octagon sai, tonfa or chinese star

Injury Definitions

C.G.S. § 53a-3:

- (3) "Physical injury" means impairment of physical condition or pain
- (4) "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ
- (5) "Deadly physical force" means physical force which can be reasonably expected to cause death or serious physical injury

Expulsion: Mandatory proceedings - Drugs

On or off school grounds:

 Offered for sale or distribution a controlled substance

Controlled Substances

C.G.S. § 21a-240(9):

"Controlled substance" means a drug, substance, or immediate precursor in schedules I to V, inclusive, of the Connecticut controlled substance scheduling regulations adopted pursuant to section § 21a-243

Expulsion – Pre-School Age

For preschool students:

- <u>Mandatory expulsion</u> for possession of firearm on or school grounds or at preschool sponsored event
- <u>No discretionary</u> expulsion

Expulsion – Consequences

- Discretionary offenses
 - Any period up to 1 calendar year
- Mandatory offenses
 - One calendar year, BUT
 - Period may be modified on case-by-case basis

C.G.S. § 10-233d(a)(2)

Expulsion – Statutory Analysis

<u>Consequences</u>, cont'd.

- For student expelled for first time and who has never been suspended before, Board may shorten or waive expulsion period & offer "Board-specified program"
- Decision-maker may consider evidence of prior discipline, or lack thereof, in deciding length of expulsion period

Due Process

Due Process Rights

Written Notice at least five business days before the hearing, including:

- Statement of time and place of hearing
- Statement of legal authority under which hearing is held
- Reference to statutes and regulations involved
- Short, plain statement of the matters asserted
- Information concerning both the availability of free or reduced rate legal services and how to access

CTUAPA § 4-177(b); C.G.S. § 10-233d(a)(3)

Due Process Rights, cont'd.

- Right to be represented by counsel
- Right to request a continuance of up to one week
- Right to inspect and copy relevant and material records, paper, and documents
- Right to have a record of the hearingstenographic or tape recording
- At the hearing, afforded the opportunity to:
 - Respond, present evidence & argument
 - Cross-examine other parties, intervenors and witnesses presented by administration

Preparing Your Case



Meeting with Client and Parent/Guardian

- Interview client and parent/guardian about the incident
 - Any witnesses to incident, including codefendants?
 - Have there been any admissions or statements made by the student?
 - Any news coverage of the incident?
 - Copy any papers/documents from family
- Meet with student alone

Meeting with Client and Parent/Guardian, cont'd.

- Additional Questions for Family
 - Any character witnesses?
 - Other agencies involved with family?
 - Public Defender?
- Sign releases
- Advise about the hearing process

Joint Representation

In representing both the parent/legal guardians AND the child/student, consider:

Rule 1.7. Conflict of Interest: Current Clients

RPC 1.7

(a) Except as provided in subsection (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

*see also Commentary & Rule 1.0 on "Informed Consent.

RPC 1.7

(b) Notwithstanding the existence of a concurrent conflict of interest under subsection (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another

client represented by the lawyer in the same litigation or the same proceeding before any tribunal;

and

(4) each affected client gives informed consent, confirmed in writing.

Initial contact with School District

- Notify District that you represent student
 - Request continuance of hearing if necessary
- Request Records both expulsion record <u>and</u> entire school record
- Request copy of student handbook and copy of Board policy concerning discipline (or access on district website)

Other Sources of Information

- Police Reports
- Mental Health Records
- Probation
- Juvenile Review Board

Review Expulsion Record

- Expulsion record should include:
 - Letters of suspension and recommendation for expulsion
 - Information about the incident, including
 - Memos/documents regarding administration's investigation of the incident
 - Written statements of school personnel who witnessed incident
 - Written statements provided by other students
 - Past Discipline History, Grades and Attendance

Compliance with Procedural Safeguards

- Notice of suspension for this incident?
- Notice of expulsion hearing to parents/guardians at least 5 business days before hearing?
- What violations are claimed?
- Is the violation an expellable offense under Board policies?

See, <u>DeJesus v. Penberthy</u>, 344 F. Supp. 70 (D. Conn.1972) (expelling for reason not listed in notice violates due process for lack of notice, and lack of opportunity to defend at hearing)

Screen for Potential Special Education Issues

- Does the student's record show:
 - Repeated suspensions or other discipline
 - Multiple absences/truancy
 - Poor academic performance

Prepare for Hearing

- Meet with client
 - Review case and possible outcomes
 - Discuss possible settlement
- Contact other witnesses
- Contact character witnesses
 - Available to testify?
 - Provide notarized statement?

Prepare for Hearing, cont'd.

- Contact Public Defender
 - Discuss ramifications of student testifying in expulsion

SETTLEMENT?

Settlement Considerations

- Discussion with Public Defender if pending criminal matter
- Special education issues
- Restorative practices <u>with</u> Student:
 - What happened?
 - What does student need?
 - What has student learned?
 - How can damage be repaired?

The Hearing



The Hearing

Know who will adjudicate:

- Hearing Officer OR
 Subcommittee of the Board of
- Education

Decision-maker's Responsibilities

- Be impartial
- Complete Adjudicatory phase before Dispositive phase
 - Permitted to have either a bifurcated or unified hearing
 - Adjudication
 - Did student do acts accused of?
 - Were these acts an expellable offense?

Administration's Responsibility

Must prove:

- Proper notice was provided
 - Alleged act was expellable offense
 - Hearing
- Student committed expellable offense
- Student should be expelled for recommended period if decision-maker finds expellable offense was committed

Student's Role

If possible, demonstrate:

- No notice
 - Either that action was expellable offense or
 - Actual notice of hearing in compliance with statute and/or Board's policy
- Action was not an expellable offense
- Lesser penalty should be imposed
 - Mitigating circumstances
 - Request restorative practices

Evidentiary issues

- "Trustworthy," "reliable" and "probative" hearsay admissible, but cannot be sole evidence
 - <u>DeJesus v. Penberthy</u>, 344 F. Supp. 70 (D. Conn. 1972)
 - <u>Carlson v. Kozlowski</u>, 172 Conn. 263 (1977)
 - <u>Balbi v. Ridgefield Public Schools</u>, 2000 WL 122 8690 (Conn. Super. 2000)
- No right to confront student witnesses
 - <u>E.K. v. Stamford Bd. of Educ</u>., 557 F. Supp. 2d 272 (D. Conn. 2007)

Search & Seizure:

- 4th Amendment applies to school searches by school administrators
- "reasonable cause" needed:
 - Reasonable at its inception (believed it will produce evidence that school rule or law has been violated)
 - Scope of search reasonably related to purpose of search & not excessively intrusive
 - Student's age
 - Student's sex
 - Nature of infraction

New Jersey v. T.L.O., 469 U.S. 325 (1985)

Generalized searches permissible under 4th Amendment

- Students' expectations of privacy limited
- <u>Thompson v. Carthage Sch.Dist. et al.</u>, 87
 F.3d. 979 (1996) (metal detectors)
- <u>Burbank et al. v. Canton Bd. of Educ</u>. (unpublished), 109 LRP 67733 (2009) (dog sweeps of school parking lots and school lockers for drugs

- May confiscate cell phones per school policy, but SEARCH of cell phones:
 - Unsettled in 2d Circuit
 - 6th Cir. determined search should be "substantially or temporally" related to the infraction: <u>G.C.v.</u> <u>Owensboro Public Sch</u>., 711 F.3d 623 (6th Cir. 2013)
 - <u>Klump v. Nazareth Area Sch. Dist.</u>, 425 F. Supp. 2d 622 (E.D. Pa. 2006) (can confiscate phone but can only search if reasonable suspicion of violating school policy or law)

See also, <u>Riley v. California</u>, 134 S. Ct. 2473 (2014) (police must obtain warrant to search data on cell phone confiscated incident to an arrest)

Video & Written Evidence involving other students:

- If video or written statements are "directly related" to student and maintained as part of school administration's disciplinary file, parent has right to inspect, review or "be informed of" video/security surveillance or written statements of their child alone (with use of blurring faces, redaction) under FERPA unless:
 - "information about other student or students cannot be segregated and redacted without destroying its meaning."

Letter to Wachter, December 7, 2017 (involving hazing incident with several students)

If Student is Expelled

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Right to Alternative Education

- Any expelled student under age 16 is entitled to an alternative educational opportunity
- Any student, expelled for the first time, aged 16 to 18 wishing to continue education shall be offered an alternative educational opportunity
 - A district has the right to place a student at least 17 years of age in an adult education program

No Right to Alternative Education

- 16 or over and expelled more than once
 * Unless student is special education student
- Even if district is not required to provide alternative educational opportunity, they have the authority to provide it if they want –always ask!

Alternative Education for Special Education Students

Expelled special education students must receive:

- "Modified FAPE"
- Setting must be determined by the PPT
- Setting/program offered must enable the student to continue making progress on IEP

Children sent to Juvenile Detention

 If a student who committed an expellable offense seeks to return to school after having been in a juvenile detention center, the CJS or any other residential placement & such student has not been expelled by the local BOE for the offense, the local BOE shall allow such student to return & may NOT expel the student for additional time for such offense.

C.G.S. § 10-233d (/) (1)

Other Considerations

- Expungement
- Early readmission
- If student moves to different town
- Can refer for special education during expulsion period

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Expungement

- Expulsion and conduct are included on cumulative record
- All expulsions shall be expunded upon graduation from high school, except for expulsions for firearm or deadly weapons in grades 9-12
- May be expunded before graduation under limited circumstances with board approval

C.G.S. § 10-233d (f)

Early Re-admission

C.G.S. § 10-233d:

"(j) An expelled pupil may apply for early readmission to school. Except as provided in this subsection, such readmission shall be at the discretion of the local or regional board of education. The board of education may delegate authority for readmission decisions to the superintendent of schools for the school district. If the board delegates such authority, readmission shall be at the discretion of the superintendent. Readmission decisions shall not be subject to appeal to Superior Court. The board or superintendent, as appropriate, may condition such readmission on specified criteria."

Changing Districts/Withdrawing

After hearing and decision:

- Receiving district may adopt prior district's expulsion decision, but must hold a hearing to determine whether the conduct would also warrant expulsion under their policies
- Student is excluded from school pending such hearing
- Receiving district must provide alternative educational opportunity

C.G.S. §10-233d (g)

Changing Districts/Withdrawing, cont'd.

Withdrawal after notification of hearing, but before hearing completed:

- Notice of pending expulsion hearing included in cumulative education records AND
- Board shall complete expulsion hearing and render a decision

Enrollment in another school district while hearing pending:

- Student shall not be excluded from school pending completion of the hearing unless an emergency exists
- Receiving district has authority to suspend student or conduct own expulsion hearing

C.G.S. §10-233d (h)

Rights of Children with Disabilities



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All Students

Students with disabilities (who do not need special services)

SECTION 504

IDEA

What is Special Education?

- Individuals with Disabilities Education Act
- Specially designed instruction, at no cost to the parents, to meet the unique needs of a child identified as having a disability and needing specially designed instruction to address the problems with learning that are result of disability

Discipline and Special Education

Special education (IDEA) students may be suspended, but are entitled to significant discipline protections not available to regular education students.

Manifestation PPT

A "manifestation determination" is required when a student with a disability is subject to a disciplinary change in placement. It must occur within *10 days* of the decision to change the placement. The PPT Team shall determine if the conduct:

- was caused by, or had a direct and substantial relationship to, the child's disability; or
- was the direct result of the local educational agency's failure to implement the IEP

20 U.S.C. §1415(k)(1)(E), 34 C.F.R. §300.530(e), See C.G.S. §10-233d(i)

What happens if the Behavior is a Manifestation?

- If behavior is a manifestation of a disability, the student may not be expelled!
- BUT the district has the right to place the student in a 45 day Interim Alternative Educational Setting (IAES) when:
 - Behavior involves bringing or having a weapon or drugs, on school premises or a school function or
 - Inflicting serious bodily harm while on school premises or at a school function

34 C.F.R. §300.530(g)

Outcome of manifestation PPT

Conduct is manifestation

Complete a Functional Behavioral Assessment and implement a Behavioral Intervention Plan BIP; OR Review BIP and modify it to address the behavior

Return child to placement, unless parents and district agree on change placement or district moves to interim alternative setting

Conduct is NOT manifestation

District may move forward with expulsion hearing

If expelled the alternative educational opportunity for services must be determined by the PPT and district must enable the student to continue making progress on IEP

34 CFR § 300.530

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Expedited Due Process Hearing

- Parent who disagrees with Manifestation Determination may request an Expedited Due Process Hearing
- EDPH within 20 school days of the date the complaint requesting the hearing
- Hearing decision within 10 school days after the hearing

34 C.F.R. § 300.532

What if the Child has Special Needs but is not "Identified" as eligible?"

A child not yet determined eligible for special education may assert rights under IDEA if the school district had knowledge that the child was a child with a disability **before** the behavior that precipitated the disciplinary action occurred.

34 C.F.R. § 300.534(a)

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What if the Child has Special Needs but is not "Identified?"

District Deemed to have Knowledge when:

- the parent of the child has expressed concern in writing to supervisory/administrative personnel or a teacher of the child, that the child is in need of special education and related services;
- the parent of the child has requested an evaluation of the child; or
- the teacher of the child, or other personnel within the school district, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education or to other supervisory personnel of the district.

34 C.F.R. § 300.534(b)

What if the Child has Special Needs but is not "Identified?"

- Exception—A school district will not be deemed to know that the child is a child with a disability if
 - the parent has not allowed an evaluation of the child or
 - the parent has refused services under this part or
 - the child has been evaluated and it was determined that the child was not a child with a disability under this part.

34 C.F.R. § 300.534(c)

If no basis for knowledge of disability before disciplinary offense occurred...

- District may proceed with the proposed discipline
- Parents may request evaluation & district must expedite evaluation
- Until evaluation completed, child remains in school determined educational placement, including suspension or expulsion
- If then identified as eligible for special education, district must then supply special education services

34 C.F.R. § 300.534(d)(2)

What does Section 504 Require?

- Eligible for services if
 - "disability substantially limits one or more major life activities"
- Learning is a major life activity
- Must provide reasonable accommodations
- Must develop an accommodation plan

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"Manifestation Determination" for child eligible for 504

- Statute does not explicitly require that a "manifestation determination" meeting is held
- OCR interprets 504 regulation as requiring a MDR because an expulsion is a significant change in placement

34 CFR 104.35

See, e.g., Dunkin (MO) R-V Sch. Dist., 52 IDELR 138 (OCR 2009). *OCR Staff Memorandum*, 16 IDELR 491 (OCR 1989). *See also Greenville (TX) Indep. Sch. Dist.*, 113 LRP 27897 (OCR 04/11/13); *South Harrison County (MO) R-II Sch. Dist.*, 51 IDELR 110 (OCR 2008); and *S-1 v. Turlington*, 552 IDELR 267 (5th Cir. 1981).

If 504 student is expelled:

Educational services may be discontinued during the expulsion period if they would be discontinued for nondisabled students under similar circumstances.

OSEP Memorandum 95-16, 22 IDELR 531 (OSEP 1995).

Alternative Educational Opportunities For Students Who Have Been Expelled: Best Practice Guidelines for Program Implementation



Connecticut State Department of Education

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Alternative Educational Opportunities For Students Who Have Been Expelled: Best Practice Guidelines for Program Implementation

August 31, 2018

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Levy Gillespie Equal Employment Opportunity Director/Americans with Disabilities Act Coordinator Connecticut State Department of Education 450 Columbus Boulevard, Suite 607 Hartford, CT 06103 860-807-2071 Levy.Gillespie@ct.gov The expulsion of students from their school may be an indication that the students have intense educational needs. While students who are expelled do not have rights that exceed those of their peers in the traditional school setting, they may require more intensive supports to ensure their success and equitable access to a high-quality education. These *Best Practice Guidelines* provide a framework to support the implementation of high-quality programming for students placed in an existing alternative program or school or a different alternative educational opportunity created in accordance with Connecticut General Statutes (C.G.S.) Section 10-74j, under the *Standards for Educational Opportunities for Students Who Have Been Expelled (Standards)* and the *Guidelines for Alternative Education Settings* (C.G.S. Sections 10-74j and 10-74k).

Framework for Program Implementation

This framework for effective program implementation consists of eight indicators for best practices regarding the delivery of educational opportunities to students who have been expelled from their school and placed in alternative education settings. These best practices are described within the following categories: (1) Program Characteristics; (2) Academic and Instructional Supports; (3) Climate and Culture: Discipline, Behavior Management and School Safety; (4) Counseling and Support Services for Socio-Emotional and Life Skill Development; (5) Responsibilities and Training for Educators: Administration, Teachers and Staff; (6) Parent/Guardian and Family Engagement Practices; (7) Transition Planning and Support; and (8) Program Evaluation.¹

As a reminder, and as delineated in the Standards (see p. 4), the program being provided to students should align with each student's Individualized Learning Plan (ILP), which should be developed at the commencement of the student's placement. Consistent with the Standards, *The ILP will reference student records with information relevant to the provision of an alternative educational opportunity, such as a student success plan, Individualized Education Program (IEP) under special education, Section 504 Plan, Individualized Health Plan, and/or other academic and behavioral data... The ILP must address the following:*

- The student's academic and behavioral needs and appropriate academic and behavioral goals and interventions. Include the student's core classes at the time of expulsion and the student's current placement or progress in the curriculum of those classes so that the student has an opportunity to progress in the LEA's [Local Education Agency's] academic program and earn graduation credits, if applicable.
- Benchmarks to measure the progress towards goals and ultimately, progress towards graduation.

¹ For Exemplary Practices in Alternative Education: <u>National Alternative Education Association</u>

- Timing and method for reviewing the student's progress and for communicating that progress to the parent/guardian or student. For most students, monitoring and reviewing the student's progress will include monitoring the student's attendance, work completion and progress toward meeting the relevant academic standards for particular coursework, and thus progressing toward graduation, if applicable. Such progress must be communicated to the parent/guardian or student with the same frequency as similar progress for students in the regular school environment is reported and communicated to parents/guardians or students.
- Provision for the timely transfer of the student's records both from the student's school to the
 alternative educational opportunity provider, and also from the alternative educational
 opportunity provider to the student's school.
- The possibility of early readmission to the school from which the student was expelled and the early readmission criteria.

It is important to note that in the case of a student with an IEP, the planning and placement team (PPT) shall determine the appropriate services for the student during the period of expulsion, as well as the alternative educational setting, if necessary. The educational services shall enable the student to continue to participate in the general educational curriculum, although in another setting, and to progress toward meeting the goals contained in the student's IEP. The ILP and IEP should work together to meet the general educational and special education needs of students with disabilities who are eligible for special education.

1. Program Characteristics

Alternative educational opportunities that are designed to serve students who have been expelled should be designed in accordance with C.G.S. Sections 10-74j and 10-74k and demonstrate the following characteristics:

- A high-quality education that is provided in an emotionally safe, culturally responsive and physically safe environment.
 - The alternative education opportunity provides a student-focused perspective based on respect for who students are and the belief that all students can learn to make appropriate choices given the right instruction and climate. This is the foundation for the development of the ILP, which reflects high academic and behavioral expectations for students.
- Although placement is not necessarily a choice, students and their parents/guardians are active members of the planning and placement process and in the development of the ILP.
- Alternative education for students who have been expelled involves a full-time comprehensive experience comparable to what would be experienced at the sending school, which is unlikely to be fulfilled by a homebound or tutoring-only experience.
- High-quality alternative education occurs in a context of respectful, supportive, reciprocal relationships among the LEA leadership (superintendents and local boards of education), the alternative school administration and staff, as well as students and their families.

- Access to physical facilities or space that adequately accommodate students' needs, as well as those of staff. This includes the provision of adequate space to accommodate technology as a resource for students and educators and "privacy areas" for counseling and the delivery of community-based support services.
- As with all alternative learning environments, alternative education opportunities must be consistent with all local, state and federal laws and regulations regarding physical plant and environment.

2. Academic and Instructional Supports

During an expulsion, a student excluded from school should still have access to the curriculum. During the period of the expulsion, students who are on track for on-time graduation towards college and/or career readiness should be able to maintain their academic trajectory to the greatest degree possible. Conversely, students who are under-credited and/or academically underperforming should be able to accelerate their trajectory towards graduation and college and/or career readiness and receive more intensive educational supports. Academic expectations and goals of all students should be outlined in their ILP.

Alternative education settings should ensure that students' academic needs are being met through the implementation of a systematic and rigorous curriculum, high-quality instruction, appropriate digital and virtual systems, and a range of assessment and progress monitoring practices. These are outlined below.

Curriculum and Instruction

- All students should receive instruction based on a curriculum aligned to the Connecticut Core Standards (CCS).
- For students who are functioning below grade-level expectations, interventions to improve skills in identified areas of challenge should be implemented in the context of multi-tiered systems of support² with a focus in the area of literacy.
- Approaches, such as the frameworks for Mastery-Based Personalized Learning³, are encouraged due to the emphasis on the following:
 - o rigorous college and career learning competencies;
 - high-quality instruction;
 - $\circ~$ curriculum based on state content standards; and
 - o learning based on authentic experiences and application of critical knowledge.
- Instructional practices include cooperative learning, team building, and other group activities to
 encourage the development of personal/social behaviors important to the success of the
 community.

² For information on multi-tiered systems of support: <u>Multi-Tiered Systems of Support</u>

³ For CT's Mastery-Based Learning Guidelines: <u>Mastery-Based Guidelines</u>

Digital and Virtual Learning

When appropriate for the individual student, opportunities for blended learning⁴ and credit recovery⁵ through online learning platforms should be explored with considerations for the following:

- Course content should be rigorous and aligned to state and local standards, including the CCS, but is flexible, allowing instructors to customize with additional activities and content.
- Course content should be aligned to the curriculum of the school from which the student was expelled, so that students may stay on track with grade appropriate coursework necessary for graduation. To address immediate questions and provide additional instruction, students should have access to a certified teacher as needed.
- Course design should be clear, incorporates multiple ways to engage in learning, and is organized in lessons and units that are aligned and sequential.
- Course assessments should be easy to understand and allow for timely and frequent feedback to inform teaching and learning.
- Students should be able to develop the prerequisite technology skills to access the course materials.
- Students should have access to ongoing teacher-directed learning and peer learning opportunities to enrich their online learning.
- Procedures should ensure that student information remains confidential, as required by the Family Educational Rights and Privacy Act (FERPA).
- Courses should be updated regularly to adapt to changes in state and national standards and are facilitated by a highly qualified teacher.

Assessment and Progress Monitoring

- Educators should select assessments for both formative and summative purposes, to guide instruction, monitor student progress, design interventions in the context of a multi-tiered system of supports, and provide appropriate services to benefit the student.
- Staff, students, and parents/guardians should be able to clearly identify the purposes of assessment, which should be outlined in the ILP.
- Multiple measures should be utilized to guide student learning that are aligned with districtwide measures to allow aggregate progress reporting.
- Assessments should include all district and state standardized measures to identify student overall achievement, as well as student progress.

3. <u>Climate and Culture: Discipline, Behavior Management and School Safety</u>

Policies and practices must ensure the safety and security of students. Alternative education settings should consider the following:

 ⁴ For information on blended learning: <u>CTHSS Blended Learning Model for Delivery of Instruction</u>
 ⁵ For information on credit recovery: <u>Using Online Learning for Credit Recovery</u>

- Implement multi-tiered systems of support such as Positive Behavior Interventions and Supports (PBIS)⁶ that monitor growth and progress towards goals and may provide opportunities to reinforce students' behavioral successes through providing clear expectations and recognition of positive behavior.
- Review and address issues of bullying, discipline, safety procedures and the rules for students as a means to achieve a positive learning environment.

4. Counseling and Support Services for Socio-Emotional and Life Skill Development

Programming should be designed to meet the needs of the *whole child* to prepare the student to be a productive member of the school and larger community. To fully address the *whole child* needs of students who have been expelled and are placed in an alternative education setting, both the implementation of the student's ILP and the content of the general program should consider the following: growth mindset and the integration of culturally relevant social and emotional learning (SEL) to support the personal, social and behavioral needs of the students. SEL is the process through which students develop and apply culturally relevant knowledge, skills and attitudes necessary to achieve academic success, college and career readiness and pro-social development.

Growth Mindset

When there is a focus on student growth and development, students have greater self-efficacy and persistence⁷.

- Students should be encouraged to advocate for their needs and be fully informed about the requirements for graduation and readiness for college or career.
- Factors for students and staff to consider:
 - What are the student's attitudes and beliefs related to academic work?
 - Understand that these beliefs could have an impact on behaviors and motivation.
 - Understand behaviors that are commonly associated with being a successful student based on individual needs.
- Students and their families should be regularly informed of their progress and be able to continuously monitor their credits earned with regard to personal goals, completion and graduation.

Personal/Social/Life Skills

The development of students in the areas related to personal, social, emotional, behavioral, career and other essential learnings, which are not addressed by the CCS should be embedded in the program delivery and/or evidenced in specific course content that is culturally responsive to the students' needs. These areas are identified in the students' ILP and may include the following:

• Opportunities for mentorship should be considered as an opportunity to ensure that every child has a meaningful relationship with a trusted adult.

⁶ For information on Positive Behavior Interventions and Supports: <u>https://www.pbis.org/</u>

⁷ Dweck, C.S. (2006). Mindset: The New Psychology of Success. New York: Ballantine Books

- All staff, students, and families should consider cultural differences as critical to understanding personal needs.
- Critically conscious and culturally relevant approaches to academic and social-emotional learning should be integrated across the curriculum to support personal success within the alternative learning environment.

Community/Social Services

In an effort to support the needs of the *whole child*, all settings providing alternative educational opportunities should ensure that resources provided by support service agencies and relevant community organizations are coordinated to provide multiple support systems for both students and families and should include the following:

- Opportunities for mentorship and service learning, particularly if these were in place prior to the expulsion.
 - This will require strong partnerships among educators, local/ state agencies, and community organizations.
- Based on the resources available, a reasonable effort to accommodate the delivery of community-based support services to students and families; the need for such services should be documented in the ILP.
- Regular opportunities for students and their families to receive information and personal assistance to ensure access to relevant community-based support services.

5. Responsibilities and Training for Educators: Administration, Teachers and Staff

As instructional leaders, administrators ensure a quality learning environment for students that is compliant with all applicable federal and state laws and regulations and where students receive a high-quality, efficacious educational experience. Administrators work to ensure that staff members are highly qualified, choose to work in an alternative setting, and receive high-quality and relevant professional learning experiences. These are outlined below:

<u>Staff</u>

- Staff members display the value of high expectations for themselves and their students.
- Staff members are actively committed to building a trusting school environment and understands their position as role models for students.
- Their practices reflect a holistic perspective of care for students' overall development (i.e., personal, social, emotional, intellectual, life success) and create a climate of safety/security.
- Emphasis on the process of learning is valued, embraced, and implemented as the means for creating the primary motivation for student learning.

Professional Learning

As a part of their system for evaluation, each staff member should have the opportunity to participate in professional learning opportunities such as *Professional Learning Communities (PLCs)*, for self-improvement as indicated by their students' learning objectives. Administrators may prioritize the following areas for professional learning, as necessary:

- wellness/burnout;
- trauma-informed care, diffusion and de-escalation techniques, and SEL;
- building family-school-community relationships using research-based, culturally relevant, family engagement strategies for working with parents/guardians from diverse backgrounds;
- culturally relevant pedagogy and cultural competency;
- reflective practice;
- addressing the needs of students and/or families in crisis to be able to provide accommodations via the implementation of the ILP; and
- effectively collaborating with community-based support services and how to connect students and families with such support services.

6. <u>Parent/Guardian and Family Engagement Practices</u>

As a part of the overall philosophy of alternative education, family involvement should be welcomed and actively supported. While it is understood that a recommendation for a student's expulsion may limit parent choice, families remain equal partners. In this context, equal is defined to mean, "families and educators recognize that both bring valuable knowledge to the table. Their deep knowledge and skills are complementary, overlapping, and essential to ensuring children's success."⁸ Suggestions for family engagement include practices to ensure the following:

- Families are aware of the program policies and procedures, as well as information related to their children's educational program, curriculum and instruction.
- Families are involved in all decision-making processes for their children's learning and personal success to the degree possible.
- Structures for bi-directional communication are developed to promote the sharing of information.
- Timely and effective communication is presented in a format and language that the families can understand.
- In order to be equal partners, parents/guardians must understand their and their children's rights as it relates to the following:
 - o privacy; and
 - procedures to file grievances resulting from their experiences within the alternative educational opportunity.

7. <u>Transition Planning and Support</u>

Transitions procedures are important for entry into and exit from the alternative education setting. Students should be enrolled in an appropriate alternative education as soon as possible after an expulsion. The following are recommended:

⁸ Full, Equal and Equitable Partnerships with Families: Connecticut's Definition and Framework for Family Engagement (Draft June 2018)

- Use the ILP for the following:
 - to formalize the expectations while placed in the alternative setting including expectations allowing an early return to the school from which the student was expelled;
 - \circ $\,$ to establish communication and coordination with the school from which the student was expelled; and
 - to assist in fostering a smooth transition back to that school for the students upon completion of their expulsion.
- Use documented admission procedures that help orient newly-entering students and their parents/families to expectations in the alternative education setting.
- Use exit procedures that facilitate ongoing communication between the school from which the student was expelled and the alternative education setting to ease the student's transition back to the sending school.
- Provide transition counseling and other services in the school from which the student was expelled to assist students, as they adjust to the emotional and social effects of reentering the schools.

8. Program Evaluation

Administration should regularly assess the alternative education program or setting to ensure that it is meeting the needs of students who have been expelled. Systematic program evaluations for continuous school improvement should be conducted regularly using the following data:

- program implementation ratings;
- student achievement data; and
- student/parent surveys.

Resources

These resources have been developed as a companion to the Best Practice Guidelines. They are organized around the indicators for best practices that are presented in the Best Practice Guidelines as well as an additional category related to educational opportunities for students who have been expelled. Additions will be made to the list of resources and will be available in the <u>Discipline in Schools</u> section of the Connecticut State Department of Education Web site.

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