



STATE OF CONNECTICUT
STATE DEPARTMENT OF EDUCATION



TO: Superintendents of Schools
Executive Directors of Regional Educational Service Centers
Directors of Public Charter Schools
Heads of Endowed and Incorporated Academies

FROM: Peter M. Haberlandt, Director of Legal Affairs

DATE: August 31, 2018

SUBJECT: Guidance Regarding Student Expulsions

When a student is expelled, the student is removed from his or her normal school environment for an extended length of time, often a full year. Consequently, as educators know and as research shows, expelling a student often has a very serious, lasting negative impact on the student and potentially on other students as well. The Connecticut State Department of Education (CSDE) provides this guidance to leaders of all school systems and schools that educate public school students in Connecticut¹ to assist you in making the high stakes decision of whether to seek an expulsion and in carrying out the expulsion process in accordance with applicable law. This guidance will outline the process and procedures required for expulsions and provide an overview of key legal considerations relevant to expulsions in Connecticut.

I. Expulsions Overview

The law defines an “expulsion” to be “an exclusion from school privileges for more than ten consecutive school days...” The law further provides that an expulsion may be for a maximum of one calendar year. Connecticut General Statutes (C.G.S.) § 10-233a(e). In addition, as detailed in Section V of this guidance (pp. 5-7), only the board of education or a hearing officer may expel a student, and only after completion of a duly noticed expulsion hearing. Moreover, if the student is receiving special education or related services and/or has a disability, the planning and placement team (PPT) or Section 504 team normally must first determine if the student’s disability played a role in the conduct, as discussed in Section VII of this guidance (pp. 7-8).

With regard to expulsions, Connecticut law divides student misconduct into three categories:

- (1) in some cases, depending on the particular facts of the alleged misconduct, the LEA is legally required to initiate the expulsion process;
- (2) in other cases, depending on the conduct at issue and the student’s grade level, the LEA is legally prohibited from seeking expulsion; and


¹ CSDE is providing this guidance to all schools and school systems that educate public school students in Connecticut including local and regional school districts, charter schools, endowed academies, technical high schools, inter- and intra-district magnet schools, and RESC-operated schools, all of which collectively are referred to as LEAs in this guidance.

(3) in the remaining set of cases, the LEA has discretion to seek an expulsion or take some other action to appropriately address the student’s conduct.

The table below provides an overview by grade level of these categories by summarizing circumstances when seeking an expulsion is required, prohibited, or within the LEA’s discretion.

Expulsions Law: Overview by Grade Level

Grade Level	Is an LEA ever required to initiate the expulsion process?	Is an LEA <i>permitted</i> to initiate the expulsion process in any other situation?
Pre-K	Yes, but <u>only</u> if there is reason to believe that the student possessed a firearm (as defined in federal statute) at school/school-sponsored event.	No (CGS § 10-233l(b))
K-2	Yes, if there is reason to believe that the student engaged in certain conduct involving weapons or illegal drugs as specified in statute.	No (CGS § 10-233d(a)(2))
3-12	Yes, same as for K-2.	Yes, if there is reason to believe that the student’s conduct meets certain criteria in statute. (CGS § 10-233d(a)(1))



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Thus, for Pre-K students, expulsions are prohibited unless there is reason to believe that the student possessed a firearm (as that term is defined in a federal statute, 18 U.S.C. § 921), in which case the LEA is required to initiate the expulsion process. Similarly, for K-2 students, expulsion is prohibited unless there is reason to believe that the student engaged in certain conduct involving weapons or illegal drugs, as specified in statute, in which case the LEA is required to initiate the expulsion process. (CSDE previously issued guidance concerning exclusionary discipline regarding students in grades preK-2. This guidance and other useful materials are available at: <https://portal.ct.gov/SDE/Rethinking-Discipline-in-Connecticut>).

Finally, for students in Grades 3-12, the LEA is required to initiate the expulsion process in the same circumstances as for K-2 students, and the LEA is permitted to initiate the expulsion process in other cases if the facts satisfy the legal standard set forth in C.G.S. § 10-233d(a), as discussed in Section IV of this guidance (pp. 4-5).


II. When the Expulsion Process is Required

As noted, if a Pre-K student possessed a firearm, as defined in 18 U.S.C. § 921, the LEA is required to initiate the expulsion process pursuant to C.G.S. § 10-233l(b)(1). For students in grades K-12, whether the LEA is required to initiate the expulsion process depends on the alleged conduct and the location. The table below summarizes the circumstances in which LEAs are required to initiate the expulsion process for K-12 students:

When is an LEA *Required* to initiate the expulsion process for a student in K-12?

- When there is reason to believe that the student...

Location	Conduct
On school grounds/ school-sponsored activity	Possessed a firearm (as defined in a federal law, 18 USC § 921) Or Possessed a deadly weapon, dangerous instrument or martial arts weapon (as defined in a state law, CGS § 53a-3) (CGS § 10-233d(a)(2))
Off school grounds	Possessed a firearm without a permit (outside the home) in violation of CGS § 29-35, unless one of the exceptions applies Or Used firearm/deadly weapon/dangerous instrument/martial arts weapon while committing certain crimes (CGS § 10-233d(a)(2))
Anywhere	Offered for sale/distribution certain controlled substances that are prohibited from being sold/distributed/etc. by criminal laws (see CGS §§ 21a-240(9), 21a-277, 21a-278)


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III. Expulsions Required by Law: Length and Waiver of Expulsion

In cases in which an expulsion is required by law, the default rule is that the student “shall be expelled for one calendar year” if the evidence at the hearing establishes that the student engaged in the prohibited behavior. C.G.S. § 10-233d(a)(2). There are two key exceptions, however:

- First, the board of education or impartial hearing officer, as applicable, **may shorten** the length of the expulsion on a case-by-case basis. C.G.S. § 10-233d(a)(2); *see* Gun-Free Schools Act, 20 U.S.C. § 7961(b)(1).

- Second, the board of education or hearing officer, as applicable, **may shorten or waive** the expulsion if the student: (a) has not previously been suspended; (b) is being expelled for the first time; (c) did not possess a firearm/deadly weapon; and (d) successfully completes, at no cost, a board of education-specified program and meets any other conditions set by the board of education. C.G.S. § 10-233d(c)(2).

Thus, even where the student’s conduct requires initiation of the expulsion process, the statute provides the officials who are responsible for making the expulsion decision with the authority to decide if a year-long removal from school is appropriate in the circumstances and whether to offer the student the opportunity to avoid expulsion if the student is eligible for a waiver. School administrators should therefore make their own judgment on these issues in cases where the expulsion process is required to decide whether the LEA should support waiver of an expulsion (if the student is eligible) or expulsion for less than a year.


IV. When the Expulsion Process is Permitted – Grades 3-12

An LEA has the authority to initiate the expulsion process for students in grades 3-12 in certain circumstances, as set forth in C.G.S. § 10-233d(a) and summarized in the table below.

When is an LEA *Permitted* to initiate the expulsion process for a student in 3-12?

- When there is reason to believe that the student's conduct...

Location	Conduct
On school grounds/ School-sponsored activity	Violated a publicized policy of the LEA Or Was seriously disruptive of the educational process Or Endangered persons or property (CGS § 10-233d(a)(1))
Off school grounds	Violated a publicized policy of the LEA And Was seriously disruptive of the educational process (CGS § 10-233d(a)(1))


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As illustrated above, the legal standard for permissive expulsions varies depending upon whether the conduct occurred on school grounds (or at a school-sponsored activity) or off school grounds.

The expulsion statute provides some guidance on how to decide whether a grade 3-12 student's conduct "was seriously disruptive of the educational process." The statute provides that, in determining whether a student's conduct is seriously disruptive of the educational process, the board of education or impartial hearing officer may consider the following non-exhaustive factors: (1) whether the incident occurred in close proximity to a school; (2) whether other students from the school were involved or whether there was gang involvement; (3) whether the conduct involved violence, threats of violence or the unlawful use of a weapon, as that term is defined in C.G.S. § 29-38, and whether any injuries occurred; and (4) whether the conduct involved the use of alcohol. C.G.S. § 10-233d(a)(1).

In cases in which expulsion is permissible but not required, the board of education or hearing officer has the authority to determine the appropriate length of the expulsion up to the one-year maximum. The law does not dictate the factors that the board of education/hearing officer should consider in making this decision, presumably because the Legislature understood that the appropriate school administrators and the board of education/hearing officer are in the best position to make these judgment calls based on their expertise and experience. The law notes that, in determining the length of an expulsion, the board/hearing officer "may receive and consider evidence of past disciplinary problems that have led to the removal from a classroom, suspension or expulsion" of the student. C.G.S. § 10-233d(c)(1).

V. Procedure for Expulsions: Formal Hearing and Other Protections

This section discusses the procedure that an LEA is required to complete before expelling any student. However, before an LEA may initiate the expulsion process for a student who receives special education services and/or has a disability, the LEA must complete the additional procedures required for such students, as discussed in Section VII of this guidance (pp. 7-8).

Under Connecticut law, only the board of education has the authority to expel a child, and a formal hearing is required. A board of education has two options: (1) it can preside over hearings and make the expulsion decisions if at least three board members are present, provided that any decision to expel a student must be supported by a majority of at least three votes in favor; or (2) it can delegate its authority to an "impartial hearing board of one or more persons." C.G.S. § 10-233d(a)(1). Typically, the "impartial hearing board" is a single hearing officer who is an attorney on contract with the board of education to handle hearings. Board of education members may not serve as hearing officers in expulsion cases. C.G.S. § 10-233d(b).

Unless an emergency exists, before expelling a student the LEA must offer the student a formal hearing process that complies with the "contested case" requirements of the Uniform Administrative Procedure Act (UAPA) and the additional procedural requirements set forth in the expulsions statute, C.G.S. § 10-233d(a)(3).² These procedural requirements include:

² In cases of emergency, the board of education may expel the student before holding a hearing but must hold a hearing as soon as possible after the expulsion. C.G.S. § 10-233d(a)(3).

- Notice. If the student is a minor, the LEA is required to provide notice of the expulsion hearing to the student and his/her parents/guardians at least five business days before the hearing. If the student is not a minor, the LEA must provide notice to the student.
 - The notice must be in writing and must specify the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular statutory provisions at issue; and a “short and plain statement of the matters asserted,” that is, the factual basis for the proposed expulsion. C.G.S. § 4-177(b).
 - The notice must include information concerning the parent/guardian’s and the student’s legal rights in the expulsion process (including the right to a hearing, to representation, postponement, and the opportunities to be heard and to review documents/records, as summarized below). C.G.S. § 10-233d(a)(3).
 - The notice must include information concerning “legal services provided free of charge or at a reduced rate that are available locally and how to access such services.” C.G.S. § 10-233d(a)(3).
 - CSDE interprets the statute as requiring the LEA to provide notice in a language that the student and (if the student is a minor) parents/guardians can understand.
- Right to be Represented and to Postponement. The law provides that an “attorney or other advocate” may represent a student facing expulsion proceedings, and the student’s parent has the right to have the expulsion hearing postponed for up to one week to allow time to obtain representation. C.G.S. § 10-233d(a)(3).
- Opportunity to be Heard. At an expulsion hearing, the student has the right to respond to the allegations against him or her; to cross-examine other parties and witnesses; and to present evidence and argument on all issues involved. C.G.S. § 4-177c(a)(2).
- LEA has the Burden of Proof. The LEA, as the party seeking an expulsion, has the burden of proving the facts sufficient to establish that an expulsion is required or permitted under the law.
- Opportunity to Review Documents and Records. The law also provides that parties have an opportunity to review documents and records relevant to the proceeding, unless otherwise prohibited by law. C.G.S. § 4-177c(a)(1).
- Record of the Hearing. The LEA is required to maintain an official record of the expulsion proceeding, including a verbatim record of the expulsion hearing. C.G.S. § 4-177. This can be a transcript, audio recording or stenographic record.³

Expulsions and the expulsion process also must adhere to constitutional due process principles. Courts in Connecticut have applied these principles in a variety of expulsion cases, including to require LEAs to clearly specify the grounds of an expulsion decision, *DeJesus v. Penberthy*, 344

³ Additional requirements of the UAPA applicable to expulsions are set forth in C.G.S. §§ 4-176e to 4-180a and 4-181a. In addition to reviewing this guidance, LEAs should consult with their district counsel concerning the procedure for expulsions.

F. Supp. 70 (D. Conn. 1972), and to require that, in implementing the expulsion laws, LEAs provide adequate notice to students of conduct that could lead to expulsion in the LEA, *Packer v. Board of Education*, 246 Conn. 89 (1998). In the *Packer* case, for example, the Supreme Court of Connecticut ruled that a student did not have adequate notice that possession of marijuana in the trunk of a car, off school grounds after school hours, by itself, and without some tangible nexus to school operations, was “seriously disruptive of the educational process” as required by the statute in order to subject the student to expulsion from school.

VI. Alternative Educational Opportunities

Under C.G.S. § 10-233d(d), LEAs must offer an “alternative educational opportunity” to (1) any student under 16 years old who has been expelled for any reason; and (2) any student between 16-18 years old who has been expelled for the first time for any reason, wishes to continue his or her education, and complies with conditions set by the board of education. Thus, many students, if expelled, would be entitled to an “alternative educational opportunity” provided by the LEA. Furthermore, in cases where the LEA is not required to provide such an opportunity, the law expressly notes that the LEA has the authority to offer one. The obligations of LEAs in regard to alternative educational opportunities for students who have been expelled are set forth in the *Standards for Educational Opportunities for Students Who Have Been Expelled*, which the State Board of Education adopted in accordance with Public Act 17-220 and is available at: <https://portal.ct.gov/SDE/Publications/Standards-for-Educational-Opportunities-for-Students-Who-Have-Been-Expelled>. CSDE has also issued a Best Practices guidance: *Alternative Educational Opportunities for Students Who Have Been Expelled: Best Practice Guidelines for Program Implementation*, which is available at: <https://portal.ct.gov/SDE/Rethinking-Discipline-in-Connecticut/Related-Resources>.

For more information about alternative educational opportunities for students who have been expelled, please review the *Standards* and the *Guidelines*, and you may also contact Glen Peterson in CSDE’s Bureau of Choice Programs at (860) 713-6915 or glen.peterson@ct.gov.

VII. Additional Procedures Required for Students with Disabilities

When an LEA makes the decision to seek the expulsion of a student with a disability, the LEA must first complete certain initial procedures to determine whether it has the legal authority to expel the student. In particular, prior to conducting an expulsion hearing for a student requiring special education and related services under the Individuals with Disabilities Education Act (IDEA), a planning and placement team (PPT) must convene a PPT meeting to conduct a manifestation determination to determine whether the student’s behavior is a manifestation of the student’s disability. 34 C.F.R. § 300.530(e); *see* C.G.S. § 10-233d(i). The behavior must be found to be a manifestation of the student’s disability if: (1) the behavior in question was caused by or had a substantial relationship to the student’s disability; or (2) the behavior in question was the direct result of the LEA’s failure to implement the student’s IEP. 34 C.F.R. § 300.530(e).

If the PPT determines that the behavior is a manifestation of the student’s disability, the LEA must: (1) conduct a Functional Behavioral Assessment (FBA) (unless the LEA had conducted an FBA before the behavior that resulted in the change of placement occurred); (2) implement a Behavioral Intervention Plan (BIP) for the student (or revise an existing BIP); and (3) return the

child to the placement from which the student was removed unless the Parent and the LEA agreed to a change in placement as part of the modification to the BIP or IEP or the behavioral incident involved drugs, weapons, or serious bodily injury. 34 C.F.R. §§ 300.530(f), (g).

If, however, the PPT determines that the behavior was not a manifestation of the student's disability, the LEA may proceed with the standard expulsion process, although the student and parent/guardian may challenge the PPT's determination in a due process hearing pursuant to the IDEA and state and federal regulations. 34 C.F.R. § 300.530(c). During expulsion, the student must continue to receive the educational services required for delivering a free and appropriate public education (FAPE) under the IDEA, so as to enable the student to participate in the general education curriculum, although in another setting, and to progress towards meeting the goals and objectives in the student's IEP. 34 C.F.R. §§ 300.530(b)(2), (d). Because an expulsion constitutes a change in placement under the IDEA, the PPT determines the educational services required for a FAPE and the setting for those services. 34 C.F.R. § 300.530(d)(5). If appropriate, the PPT may recommend an FBA and/or implement a BIP. *Id.* § 300.530(d)(1)(ii).

For students who do not have an IEP but have a disability requiring accommodation under Section 504 of the Rehabilitation Act of 1973, the LEA must determine whether the student's disability caused the conduct that is the basis for seeking an expulsion. In making this determination, LEAs typically apply a similar standard to that required by the IDEA. *See, e.g., Doe v. Osseo Area Sch. Dist., ISD No. 279*, 296 F. Supp. 3d 1090, 1095-98 (D. Minn. 2017). 34 C.F.R. § 104.36. When conducting this inquiry, if an LEA determines that the student's conduct was caused by or had a direct and substantial relationship to the student's disability, it generally would be a violation of the LEA's obligations under Section 504 to expel the student unless the expulsion is for the use or possession of illegal drugs/alcohol, the student is currently engaging in the illegal use of drugs or alcohol and the LEA would expel a student without a disability for the same conduct. *See* 29 U.S.C. §§ 794, 705(20)(c)(iv); 34 C.F.R. § 104.4(b).

For questions concerning the expulsion process for students with disabilities, please contact CSDE's Bureau of Special Education at (860) 713-6910 or maryjean.schierberl@ct.gov.

VIII. When a Student Transfers to a New LEA During an Expulsion

In some cases, a student changes school districts while serving an expulsion or while an expulsion proceeding is pending. Subsections (g) and (h) of C.G.S. § 10-233d prescribe the specific steps that must be taken in these situations. In circumstances in which a pupil has been expelled from an LEA (the outgoing LEA), the new LEA in which the student seeks to enroll must decide whether to adopt or not to adopt the expulsion decision of the outgoing LEA. If the new LEA determines that it should adopt the expulsion decision of the outgoing LEA, the board/impartial hearing officer of the new LEA must hold an expulsion hearing, limited to a determination of whether the conduct that formed the basis of the expulsion would also warrant expulsion under the policies of the new LEA. This expulsion hearing must be conducted in accordance with the hearing requirements of C.G.S. § 10-233d(a) and the UAPA, which are summarized above in Section V of this guidance (pp. 5-7). The law provides that the student must be excluded from school pending this hearing, during which time he/she must be offered an alternative educational opportunity. C.G.S. § 10-233d(g). The new LEA may not lawfully

exclude the child from school until it has provided proper notice that an expulsion hearing has been scheduled in accordance with C.G.S. § 10-233d(a).

CSDE interprets C.G.S. § 10-233d(g) to require that, if the new LEA decides that it should adopt an expulsion decision issued by the outgoing LEA, the new LEA must hold its expulsion hearing promptly (subject to the 5-day notice requirement and right to a postponement discussed above in Section V of this guidance) to ensure that the student is not excluded from school for longer than necessary to properly complete the required process for adopting the expulsion decision. However, this expectation of promptness in no way precludes the new LEA from granting a request for a continuance by a student or parent/guardian.

CSDE also interprets this provision of the statute to authorize the new LEA, if it adopts another LEA's expulsion decision, to modify the length or waive the remainder of the expulsion.

Both during the period while a student is excluded from school pending an expulsion hearing in the new LEA, and during any period of expulsion ordered by the new LEA following adoption of another LEA's expulsion decision, the new LEA must offer the student an alternative educational opportunity in accordance with C.G.S. § 10-233d(d) and the *Standards for Educational Opportunities for Students Who Have been Expelled*.

The law also prescribes what happens when a student withdraws from a school district after the initiation of a hearing against the student but before the hearing is completed and a decision is rendered. In such circumstances, the outgoing district must include notice of the pending expulsion on the student's cumulative education record, and the LEA must complete the expulsion hearing and render a decision. C.G.S. § 10-233d(h). If the student enrolls in a new school district, unless an emergency exists, the student may not be excluded from the new district pending completion of the expulsion hearing. The new district may, however, in its discretion, suspend the student or initiate its own expulsion hearing. C.G.S. § 10-233d(h).

IX. Early Readmission to School

The law provides for several ways in which a child's exclusion from school through expulsion can be modified. For instance, a student who is expelled may at any time apply for early readmission to school. The board of education is authorized to determine whether a student shall be granted early readmission, although it may delegate this matter to the Superintendent. The board of education or Superintendent, as appropriate, may condition a student's readmission on specified criteria. C.G.S. § 10-233d(j).

X. Student Records

The law requires that, whenever a student is expelled, "notice of the expulsion and the conduct for which the pupil was expelled" must be included on the student's "cumulative education record." This notice *must* be expunged⁴ from the cumulative education record by the LEA if the

⁴ Expungement is not permissible for students in Grade 9-12 who have been expelled for possession of a firearm or deadly weapon as described in C.G.S. § 10-233d(a). C.G.S. § 10-233d(f).

student graduates from high school. The law also allows for the LEA to expunge this notice before the student graduates under the following circumstances: (1) for a student for whom the length of the expulsion period is shortened or waived in accordance with the statute, the LEA determines that expungement is warranted at the time the student completes the board-specified program and meets any other conditions set by the board, as applicable; or (2) the LEA determines that the conduct and behavior of the student in the years following the expulsion warrants an expungement, in which case an LEA may receive and consider “evidence of any subsequent disciplinary problems that have led to removal from a classroom, suspension or expulsion” of the student, C.G.S. § 10-233d(f).

XI. Conclusion

This guidance is intended to provide an overview of the most critical topics concerning student expulsions in Connecticut. If you have additional questions, please contact the CSDE Director of Legal Affairs Peter Haberlandt (Peter.Haberlandt@ct.gov) or Attorney Matthew Venhorst (Matthew.Venhorst@ct.gov) in the CSDE Office of Legal and Governmental Affairs at (860) 713-6520.