



Charter School Suspensions and Expulsions: Best Practices (or, this isn't how we did it at the district!)

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What we'll cover today

- Basic legal requirements/restrictions for expulsions and suspensions for charter schools
- Focus on expulsions
- We'll cover **non**-special education expulsions/suspensions
- We'll briefly cover particularities in the special-ed context
- Best practices



Big Picture

- Who cares about suspension and expulsions?
 - student and parent(s)
 - “due process” rights
 - but how extensive are those rights?
 - charter school administrators and board
 - right to remove disruptive pupil from a school of choice
 - but how do we do it?
 - local school district
 - might have to take the child “back” into district schools?



Due Process

- Every child has constitutional right to free and appropriate public education
- Legislature initially created districts to provide education
- Due process requirements for Districts are “easy”, or at least they are clear
- Ed Code explains exactly what the process is for expulsions, and provides statutory appeal rights



Megawaiver—not the same rules for charters!

- Legislature created charters to perform same constitutional function as districts
- But charters are exempt from most Ed Code req'ts-- including statutory expulsion and suspension procedures
- Charters are schools of choice, and are therefore held to different due process standard than district schools
- So charters can create their own procedures, so long as it provides a fair and impartial process



Can't charters just follow the Ed Code provisions like a school district would when faced with a potential expulsion?

- Yes and no.
- Charters can limit themselves to the same descriptions of “expellable” offenses and impose similar suspension/expulsion bureaucracy
- But unlike school districts, a charter school board can **not** hold a closed session expulsion hearing if it’s charter or MOU or bylaws requires Brown Act compliance (i.e., most charter schools)



Charter Element “J” or “10”: reasonable description of expulsion/suspension process

- Usually vague, or modeled on Ed Code process that cannot be implemented by a charter school (e.g., would violate Brown Act)
- Fixed by board-adopted policies, usually modeled on same Ed Code provisions



Charters should adopt suspension/expulsion policies that provide “due process”

- Key elements of a permissible policy providing adequate due process:
 - the school official making an expulsion recommendation cannot be the same official making the expulsion determination
 - The same official can't be the investigator/prosecutor and an impartial judge
 - some form of confidential “hearing” if parents want it (but not with board)
 - we encourage use of "hearing officer" concept
 - could/should have some form of appeal to board
 - can't suspend or expel a student due to conduct of a parent



Elements sometimes listed in charter policies, but that are otherwise not required

- Recorded or transcribed hearing
- Closed session hearing with board (works for districts but not charters)
- Special readmission policy for expelled students
- Limited to Ed Code grounds for expulsion (works for districts but not charters)
- Multi-level, complex appeals
- Administrative panel hearings
- References to Ed Code 48900
- Rehabilitation plans



The Hearing Process – The Players

- Selection of Hearing Officer
 - Not involved in underlying suspension/expulsion investigation or determination
 - No known biases
- Student's Representative
 - Right to be represented by parent and/or counsel
- School's Representative
 - Administrator responsible for suspension/expulsion recommendation



The Hearing Process – What Does The Hearing Look Like?

- Informal Hearing - Not a Court of Law
- Hearing Officer Presides
 - Option of “opening statements”
- School Presents Evidence
- Student’s Representative Presents Evidence
- Hearing Officer Makes A Decision



The Hearing Process – What Does The Hearing Look Like?

- Evidence
 - Witnesses
 - Documents
 - Suspension/expulsion should be supported by *at least one* non-hearsay, verifiable piece of evidence
- Due Process Concerns
 - Student's right to question School's witnesses
 - School's obligation to produce witnesses/documents
 - Full and fair hearing



What are the charter school's obligations following an expulsion?

- Notify district of residence
- What district does next is dependent upon district policy and the Ed Code, not the charter school's policies



Independent study in lieu of expulsion?

- Look to what is permissible under your charter.
- Do you already have independent study program?
- Independent Study is really a **choice**...it presumes that the child could “**choose**” to go back to classroom-based instruction
- Should **not** be a form of discipline (unless you’re ok with parent saying: “I’d prefer that my child be placed back in the classroom right now”)



Can we “readmit” a previously-expelled student?

- What are your admissions criteria (see charter)?
- What about student policies/handbook?
- You can theoretically treat previously-expelled students differently in the admission requirements, but that must be expressed in your charter



Can we refuse to accept a student previously expelled from district?

- **“Yes” if student expelled explicitly for the serious offenses listed in Ed Code 48915 (i.e., poses danger to others)**
 - Must enroll in community or court school, unless district board makes finding that no continuing danger
- What are your admissions criteria (see charter)?
- You can theoretically treat previously-expelled students differently in the admission requirements, but that must be expressed in your charter



Can a charter unilaterally “disenroll” a student rather than formally “expel” him/her?

- Depends on what your charter says
- What is “disenroll”? Student not eligible (or loses enrollment preference) for next school year.
- Be careful. Can not be for conduct of parents. No matter how much trouble a parent may be, it’s very risky to disenroll a student on that basis
- Not a substitute for expulsion proceeding



What policies or procedures work the best?

- Go for efficiency--few moving parts
- Designate a discipline officer, whether grade-based or school-wide
- Discipline officer makes suspensions and expulsion recommendations to principal or executive director
- If parent doesn't act within some reasonable period of time (i.e., request hearing) then recommendation becomes final
- If parent requests hearing, then designated hearing officer (school director or principal) “hears” the matter and provides summary report and recommendation for board to hear in closed session as anticipated litigation matter.
- No appeal from board action (so no need for transcript)
- All charter schools are different—no “one size fits all”



Common problems in expulsions

- Trying to mimic cumbersome district rules
- Process too complicated, no one feels it works well
- Too many “reconsiderations” or multi-level appeals
- IEP team did not address behavior issue for special-ed student
- Board hearing in closed session
- Student didn’t have fair opportunity to present his/her evidence (particular witness not allowed)



Can students with disabilities (IEP's) be suspended / expelled?

- Yes and no.
- Case by case determination
- Suspension may be considered a placement change
- School may suspend a child with a disability for 10 consecutive school days or less
- If expulsion or suspension (for more than 10 consecutive school days) is considered the school must determine whether or not the conduct was a manifestation of the child's disability



Manifestation Determination

- (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 failure to implement the IEP.



Manifestation Determinations (cont.)

If the IEP Team determines that the conduct was a manifestation of the child's disability, the IEP Team must either –

- (i) Conduct a functional behavioral assessment; OR
- (ii) If a Behavioral Intervention Plan (“BIP”) has already been developed, review the BIP and modify it, as necessary to address the behavior; AND return the child to the placement from which the child was removed (except in special circumstances)



Manifestation Determinations (cont.)

“[I]f the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child’s disability ... 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.”

Individuals with Disabilities Education Act (“IDEA”) 34
C.F.R. § 300.530



Procedural Safeguards Notice

The day the decision is made to make a removal (suspension for more than 10 consecutive school days or an expulsion) that constitutes a change of placement of a child with a disability because of a violation of school conduct, the school must notify the parents of that decision and provide a current copy of the procedural safeguards notice to the parents.



Questions and other examples

- Tell us your experiences
- Let's discuss your policies



Questions later?

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