Student Expulsions and “Dismissals”: Charter Schools are Different

March 5, 2014
California Charter Schools Conference

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What we’ll cover today

• Basic legal requirements/restrictions for expulsions and suspensions for charter schools
  – We’ll cover non-special education expulsions/suspensions
• Our focus will be expulsions and process
• What about “dismissal” from the school?
  – 2013 court opinion
• Best practices …. It’s all about process.
Big Picture

• Who cares about expulsions?
  – student and parent(s)
    • “due process” rights
    • but how extensive are those rights?
      – Much less extensive for a school-of-choice
  – charter school officials
    • You have a right to remove disruptive pupil from a school
      – but how do we do it?
  – local school district
    • May have to take the child “back” into district schools?

Due Process—generally

• 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 district process is for expulsions, and provides statutory appeal rights
  – But does not apply to charters
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 rules
- Charters are schools of choice, and can therefore apply a different (or “lower”) due process standard than district schools
- Charters have **options**. You can create your own procedures, so long as you provide 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.
- A charter can limit itself to the same descriptions of “expellable” offenses and impose similar district-style suspension/expulsion bureaucracy
  - but **why** would a charter school want to do that?!
- Most charters prefer a quicker, more streamlined process with fewer moving parts
  - Better for the students and parents
  - Better for the charter school
- Unlike school districts, a charter school board can **not** hold a closed session expulsion hearing if its charter or MOU or bylaws requires Brown Act compliance (i.e., most charter schools)
  - So we need a different procedure
Charter Element “J” or “10”: reasonable description of expulsion/suspension process

- Charter Schools Act requires that your charter petition describe “the procedures by which pupils can be suspended or expelled” (Element “J” or “10”)
- In practice it is 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
  - Complicated notices and procedures, with numerous moving parts
- But there has got to be a better way, right?!
  - Yes!

Charters can and should adopt *sensible* suspension/expulsion policies that provide appropriate “due process”, but *not* time-consuming district-like processes

- Key elements of a workable policy providing adequate due process for a charter school:
  - The school official making an expulsion recommendation should not be the same official making the expulsion determination
    - The same official should not be the investigator/prosecutor and an impartial judge
  - some form of confidential “hearing” if parents request it (but not with board)
    - we encourage use of “hearing officer” concept
    - If hearing not requested, the process is over and you’re done
  - could/should have some form of appeal if requested
- Suspended enforcement of expulsion
  - “last chance” option—you can provide it, but don’t have to
  - Parent/student stipulates to set of facts as true, and agrees to automatic expulsion order if student does not meet expectations going forward. If student complies, then expulsion order expunged.
Procedures sometimes listed in charter policies, but that are otherwise not required (and we don’t recommend them)

- Recorded or “transcribed” hearing
- Closed session hearing with board (works for districts but not charters)
- Special readmission policy for expelled students
- Restricting the charter to Ed Code grounds for expulsion (works for districts but not charters)
- Multi-level, complex appeals over 30-day periods or longer
- Administrative panel hearings
- References to Ed Code 48900
- Rehabilitation plans

The Hearing Process – The Players

- Selection of Fair Hearing Officer
  - Person not involved in underlying suspension/expulsion investigation or determination
  - No known biases
  - Executive director works if not the person initially disciplining the student

- Student’s Representative
  - Right to be represented by parent and/or counsel

- School’s Representative
  - Administrator responsible for suspension/expulsion recommendation (e.g., principal or AP, discipline officer, dean of students, etc.)
The Hearing Process – What Does The Hearing Look Like?

• Informal Hearing - Not a Court of Law
  – “hearing” means “an opportunity to be heard”

• Hearing Officer Presides
  – Option of “opening statements”

• School Presents Evidence
  – No formal rules of 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
    • What is “hearsay”?

• Other Due Process Concerns
  – Student’s right to question School’s witnesses (administrators and teachers)
  – School’s obligation to produce witnesses/documents
  – School’s obligation to protect students from embarrassment or ridicule
    • Declarations or statements OK
  – Full and fair hearing
What are the charter school’s obligations following an expulsion?

• Notify district of residence
• What that 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 should be expressed in your charter.

Can we refuse to accept a student previously expelled from a 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.
Common problems with charter school 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 fully address behavior issue for special-ed student before expulsion process starts
• Board “hearing” (taking evidence) in closed session
• Student didn’t have fair opportunity to present his/her evidence (particular witness not allowed)

What about disciplinary “dismissal” or “disenrollment” rather than a formal expulsion?

• Pre-2013…conventional wisdom was “no”
  – But charter could (and still can) determine student not eligible (or loses enrollment preference) for next school year for failure to meet behavior/conduct expectations.
  – Not a substitute for expulsion
    • Why not? A student who has been “expelled” from any public school (district or charter) must generally serve the term of expulsion before being admitted to another “regular” school. Unlike a “dismissal”, an “expulsion” results in actual delay of the student’s legitimate interest in his or her education. That triggers much higher standard for due process
Disciplinary “dismissal”—it’s not an expulsion

- 2013 case recognizes non-expulsion “dismissal” for charters
- In *Scott B. v. Board of Trustees of Orange County High School of the Arts* (2013) 217 Cal.App.4th 117, the court held that school district expulsion rules and limitations do not apply to charter schools, and that charters may implement non-expulsion “dismissals” of students. The court’s opinion is based upon legal distinctions between an “expulsion” and “dismissal”, and between charters and districts.
  - The court explained that a charter school “dismissal” is not an “expulsion”, so there is no due process hearing requirement.
  - “Dismissal” from a charter school does not implicate the student’s interest in his or her education to the same degree as expulsion. As explained by the court, when a student is “dismissed” from a charter school, the student is free to immediately enroll in another school without the loss of classroom time. The court further recognized that the “dismissal” option exists for charter schools, but not school districts which are bound to follow the Education Code due process provisions for expulsions.
  - This ruling supports greater flexibility for charter schools.

Is a disciplinary dismissal policy a good idea?

*Can you do it vs. Should you do it*

- Depends on your school
- If you want dismissal as an option, you need to develop and adopt a clear policy
  - Describe policy in student handbook (essential)
  - Make sure policy is sensible
  - Apply consistently
  - Seek expert advice if unfamiliar territory
- What about dismissal for non-disciplinary problems like excessive absence?
  - Theoretically yes—but adopt a clear policy and describe in handbook
What expulsion policies or procedures work the best?

- Go for efficiency—few moving parts
- Designate a discipline officer, whether grade-based or school-wide (can be an assistant principal)
- Discipline officer makes suspension and expulsion recommendations to principal or executive director
- If parent doesn’t request hearing within some limited period of time then recommendation becomes final determination
- If parent requests hearing, then designated hearing officer (school director or principal) “hears” the matter and makes a determination (i.e., student is expelled, or not).
- If parent timely requests an appeal to board or administrative panel, then hearing officer provides summary report and recommendation (board may consider the appeal in closed session as a litigation matter, but it’s not a new or second-bite “hearing”)
  - No further appeal (so no need for transcript)
  - Each charter schools is different—no “one size fits all”

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 up to 10 consecutive school days
- 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 (IEP students)

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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