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Failing to Address Long Standing Constitutional Due Process Requirements
A Recent Case Concludes Dismissal Is an "Alternative" to Expulsion for Charter Schools

On June 14, 2013, California's Fourth District Court of Appeal found that a charter school student was not entitled to an evidentiary hearing before he was dismissed from a charter school for exhibiting a knife and threatening a fellow student at school. *Scott B. v. Orange County High School of Arts* (2013) 2013 Cal. App. LEXIS 475.

Following his offense, the student was initially suspended and then "dismissed" by the assistant principal. He then appealed to the governing board which upheld the dismissal. In response, the Student filed a legal action (writ of administrative mandate), arguing, in part, that he was entitled to an evidentiary hearing under Education Code § 48918 ("Section 48918") before he could be lawfully expelled.

The Court rejected the student's argument and upheld the dismissal for two primary reasons. First, the Court found Section 48918 (which requires an evidentiary hearing) inapplicable to charter schools pursuant to the mega-waiver (Education Code § 47610), which exempts charter schools from many Education Code requirements. The Court determined that the Charter School never specifically adopted Section 48918 as part of its expulsion procedures. Citing no legal precedent concerning constitutional due process requirements, the Court further asserted that, because charter schools are "schools of choice," due process protections do not apply when a student is "dismissed" rather than expelled. The Court asserted that when a charter school student is "dismissed" (rather than expelled), there is no delay in education since the student can immediately enroll in another school. The Court also noted that there is no impact on the student's relationship with the new school because there is no statute requiring the charter school to notify the new school about the "dismissal."

Charter schools must read this case with extreme caution for a number of reasons. First, the Court failed to address controlling case law or basic state and federal constitutional due process provisions that have been applicable to involuntary disenrollment in such cases for decades. Moreover, in relying on the concept of "schools of choice," the Court erroneously assumed that a receiving school district would automatically accept a dangerous student who has been dismissed. In reality, it is likely a school district would treat a "dismissal" for a serious offense like an expulsion that prohibits admission. Finally, the case did not address a charter school's duty to provide an evidentiary hearing in situations where the charter school's petition promises one or where the granting agency insists one must be provided. The case also did not address the consequences to other schools when dangerous students are simply "dismissed" and then re-enroll at another school with no record to alert the new school of the dangerous conduct.

We will keep you apprised if this decision is appealed. If you should have any questions regarding this update, please contact James Young (jyoung@mycharterlaw.com) or Megan Moore (mmoore@mycharterlaw.com) via email or at (916) 646-1400. Or find us on the web at: www.mycharterlaw.com.