

CLIENT NEWS BRIEF

Court of Appeal Clarifies Issues Impacting Student Expulsions for Sexual Battery

The California Court of Appeal's recent opinion in *M.N. v. Morgan Hill Unified School District* (2018) 20 Cal.App.5th 607 ("*Morgan Hill USD*") resolves several issues of first impression significant to student expulsion proceedings involving sexual battery. In *M.N.*, a case in which Lozano Smith's [Sloan Simmons](#) and [Steve Ngo](#) successfully represented the Morgan Hill Unified School District, the court set forth clear rulings on the legal standards for expelling a student for sexual battery, the intent standard necessary to establish sexual battery in the student expulsion context, the evidentiary rules that apply to student expulsion proceedings, and the standards under which trial and appellate courts review a school board's expulsion decision.

Background

Male student M.N. was recommended for expulsion based upon the sexual battery of a female classmate. On multiple days on the school bus, M.N. (along with two other male classmates) tripped and inappropriately touched the female student on her buttocks and breasts, laughed and made harassing statements. M.N. did not stop although he knew the physical contact was unwanted. M.N. filed a lawsuit challenging his expulsion, in which he disputed whether the district established by non-hearsay evidence that he had engaged in misdemeanor sexual battery—a mandatory expulsion offense under Education Code section 48915. The trial court affirmed the student's expulsion, and on appeal the appellate court affirmed the trial court's decision to uphold the student's expulsion.

In reaching its decision, the Court of Appeal, for the first time in a published California opinion regarding student discipline, applied the reasoning from *In re Shannon T.* (2006) 144 Cal.App.4th 618 ("*Shannon T.*"), a juvenile delinquency case in which the court determined what it means to commit "sexual abuse." Applying *Shannon T.* to the student expulsion context, the court held that "sexual abuse" includes "the touching of a woman's breast, without consent, for the purpose of insulting, humiliating, or intimidating the woman, even if the touching does not result in actual physical injury." Where specific sexual intent cannot be established by direct evidence, such intent may be inferred from the act itself and the surrounding circumstances.

Turning to the facts and evidence in the case, the court found the district's expulsion of the student was based upon a "wealth of evidence" showing that the offender acted for the specific purpose of sexual abuse, namely his admission that he touched the victim's buttocks as many as 10 times, that he knew what he was doing was wrong and hurtful, that he witnessed other boys sexually battering the victim, and that he laughed during the various incidents. This non-hearsay evidence, the court held, was more than sufficient to infer that the offender's inappropriate conduct amounted to "sexual abuse" in order to sustain his expulsion for sexual battery.

In reaching its decision, the court confirmed for the first time that the proper standard of judicial review of a school board's decision to expel a student is

May 2018
Number 19



Sloan R. Simmons
Partner and Co-Chair
Litigation Practice Group
Sacramento Office
ssimmons@lozanosmith.com



Kyle A. Raney
Associate
Sacramento Office
kraney@lozanosmith.com



As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

CLIENT NEWS BRIEF

May 2018
Number 19

substantial evidence. The court's opinion also provides details and guidance on the statutory framework for student expulsions, particularly those for "very serious offenses" such as sexual battery, pursuant to Education Code section 48915.

Lastly, the court rejected the student's attempt to liken his expulsion to that in *John A. v. San Bernardino City Unified School District* (1982) 33 Cal.3d 301, where the California Supreme Court overturned the expulsion of a student who was involved in an on-campus fight on the basis that the district presented no live witnesses at his expulsion hearing and, fatally, based the expulsion solely on hearsay evidence. The court's opinion explains that the California Supreme Court's holding in *John A.* hinged upon the specific facts in that case, where the student recommended for expulsion "sharply disputed" the hearsay evidence used to expel him. Distinct from *John A.*, the substantial non-hearsay (including the student's admissions as to most of the alleged assaultive behavior) and evidence otherwise excepted from the hearsay rule supported the student's expulsion.

Takeaways

All told, the *Morgan Hill USD* opinion contains numerous holdings, detailed legal analysis helpful for school officials on the evidentiary standards and procedures governing student expulsions, and in particular expulsions involving sexual assault or battery.

For more information about the *Morgan Hill USD* opinion or about student discipline in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.