

CLIENT NEWS BRIEF

Court of Appeal Says That the Dismissal of a Charter School Student Does Not Require an Expulsion Hearing

In *Scott B. v. Board of Trustees of Orange County High School of Arts* (June 14, 2013) ___ Cal.App.4th ___ 2013 WL 2687979, the court of appeal upheld the “dismissal” of a charter school student without an evidentiary hearing or written findings. The court determined that the charter school, as a school of choice not bound by California Education Code section 48918, was allowed to “dismiss” a student. In its decision, the court distinguished between “dismissal” and “expulsion.”

Scott B. was a 14-year-old student at Orange County High School of the Arts (OCHSA), a charter school. The school’s procedures allowed for the “dismissal” of any student who accumulated more than 25 demerits. Scott B. accumulated 52 demerits. Subsequently, when he brought a knife to school and threatened another student, he was suspended, and then the assistant principal informed his parent of his dismissal in a letter, without holding an expulsion hearing. Scott B. appealed the dismissal to the charter school’s Board of Trustees and the Board upheld the dismissal without issuing written findings.

Scott B. then filed for a writ of mandate with the court, arguing that the charter school violated Education Code section 48918 by not conducting an evidentiary hearing resulting in written findings to dismiss him. The trial court denied the Student’s writ. The court of appeal upheld the decision, finding that Education Code section 48918 does not apply to charter schools and drawing a distinction between “dismissal” and “expulsion.”

Education Code section 48918 sets forth the expulsion hearing requirements with which public schools must comply when expelling a student. The court determined that section 48918 does not apply to charter schools. Education Code section 47610 exempts charter schools “from the laws governing public schools” with limited exceptions. Since section 48918 does not apply to charter schools, OCHSA was not required, prior to dismissal or “expulsion”, to provide Scott B. with an evidentiary hearing resulting in written findings. Additionally, OCHSA’s charter included “(c)riteria for suspension and expulsion . . . consistent with” specific sections of the Education Code. Those sections did not include section 48918 and, therefore, the court determined the requirements of section 48918 did not apply and were not violated.

After determining OCHSA was not required to comply with Education Code section 48918, the court analyzed whether Scott B. was in fact expelled, or merely “dismissed.” Expulsion, according to the court, requires a student to serve the term of the expulsion prior to being admitted to another school, resulting in a delay in the student’s education. Expulsion also affects a student’s reputation because an expelled student is required to notify a new school of the expulsion. According to the court, dismissal from a charter school does not implicate these concerns to the same degree. Because OCHSA is a school of choice, the court concluded that a “dismissed student” can reenroll in his public school without delay or any required notification. Because, in the court’s opinion, the dismissal was not equivalent to an expulsion, an evidentiary hearing resulting in written findings was not legally required.

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Significantly, Scott B.'s attorney conceded that her client's due process rights had not been violated in this case. Therefore, this decision leaves unanswered the question of whether a different outcome might result in a case where a student contends that a denial of due process resulted in his or her dismissal from a charter school.

Charter petitions must identify suspension and expulsion procedures. It is imperative that charter petitions also clearly define the due process that will be provided to students to ensure that their rights are protected prior to the imposition of discipline. Additionally, school districts should consider the potential impacts of the court's decision. There is the possibility school districts will see a number of students being dismissed or "counseled out" of charter schools and returning to public schools. Specifically, students who have been dismissed, not expelled, as a result of dangerous behavior, may seek to reenroll in their public school district. School Districts will have to work to balance the rights of those students with its mandate to ensure school safety.

If you have any questions regarding the implications of *Scott B.*, or charter school student discipline requirements, please feel free to contact 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](#).