

CLIENT NEWS BRIEF

Court Upholds School District's Authority to Involuntarily Transfer Students to Continuation School

In *Nathan G. v. Clovis Unified School Dist.* (March 25, 2014) __ Cal.App.4th __ 2014 WL 1202665, the California Court of Appeal issued the first published opinion to address several issues regarding the involuntary transfer of students to continuation high school under Education Code section 48432.5, as well as the applicable legal standard under which transfer decisions are reviewed by the courts. Lozano Smith represented the school district in this case.

In *Nathan G.*, a high school student admitted to entering school grounds on a school day under the influence of a controlled substance, conduct for which he was suspended. Consistent with Education Code section 48432.5, the student received written notice of his recommended involuntary transfer to continuation high school and the right to participate in a meeting to review and question the reasons and evidence supporting the recommendation. Following the scheduled meeting, in which the student and his parent participated, Clovis Unified School District issued a written decision involuntarily transferring the student to continuation high school. Also consistent with section 48432.5, the transfer decision rested upon the findings that the student violated Education Code section 48900 and District policy when he entered campus under the influence of a controlled substance, and his presence on school grounds posed a danger to other students and/or threatened to disrupt the educational process. The transfer decision also made the finding that other means of correction had failed to bring about improvement on the part of the student because: (1) the record included other alternative means of correction implemented by the District to address the student's prior less severe disciplinary violations; and (2) a month earlier, the student had been suspended from extracurricular activities due to his involvement in an incident relating to alcohol, for which school officials counseled him as to the more serious consequences that would result if found in possession or under the influence of a controlled substance.

The student challenged his involuntary transfer in superior court. The superior court applied the "substantial evidence" standard because the court found that transferring the student to continuation school did not substantially affect a vested fundamental right. The substantial evidence standard is more deferential to the District's discipline decision-making process than the alternative independent judgment standard. The superior court upheld the District's involuntary transfer of the student, and the student appealed.

On appeal, among other propositions, the student argued that: (1) Education Code section 48432.5 demands reasonable exhaustion of *all* other means of correction before a student can be involuntarily transferred to continuation school; and (2) the proper standard of judicial review of a school district's involuntary transfer decision is the "independent judgment test" rather than the substantial evidence test because the administrative action of involuntarily transferring a student to continuation school substantially affects a fundamental vested right, namely access to public education.

April 2014
Number 22



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



Gary B. Bell
Associate
Fresno Office
gbell@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

April 2014
Number 22

The court of appeal addressed several issues of first impression relative to involuntary transfers. The court of appeal first held that an involuntary transfer decision is properly subject to review through a writ of administrative mandate. Second, the court of appeal rejected the student's argument that Education Code section 48432.5 requires school districts to reasonably exhaust *all* other means of correction before imposing an involuntary transfer. On the record of the case, several alternative means of correction were utilized with the student for other disciplinary infractions, including in relation to another controlled substance related incident. This record of other means of correction was sufficient under the statute.

Third, while the court acknowledged that access to public education is a fundamental interest, the court held an involuntarily transfer to continuation school under Education Code section 48432.5 does not substantially affect this interest. Rather, unlike suspension or expulsion from school, an involuntary transfer to continuation school does not deny a student access to public education. Instead, the court reasoned, a student involuntarily transferred to continuation school still receives educational instruction, albeit at an alternative venue. In fact, in *Nathan G.*, the District's continuation high school had the same graduation requirements as the District's other comprehensive high schools. As such, the lesser substantial evidence test applies to the judicial review of a school district's involuntary transfer decision, a standard the court found consistent with the "deference to be accorded to a school administrator's decision to discipline a student."

Before the court of appeal and the superior court, the District was represented by Sloan Simmons, Ruth Mendyk and Aimee Perry of Lozano Smith.

For further information on student discipline, involuntary transfers to continuation high school, defending against lawsuits challenging student discipline decisions, or for information about our student discipline in-service trainings, 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](#).