



Monthly Newsletter - Issue 8

February 1, 2014

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SCOTT v. BOARD OF TRUSTEES OF ORANGE COUNTY HIGH SCHOOL

CASE SUMMARY

On June 14, 2013, California's 4th District Court of Appeal found that a charter school student was not entitled to an evidentiary hearing before he was dismissed from the charter school for wielding a knife and threatening a fellow student at school. [Scott B. v. Board of Trustee of Orange County High School](#) (2013 217 Cal. App. 4th 117; 158 Cal. Rptr. 3d 173; 2013 Cal. App). The importance of this ruling is significant: in effect, this case stands for the proposition that a charter school can dismiss a student unilaterally under certain circumstances.

The Court's ruling rested on two fundamental principles. First, pursuant to Ed. Code section 47610, the so-called charter school "megawaiver" that exempts charter schools from almost all Ed. Code provisions, Ed. Code section 48918 (requiring an evidentiary hearing prior to the expulsion of a student) is inapplicable to Charters. The Court determined that because the Charter school never specifically adopted Section 48918 as part of its charter expulsion procedures, the School was exempt from the requirement. Second, the Court determined that because charter schools are "schools of choice" and a student's dismissal from a charter does not prevent a student from immediately enrolling in another school, dismissal is not a disciplinary action that necessarily implicates due process guarantees under *Goss v. Lopez* (1975) 419 U.S. 565, 572-574, 42 L. Ed. 2d 725, 95 S.Ct. 729 or *Serrano v. Priest* (1976) 18 Cal.3d 728, 766, 135 Cal. Rptr. 345, 557, P.2d 929.

While at first glance Scott may suggest that charter schools may "dismiss" any student without fear of legal action, that is not the case. We urge clients to read this case with caution, as it does not give a charter carte blanche to "dismiss" students.

BACKGROUND OF THE CASE

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CCSA CONFERENCE

Join us at Booth 1528 at the 21st Annual California Charter Schools Association Conference in San Jose, California. March 3-6, 2014 at the San Jose Convention Center. We'll see you there!

CONTACT DETAILS

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The student in this case attended the Orange County High School of the Arts (OCHSA), a charter school in Orange County, California. The charter governing OCHSA permitted “dismissal” of a student upon the accumulation of 25 demerits. The student was not summarily dismissed for the accumulation of demerits, although he could have been. Instead, the school chose to permit him to remain enrolled. However, the student brought a knife to campus, showed the knife in class, and threatened a fellow student. The student was immediately suspended for this conduct, and the parent was timely notified of the suspension.

Subsequently, after relevant parties, including the student, his mother, the student’s attorney, the school’s principal, special education coordinator, attorney and teacher in whose classroom the incident occurred, participated in a two hour manifestation determination hearing it was determined the student’s conduct was not a manifestation of his disability (as required by Section 504 of the Rehabilitation Act of 1973 (see 29 United States Code section 794(a)).

That same day, the assistant principal informed the mother that student was being “dismissed” from the charter school. The student appealed his dismissal to the OCHSA Board of Trustees, but the Board voted unanimously to dismiss the student in accordance with the terms of the charter. The student subsequently received a letter from OCHSA stating that the Board had voted unanimously to support the administrative decision to dismiss him.

The student challenged his dismissal by filing a petition for writ of mandate pursuant to Code of Civil Procedure section 1094.5, alleging, among other things, that the Board did not provide a legal or factual basis to support its decision. The trial court denied the petition, and the student appealed.

On June 14, 2013, the California Court of Appeal for the Fourth District affirmed the judgment of the superior court.

DISMISSAL v. EXPULSION

Pursuant to Scott, under certain circumstances a charter school may choose to dismiss a student from an educational program for disciplinary reasons without recourse to the statutory requirements for an expulsion hearing.

The court held that the due process hearing protections of California Education Code 48918 do not apply to charter schools because Scott was dismissed rather than expelled. The Court wrote, “There is a difference between being expelled and being dismissed. A student who has been expelled must generally serve the term of expulsion before being admitted to another school. (Citations omitted.) An expulsion results in a delay of the student’s legitimate interest in an education.” Dismissal from a charter school, on the other hand, does not interfere with a student’s legitimate interest in an education. A dismissal of a student from a charter school does not deny a student’s legitimate interest in an education because the student is free to enroll immediately in another public school. Notably, the Court observed that a charter school is a school of choice, and enrollment in a charter school is voluntary. At any time, a student may withdraw from a charter and enroll in another school. Similarly, a charter school’s dismissal of a student does not necessarily delay that student’s ability to enroll in another educational program immediately.

IMPACT ON CHARTERS

Significantly, Scott fails to establish precedent on due process considerations. Notably, the student’s attorney conceded that her client’s due process rights had not been violated. As a result, the

Court did not reach the issue of due process and this decision leaves unanswered the question of whether, if so presented, a student who contends that a charter's dismissal resulted in a denial of due process would prevail.

Some attorneys and others have opined that the Scott decision foregoes public policy considerations and permits charter schools to operate absent some of the due process protections that are traditionally guaranteed by public schools. For some, the decision sends a message that charters are not necessarily "open" to all students, which could lead to speculation that children who are disadvantaged or disabled do not have the same "access" to charter schools as those who are not.

Perhaps more significantly, the Court did not treat long-standing precedent or state and federal constitutional due process provisions applicable to involuntary disenrollment. To what extent such authority would contradict the Court's finding that enrollment in a charter school is wholly "voluntary" also remains unanswered. Further, and perhaps even more difficult to divine, is the question of whether a traditional school district or another charter school would automatically accept a student previously "dismissed" for the kind of dangerous conduct described in the Court's factual summary of the case. It is quite likely that a school district or another charter school would treat a student dismissed for a serious offense, such as a wielding a knife and using it to threaten a fellow student, similarly to an expulsion, and prohibit admission. Currently, for example, the California Department of Education has issued guidance that a school district "may choose to treat a student expelled from a charter school in the same manner as a student expelled from the district." Whether a school district could characterize a "dismissal" as an "expulsion" remains unanswered.

Further, the Court's ruling touches on public policy concerns that are important to consider: While charter schools have a duty to provide an evidentiary hearing in situations where the charters petition promises one or the charter's authorizing entity requires one, a question remains: should charter schools be required to provide evidentiary hearings before dismissing "dangerous" students, so as to provide a clear record that would alert admitting schools of the student's dangerous record? In short, the ruling fails to consider significant rehabilitative and safety implications for students and staff at schools enrolling students who have exhibited dangerous and potentially life-threatening behavior.

WHAT YOU NEED TO DO

Charter petitions must identify the suspension and expulsion procedures a charter school shall follow. Further, charter policies, handbooks or other documented policies and procedures should clearly state the school's suspension, expulsion and dismissal policies (where dismissal is an option). 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, if your charter or board policy has adopted the provisions of Cal. Ed. Code section 48900 et. seq. (or your authorizing entity has required it by some other means), then the Scott decision has no impact on your operations. Your school is obligated to provide an evidentiary hearing prior to expelling a student, and "dismissal" is not an option.

In sum, we urge charter schools to proceed with caution when expelling or dismissing a student. Scott does not preclude a costly court battle over an expulsion or dismissal, and it is prudent to

consult with your attorney on such matters for some of the following reasons, prior to expelling or dismissing a student.

First, the Charter Schools Act only recognizes suspension or expulsion as a basis to deny continued enrollment in a charter school. See Ed. Code section 47605(b)(5)(J), (d); see also, Cal. Code Regs., tit. 5, § 11967.5.1(f)(10). The Court simply did not address the Charter Schools Act other than reference to section 47610, the megawaiver. Again, this silence raises concerns regarding charter school students' constitutional rights to due process, matters left unaddressed by the ruling.

Second, because the Scott decision does not address due process considerations, the law requires that charter schools take into account students' rights to due process when disciplining students, up to and including expulsion. Accordingly, authorizers (and courts) should and will likely still consider due process rights when evaluating charter petitions and exercising oversight.

Third, how traditional public and other charter schools will respond to enrollment requests by "dismissed" charter school students has yet to be tested. It is not difficult to imagine that, should a dismissed charter school student find it difficult or impossible to enroll in a new school because of his or her dismissal, the student might file a cause of action against the dismissing charter or the enrolling school.

Fourth, and perhaps most importantly, where a charter school seeks to suspend, expel or dismiss a student protected by the Individuals with Disabilities Education Act (IDEA), section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and/or Title VI of the Civil Rights Act, charter schools must operate in compliance with applicable state and federal laws and regulations, which could include a manifestation determination hearing or other placement and assessment determinations. To do otherwise could result in a denial of a free and appropriate public education.

QUESTIONS?

As always, if you have questions about this newsletter or any other matter, please call us at any time for guidance.

Regards,

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