



School Business Law Update

TEL: 661.636.4830
FAX: 661.636.4843
E-mail: sls@kern.org
www.schoolslegalservice.org

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CHARTER SCHOOL STUDENT LOSES WRIT ACTION CONTESTING DISMISSAL FOR BRINGING KNIFE TO SCHOOL

On June 14, 2013, the Fourth District Court of Appeals upheld the trial court's denial of a writ of mandate to a charter school student who challenged being dismissed from the charter school for admittedly bringing a knife to school. While the case was clear on two topics, it left for another day the question of charter school due process obligations regarding student discipline. Among other things, the case holds that various Education Code provisions do not apply to the charter school.

In this case (*Scott B. v. Board of Trustees of Orange County High School of Arts*, 2013 DJDAR 7608, June 14, 2013), the student admitted bringing a knife to school but challenged dismissal from the charter school because the board did not make written findings. The student filed the writ under Code of Civil Procedure Section 1094.5, which presupposes the court's evaluation of written findings. The court, however, rejected the challenge by indicating the proper section would have been Code of Civil Procedure Section 1085, which does not require written findings.

Under Section 1094.5, a tribunal that is required to take evidence at a hearing must make findings to bridge the gap between the evidence heard and their ruling on the evidence. On application for a writ, the court then determines whether the findings are supported by substantial evidence and whether the tribunal's determination is supported by the findings.

Under Section 1085, a writ may be issued to compel performance of an official duty or admission to the use and enjoyment of a right or office to which the petitioner is entitled. In such cases, the court looks at administrative decisions to see if they are arbitrary, capricious, or entirely lacking evidentiary support.

In the charter school case, the appellate court held that the hearing requirements of Education Code Section 48918 did not apply to a charter school unless the school expressly adopted them. Since the school had not adopted the requirements of Section 48918, no hearing was required, and for that reason the proper writ section to use would have been Code of Civil Procedure Section 1085.

The court also held that the student's dismissal from the charter school was not an expulsion and went on to distinguish dismissal from a charter school from expulsion from a school district. The distinction, the court noted, is in the fact that dismissal from a charter school, a school of choice, does not exclude the student from immediate enrollment in another public school, while an expulsion does limit a student's rights in that regard.

Interestingly, most charters in the state discuss the concept of expulsion rather than dismissal, and there is a dispute within the state as to whether or not a charter school student who is expelled from the school has an appeal right to the local granting agency or the local county board of education. In this case, the court noted in a footnote that arguments on due process had been waived by the student's lawyer at oral argument so the court chose not to address such arguments in its written opinion. Clarification on that issue will have to await a future case.

— *William A. Hornback*

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