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When Progressive Discipline Fails: Lawful Suspensions and Expulsions

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THE CHARTER LAW FIRM

Some Basics

- Introduction
- Goals
 - Ounce of Prevention
 - Improve Issue Spotting Skills
 - Provide Ideas for Systematic Change
 - Limit Disruption/Liabilities
- Disclaimers
 - Real Problems are Fact Specific & Complex
 - Cookie-Cutting can be Dangerous
 - Non-Attorney Advice and the Attorney-Client Privilege
- Keep Your Questions Hypothetical

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Today's Takeaways

- Due Process, the Education Code & Charter Schools
- Investigation, Search and Seizure, and Consistency
- Special Education = Special Procedures!
- Suspension & Expulsion Procedures


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Hypothetically Speaking



Ronnie Rulebreaker brings a baggie of marijuana to school. Three of Ronnie's classmates tell a teacher that Ronnie tried to sell them pot during lunch time. The teacher did not witness anything, but the classmates appear to be truthful.



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I. Basic Legal Requirements for Student Discipline

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Charter School Discipline



- May follow the Education Code, but not required to do so. (Cal. Ed. Code § 47610.)
- Required to comply with federal due process: Notice and an Opportunity to be Heard.
- Must follow your school's adopted policy in the charter petition or Board adopted policy.
- Must follow school procedures (progressive discipline/restorative justice/mandatory offenses).

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Policies & Handbooks



- Ensure policies and rules stated in your school's student-parent handbook match your school's charter and/or any Board adopted policies.
- Must always follow the charter or Board adopted policy—do not make unilateral changes to the discipline procedures.



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Hypothetically Speaking



- Is possession of drugs a zero tolerance offense for charter schools?
- What about the sale of drugs?



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II. Investigation



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Jurisdiction



A Pupil may be suspended or expelled for enumerated acts related to a school activity or attendance that occur at any time, including, but not limited to:

1. While on school grounds;
2. While going to or coming from school;
3. During the lunch period, whether on or off the school campus; or
4. During, going to, or coming from a school-sponsored activity.



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Hypothetically Speaking



- Thinking back to our friend Ronnie Rulebreaker...If it is determined he brought marijuana to school, does a charter school have jurisdiction to suspend or expel him?
- What if Ronnie had only posted a message on social media that he intended to bring drugs to school to distribute?



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Investigate




1. Determine whether Student has an IEP or Section 504 plan
2. Review pupil's disciplinary history
3. Speak with as many relevant witnesses as possible
4. Obtain signed written statements from percipient witnesses
5. Document admissions of guilt
6. Collect any relevant physical evidence—TAKE PHOTOS!! (Keep basic search & seizure rules in mind)
7. Obtain any necessary third party reports
8. Report the incident to law enforcement if required
9. Notify parents
10. Create a written summary of the investigation




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Hypothetically Speaking



The teacher has reported to you that he believes Ronnie Rulebreaker may have tried to sell his classmates some marijuana. What do you do next?


- A. Interview the classmates.
- B. Search Ronnie's Locker.
- C. Call Ronnie's parents to schedule a pre-suspension conference.
- D. Interview Ronnie.



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Search and Seizure




What is the standard that applies to a school official's search of students?

- **Reasonableness.** To maintain discipline and order within the school environment, school officials may conduct searches without a warrant based on **reasonable suspicion** that the student is engaged in illegal activity or a violation of school rules. *New Jersey v. T.L.O (1985) 469 U.S. 325.*

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Reasonable or Unreasonable?




- What is reasonable depends on the context within which a search takes place.
- The search must be:
 - **Justified at its inception** (*i.e.*, there are reasonable grounds for suspecting the search will turn up evidence that the student is violating the law or school rules); and

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Reasonable or Unreasonable?




- **Reasonable in scope** (*i.e.*, the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction).

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Reasonable or Unreasonable?




During the interviews with the classmates, each one of them states Ronnie showed them a baggie of marijuana in his pocket. One classmate says Ronnie told her he had more in his locker. The school leader can search:

- A. Ronnie by asking him to empty all pockets and looking inside his backpack.
- B. Ronnie's locker.
- C. Both.

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Strip Searches



- Keep it ABOVE the belt...
- Education Code Section 49050: No school employee shall conduct a search that involves
 - (a) conducting a body cavity search of a pupil manually or with an instrument or
 - (b) removing or arranging any or all of the clothing of a pupil to permit visual inspection of the underclothing, breast, buttocks, or genitalia of the pupil.

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Analyze the Evidence to Determine Consequences



1. Analyze nexus between misconduct and school
2. Identify the appropriate consequence for infraction based on charter school policy and procedures:
 - Restorative justice or progressive discipline?
 - Use of behavior contracts—cannot deny students the right to due process in the future
3. If suspension is the next step, follow procedures!



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III. Special Education? Special Considerations



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Students with IEPs and Section 504 Plans



- Students with Section 504 Plans and IEPs may be disciplined to the same extent as their peers.
- **However:** Special education students under Section 504 or the IDEA are entitled to additional protections when a change in placement occurs as the result of discipline.
- **Change in Placement:** More than 10 school days or pattern of removal of more than 10 school days in one school year.



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Students with IEPs and Section 504 Plans

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Manifestation Determination Review Meeting

1. Was the misconduct caused by, or did it have a direct and substantial relationship to, the child's disability?
2. Was the misconduct the direct result of the district's failure to implement the IEP?



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The student has an IEP...now what?



You plan to suspend Ronnie and recommend him for expulsion, but you learn that he has an IEP. You need to:

- A. Determine the number of days of suspension.
- B. Contact the special education team at your school/authorizer to schedule a manifestation determination review.
- C. Send Ronnie back to class because you cannot expel him.
- D. Take a break and contemplate the philosophical underpinnings of the Individuals with Disabilities Education Act.



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III. Suspension, & Expulsion



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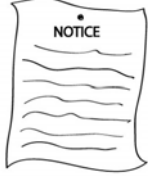
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Suspension Requirements



Notice & an Opportunity to be Heard

Written Notice
Conference



Pre-Suspension



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Expulsion



1. Extension of Suspension: Conference & Notice.
2. Notice of Hearing—Timing is everything.
3. Hearing within required timeline and with required panel.
4. Recommendation/Decision within required timeline.



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The Hearing & Decision



- Generally, an expulsion hearing is held before the Board or before an Administrative Panel.
- In the event an administrative panel hears the case, it should make a recommendation to the Board for a final decision whether to expel.
- Follow your Charter Petition and/or Board Policy!



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Recommendation for Expulsion Now What?



Ronnie Rulebreaker had an ounce of marijuana in a baggie in his back pack. All three classmates completed written statements that Ronnie offered to sell them pot for \$10.00. Ronnie denies he tried to sell and refuses to provide a written statement. If the charter school wants to expel him based on the sale, what must it do at the expulsion hearing?



- A. Provide the written statements of the students as sworn declarations.
- B. At least one classmate must testify about the drug sale.
- C. Provide a photograph of the marijuana confiscated by the school.



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Appeal Rights for Pupils



- 1. County lacks jurisdiction over charter school expulsions.
- 2. Appeals for charter schools are dependent on the charter.
- 3. Review is limited to the record.
- 4. The focus: procedure, procedure, procedure.

Problems on Appeal

- 1. Procedural lapses
- 2. Lack of record at the hearing



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Future Student Admission Issues



- 1. Right to enroll elsewhere.
- 2. Right of expelled pupil to enroll at charter school.
- 3. "Rehabilitation" plan requirements
- 4. Readmission procedures.
- 5. Potential pitfalls of allowing voluntary disenrollment in lieu of expulsion.



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QUESTIONS AND RESPONSES

THANKS FOR ATTENDING TODAY

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SACRAMENTO, CA 95825

LOS ANGELES OFFICE:
5200 LANKERSHIM BLVD.
SUITE 210
NORTH HOLLYWOOD, CA 91601

SAN DIEGO OFFICE:
591 CAMINO DE LA REINA
SUITE 210
SAN DIEGO, CA 92108

WALNUT CREEK OFFICE:
500 YGNACIO VALLEY ROAD
SUITE 190
WALNUT CREEK, CA 94596

OSOGOOD CHARTER SCHOOL

[Date]

NOTICE OF SUSPENSION

THE FOLLOWING STUDENT HAS BEEN SUSPENDED FOR VIOLATION OF SCHOOL RULES:

Student Last Name

First Name

Date of Birth

Grade

Special Education: yes no

Parent/Guardian Last Name

Parent/Guardian First Name

Phone Number

Street Address

City, State, Zip

- Parent notified by phone.
- Parent requested to call school.
- Parent conference held.

Statement of Facts:

On ___/___/___ (Date), the above named student engaged in the following behaviors or activities: [provide detailed description, using additional pages if necessary]

Your child has been suspended for the following reason(s) in violation of School rules:

[Insert provisions from your policy. The following is only an example]

Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.



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Unlawfully offered, arranged, or negotiated to sell any controlled substance, an alcoholic beverage, or an intoxicant of any kind, and then either sold, delivered, or otherwise furnished to any person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.

Any of these above offenses may be grounds for expulsion.

Dates of Full Day Suspension(s): _____

Number of Days: _____

Student may return to school on (date): _____

Recommending Administrator

Date

Director or Director's Designee

Date



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[SCHOOL LETTERHEAD]

[Date]

Via Certified Mail
Return Receipt Requested

[Name], Superintendent
[Address]

Re: Notice Pursuant to Education Code Section 47605(d)(3)
Student: [Insert Name]
DOB: [Insert Date of Birth]
Grade: [Insert] Grade

Dear Superintendent [Insert Name]:

Pursuant to Education Code Section 47605(d)(3), please be advised that as of [INSERT DATE] the above-named student has withdrawn from enrollment from [INSERT NAME OF SCHOOL] (“Charter School”).

The above mentioned student’s last known address is as follows:

[Insert last known address]

Charter School will provide the District with a copy of the student’s cumulative record, including a transcript of grades or report card, attendance information, and health information upon receipt of written request. Please mail all written requests to:

[INSERT CONTACT INFO]

Sincerely,

[Insert Name and Title]

Cc: [Name], Parent
File



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OSOGOOD CHARTER SCHOOL
SAMPLE FORM

WITNESS DECLARATION FORM

DATE OF INCIDENT: _____

TIME OF INCIDENT: _____

LOCATION OF INCIDENT: _____

I, _____, declare:
[name of witness]

1. I have personal knowledge of the facts set forth in this declaration, and if necessary, I am capable and competent to testify to those facts.
2. The following is a detailed description of the incident [if additional space is needed, please use the reverse side]:

I have read the foregoing statement and declare under penalty of perjury that it is true and correct.

Executed this _____ day of _____, _____ at _____, California.

Signature: _____ Print Name: _____

Witnessed by: _____



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HYPOTHETICALLY SPEAKING

Ronnie Rulebreaker brings a baggie of marijuana to school. Three of Ronnie’s classmates tell a teacher that Ronnie tried to sell them pot during lunch time. The teacher did not witness anything, but the classmates appear to be truthful.

QUESTION SLIDE 8: Is possession of drugs a zero tolerance offense for charter schools? What about the sale of drugs?

ANSWER: “Zero tolerance” is a term used by some schools to identify offenses for which a school leader must recommend expulsion. The term under the Education Code is “mandatory expulsion offense.” (EC §48915(a) and (c).) Each charter school must look at its charter and adopted discipline policies to determine whether possession or sale of drugs is a mandatory/zero tolerance offense for the charter school.

QUESTION SLIDE 11: Thinking back to our friend Ronnie Rulebreaker...If it is determined he brought marijuana to school, does a charter school have jurisdiction to suspend or expel him? What if Ronnie had only posted a message on social media that he intended to bring drugs to school to distribute?

ANSWER: Yes, the charter school has jurisdiction over Ronnie if he brings drugs to school. Such an offense occurred on school grounds during the school day. If, however, he only posted a message on social media, the answer depends on other facts related to the post. Specifically, whether the post on social-media can be classified as purely off-campus speech or whether there is evidence to support a finding Ronnie actually intended to bring the drugs to school and/or if the post caused a substantial disruption.

QUESTION SLIDE 13: The teacher has reported to you that he believes Ronnie Rulebreaker may have tried to sell his classmates some marijuana. What do you do next?

- A. Interview the classmates
- B. Search Ronnie’s Locker
- C. Call Ronnie’s parents to schedule a pre-suspension conference
- D. Interview Ronnie

ANSWER: A. With just the teacher’s report who did not witness the event, best practice would be to interview the classmates next. TIP: Ask each classmate to provide a written statement as part of the interview.

QUESTION SLIDE 17: During the interviews with the classmates, each one of them states Ronnie showed them a baggie of marijuana in his pocket. One classmate says Ronnie told her he had more in his locker. The school leader can search:

- A. Ronnie by asking him to empty all pockets and looking inside his backpack.
- B. Ronnie’s locker.
- C. Both.

ANSWER: C. The school leader has reasonable suspicion that Ronnie is in possession of drugs on school



grounds, both on his person and in his locker. NOTE: If your charter school has lockers, consider a board-adopted policy governing inspection of the lockers as school property.

QUESTION SLIDE 23: You plan to suspend Ronnie and recommend him for expulsion, but you learn that he has an IEP. You need to:

- A. Determine the number of days of suspension.
- B. Contact the special education team at your school/authorizer to schedule a manifestation determination review.
- C. Send Ronnie back to class because you cannot expel him.
- D. Take a break and contemplate the philosophical underpinnings of Individuals with Disabilities Education Act.

ANSWER: B. A recommendation for expulsion is an automatic trigger for a manifestation determination review, regardless of the number of previous days of suspension.

QUESTION SLIDE 28: Ronnie Rulebreaker had an ounce of marijuana in a baggie in his back pack. All 3 classmates completed written statements that Ronnie offered to sell them pot for \$10.00. Ronnie denies he tried to sell and refuses to provide a written statement. If the charter school wants to expel him based on **the sale**, what must it do at the expulsion hearing?

- A. Provide the written statements of the students as sworn declarations.
- B. At least one classmate must testify about the drug sale.
- C. Provide a photograph of the marijuana confiscated by the school.

ANSWER: B. An expulsion cannot be supported by hearsay alone. Written statements are considered hearsay—they are out of hearing statements offered for the truth. To avoid a legal challenge, at least one classmate must testify about she/he personally observed regarding the sale of marijuana.

