



**YOUNG, MINNEY & CORR, LLP**  
**EXPERT CHARTER SCHOOL**  
**LEGAL SERVICES**

# **Student Discipline in the Virtual and Real World**

Presented by:

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# FIRM OVERVIEW

**Young, Minney & Corr LLP** (YM&C) has been the leader in charter school law approaching three decades, representing well over half of California's charter schools with offices in Sacramento, Los Angeles, San Diego, and Walnut Creek. The firm principals have been working with charter schools since the inception of California's Charter Schools Act in 1992.

We offer superior legal expertise, as well as the technical know-how, to allow you to effectively resolve your problems and meet all of your charter school needs.

The YM&C team of experts can assist charter schools in every aspect of charter school creation, expansion, and operation including:

- **Labor & Employment**
- **Student Rights & Discipline**
- **Special Education**
- **Board Governance**
- **Facilities**
- **Granting Agency Relations**
- **Charter Development & Renewal**
- **Charter Defense**
- **Insurance Defense**
- **Charter Litigation**
- **Independent Study**
- **Corporate Law**
- **Public Law**
- **Fighting Charter School Revocation**

We emphasize a preventative approach to the law, helping our clients anticipate legal difficulties, minimize exposure to legal claims and fees, and prevent operational challenges.

With our main office located in Sacramento, YM&C is also uniquely positioned to influence the public policy debate in California – helping shape the future of charter schools.

For more information on our team of expert attorneys and services, please visit [www.mycharterlaw.com](http://www.mycharterlaw.com) or call us at **916-646-1400**.

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Drew Rymer's primary practice areas include assisting schools with special education compliance, section 504, and other student-related issues. Prior to joining Young, Minney & Corr, LLP, Drew worked for the Office of Legal Affairs for Governor Schwarzenegger and at a law firm whose primary focus was on business and real property law. Drew is a member of the Sacramento County Bar Association and currently serves on the Board of Directors for a non-profit organization that advocates for special needs children within the greater Sacramento area.

Drew graduated cum laude with a Bachelor of Science degree in Business Administration, Accountancy and a Minor in History from California State University, Sacramento. Drew received a Juris Doctor from University of the Pacific, McGeorge School of Law where he was on the Dean's Honor List.




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## Student Discipline in the Virtual & Real World

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THE CHARTER LAW FIRM

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## Disclaimer



- This webinar cannot substitute for personalized legal advice.
- Presenters may be working from home and apologize in advance for any child or canine interruptions. Thank you for your patience.
- Our advice is based upon the latest available guidance which is subject to change in this ever-evolving landscape.
- With so many participants and so little time, "live" questions are impossible, but this webinar was designed with your questions in mind.
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## YM&C Firm Overview



- Partners have over 100 years of collective experience working with charter schools
- 34 attorneys working with charter schools throughout the state in all areas of charter school law (e.g., employment/labor, special education, nonprofits, litigation, audits, facilities, etc.)
- Represent more than a majority of California's charter schools
- Conduct workshops for charter schools in all areas of legal compliance



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## Discussion Topics



- What Laws Apply to Charter Schools Regarding Suspension and Expulsion or involuntary Removal of Students?
- What Due Process Rights Does a Student have Prior to Suspension, Expulsion or Any Other Involuntary Removal?
- What Minimum Procedures Are Required or Prohibited When Suspending or Expelling or Involuntarily Removing Students?
- When Does a Charter School Have Jurisdiction to Suspend or Expel?
- How Does a Charter School Lawfully Investigate Student Misconduct Including Student Searches?
- What Notices are Required Upon Expulsion or Involuntary Removal?
- What Special Rules Apply to Virtual Incidents?



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## What Laws Apply?



- School districts are bound by Education Code Section 48900 et. seq. which lists enumerated offenses and procedures for suspension & expulsion.
- Charter Schools are not bound by Education Code Section 48900 et. seq. due to the “mega-waiver” found in Education Code Section 47610.



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## What Laws Apply?



- **Instead, charter documents must contain:**  
*“the procedures by which pupils can be suspended or expelled from the charter school for disciplinary reasons or otherwise involuntarily removed from the charter school for any reason.”*
- **And those procedures, at a minimum must include:**  
*“an explanation of how the charter school will comply with federal and state constitutional due process requirements that is consistent with the minimum procedures required in Education Code Section 47605(c)(5)(J).”*



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## What Charter Document?

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So this means.... It is the **Charter Document** that we look to for your procedures for suspension, expulsion or other involuntary removal of Students.

What this also means, is that your policies, and your handbooks should all be in alignment with your Charter Document.

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## What is Due Process?

The State and Federal Constitutions Require "Due Process" Prior to the Deprivation of Life, Liberty or Property.

The U.S. Supreme Court has established that suspension & expulsions are a deprivation of a property right (the right to a public education) and therefore, trigger the obligation for "due process."

Due process, as defined by the Supreme Court, is **NOTICE** and an **Opportunity to be Heard**.

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## What Minimum Procedures Are Required by the Charter Schools Act to Provide Due Process?

**Notice Under the Charter Schools Act**

- 1) **Notice Of the rules** – in your charter, your policies, your handbook
- 2) **For suspensions of under 10 days** – Oral or written notice of the charges against the pupil and if the pupil denies the charges, and explanation of the evidence that supports the charges.
- 3) **For suspensions of 10 days or more and Expulsions** – timely written notice of the charges against the pupil and an explanation of the pupil's basis rights to initiate a hearing.
- 4) **For all involuntary removals** – written notice (in parent/student native language) of intent to remove the pupil no less than five schooldays before the effective date of the removal and shall inform the pupil of the right to initiate a hearing.

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What Minimum Procedures Are Required by the Charter Schools Act to Provide Due Process?



**Opportunity To Be Heard Under the Charter Schools Act**

- 1) **A conference (for suspensions of fewer than 10 days)**
  - Allow student to present student's side of the story
- 2) **A right to a hearing (for suspensions of 10 days or more or expulsion or other involuntary removal)**
  - Adjudicated by a neutral (and impartial) hearing officer
  - Within a reasonable number of days
  - At which the pupil has a fair opportunity to present testimony, evidence, and witnesses and confront and cross-examine adverse witnesses
  - At which the pupil has the right to bring legal counsel or an advocate
  - Student remains enrolled until the charter school issues a final decision.



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What Other Suspension, Expulsion, or Involuntary Removal Procedures Do We Typically Include in the Charter Document?



- **Enumerated offenses that will or may lead to suspension, expulsion, or involuntary removal** – typically in alignment with the list of offenses and procedures that apply to students attending noncharter public schools
- **Suspension Conference**
- **Recommendation for Expulsion and Extension of Suspension**
- **Noticing and Holding an Expulsion/ Removal Hearing**
- **Hearing Decision**
- **Rehabilitation Plans**
- **Readmission**
- **Notice to Teachers**
- **Special Procedures for Students with Disabilities**



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What Cannot Be Lawfully Included in a Suspension, Expulsion, or Involuntary Removal Procedure?



- 1) Corporal Punishment
- 2) No Suspension for Disruption of School Activities or Willful Defiance of Valid Authority of Supervisors, Teachers, Administrators, School Officials, or Other School Personnel - Grades TK-8
- 3) No Expulsion for Disruption of School Activities or Willful Defiance of Valid Authority of Supervisors, Teachers, Administrators, School Officials, or Other School Personnel - Grades TK-12
- 4) Cannot encourage a student to disenroll.



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Virtual Discipline

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- Treat virtual disciplinary incidents similar to in-person disciplinary incidents.
- A violation of school rules or policy should be treated the same whether in-person or virtual.
- A charter school may discipline a student for engaging in inappropriate misconduct that occurs during a virtual classroom session so long as the student's conduct constitutes an enumerated act(s) related to a school activity.
- The key is to establish a violation of school rules and to ensure jurisdiction can be established for virtual incidents.
- Examples:
  - Disruption, Harassment, Threats
  - Cyberbullying

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When Does a Charter School Have Jurisdiction to Suspend or Expel?



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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When Does a Charter School Have Jurisdiction to Suspend or Expel?



**Must have a “Causal Nexus” to establish jurisdiction to suspend or expel a student for an incident that occurs off campus outside of regular school hours**

- Causal Nexus: A causal nexus exists if the result is a natural and reasonable outcome or consequence of the activity.
  - Connect the student's conduct to a resulting effect, typically some type of injury.
  - Connect the student's conduct to some type of impact on students at the School or a disruption to the educational environment of the School.
  - Necessary for “virtual” or incidents occurring via social media or similar.

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## When Does a Charter School Have Jurisdiction to Suspend or Expel?



### Virtual & off campus incidents, outside of regular school hours that impact the school environment:

- For example: School Shooting Threats on Instagram; Sexual Harassment; Cyberbullying.
- Look for the casual nexus between misconduct and school to bring it under school jurisdiction.
- Check specific board policies that may extend jurisdiction by including Computer based activities (i.e. Technology Use, Title IX, Harassment, Intimidation, Discrimination & Bullying).



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## How Does a Charter School Lawfully Investigate Misconduct?



### Conduct a complete investigation of the incident and Student involved, which may include the following:

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!!
7. Obtain any necessary third-party reports
8. Report the incident to law enforcement and/or CPS if required
9. Notify parents
10. Create a written summary of the investigation



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## Virtual Investigations



### Virtual Investigations include the same complete investigation steps identified above. Get creative when conducting virtual investigations. Specific Techniques may include the following:

1. Contact students and families via phone and email to investigate and obtain the factual information surrounding the incident.
2. Obtain witness statements via email. Scanned signed witnesses statements may be treated the same as original copies.
3. Offer to interview witnesses via zoom or other methods of virtual communication.
4. Ask witnesses to send screen shots or videos of the incident, if possible.
5. Speak with as many relevant witnesses as possible.
6. Create a written summary of the investigation.
7. Save all relevant evidence to be further considered.



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Investigation

**Ronnie Rulebreaker's teacher reports to you that he believes Ronnie may have posted inappropriate statements on his Instagram making fun of multiple students after class. What do you do next?**

- Interview the other students.
- Search Ronnie's Phone.
- Call Ronnie's parents to schedule a pre-suspension conference.
- Interview Ronnie.

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Collecting Evidence

**During interviews with the other students, each one of them states Ronnie made statements about them on Instagram that made them feel as though they cannot attend class and do not want to be around Ronnie any more. You should ask these student to:**

- Provide you with screen shots of Ronnie's Instagram posts.
- Provide you with written statements describing what Ronnie said to them or about them and how the statements impacted them.
- Both A & B.

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Analyze the Evidence to Determine Consequences

- Determine whether the evidence supports discipline.
- Consider whether the school has jurisdiction to discipline.
- Identify the appropriate consequence for the infraction based upon the procedures listed in the charter.
  - the charter and/or other school policies/procedures may recommend or require restorative discipline, or progressive discipline prior to suspension or expulsion
- Follow the procedures in the charter.

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When we Return to In-Person Instruction  
How does a Charter School Lawfully  
Search a Student?



Fourth Amendment

*'The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.'*



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A Lawful Search Requires  
Reasonable Suspicion



**Search Must be Based Upon**

**Reasonable Suspicion:**

*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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What is a Reasonable Search?



- A **reasonable search** is:
  - **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
  - **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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## How Does a Charter School Lawfully Search a Student?



- Keep searches ABOVE the belt & NEVER under the clothes...No Strip Searches!

Education Code § 49050: No school employee shall conduct a search that involves:

- conducting a body cavity search of a pupil manually or with an instrument or
- 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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## Suspensions



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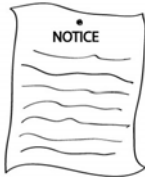
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## Suspensions



### (1) Notice & (2) Opportunity to be Heard

#### Written Notice



#### Pre-Suspension Conference



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Expulsions

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Expulsions

- 1. Recommendation for Expulsion & Extension of Suspension:** Hold Conference & Issue Notice.
- 2. Notice of Expulsion Hearing:** Provide timely written notice of charges & student's basic rights to a hearing.
  - Complete Documentation is Essential
- 3. Expulsion Hearing:** Hold a fair hearing within required timeline by required neutral & impartial panel (or Board).
- 4. Expulsion Recommendation/Decision:** Issue within required timeline.

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Virtual Expulsion Hearings

- **Videoconference Platform:** Virtual Expulsion Hearings may be held remotely through a virtual videoconferencing platform such as Zoom or Teams.
- **Written Notice:** Must Ensure Proper Written Notice that Provides the Date, Time, and Zoom/Teams Meeting Link.
  - Recommend obtaining signed written consent from Parents to hold virtual expulsion hearings.
  - Refer to your charter for additional Notice requirements. Same requirements apply.
- **Ensure Confidentiality:** Confidentiality is of upmost importance when holding a virtual expulsion hearing.
  - Use a Facilitator to facilitate the virtual expulsion hearing and ensure only authorized parties are present for the hearing
  - Use zoom waiting rooms for witnesses and only allow in the hearing when called to testify
  - Ensure zoom link is not shared with any unauthorized individuals.
- **Hearing:** A fair virtual hearing must be held within required timeline by a neutral & impartial administrative panel (or charter school Board).
- **Timelines & Other Requirements:** All other requirements and timelines under the school's charter remain applicable.
  - Maintain procedural timelines or obtain Parental consent to continue for up to 30 days.

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## Timing is Everything



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**\*Failure to Follow Procedural Timelines in the Charter Can Lead to Legal Challenge and the Potential to Invalidate the Expulsion**



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## The Expulsion Hearing & Decision



- The Charter Schools Act requires the expulsion hearing to be adjudicated by a “neutral officer”
- Generally, an expulsion hearing is held before the Board or before an Administrative Panel on behalf of the Board.
- In the event an Administrative Panel conducts the expulsion hearing, the Panel will make a Findings of Fact and Recommendation to the Board, which will make the final decision of whether to expel the student.
- Follow your Charter Document Closely!



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## Presentation of Necessary Evidence at Expulsion Hearing



- The expulsion of a student may NOT be based entirely on hearsay alone & must be supported by a **Preponderance of the Evidence**.
- At least some direct witness testimony must be presented at the expulsion hearing.
- If the school wants to substitute written statements for live testimony, the school must make a specific showing and the panel must make a finding that the witness would be subjected to an “*unreasonable risk of psychological or physical harm.*”



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## Expellable?



Ronnie Rulebreaker made offensive Instagram posts about three of his classmates. Three of his classmates completed written statements that Ronnie made serious statements about them that resulted in the students feeling bullied and not being able to focus in class. Ronnie denies he made any Instagram posts about these three classmates and refuses to provide a written statement. If the charter school wants to expel Ronnie based on the Instagram posts, 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 Instagram posts Ronnie made to/about the student.
- C. Provide a photographs of Ronnie's Instagram posts obtained by the school through other students.



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## Appeal of Expulsion Decision After Hearing



1. Appeals after the hearing decision for charter schools are dependent on whether the charter school agreed to offer a further appeal in the charter document.
2. The County Board of Education lacks jurisdiction over charter school expulsions (unlike school district expulsions)



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## What Additional Notices are Required Upon Expulsion or Involuntary Removal?



1. Before disenrollment of a pupil, send CDE template notice which informs a parent that a charter school shall not encourage a pupil to disenroll from the charter school.  
  
<https://www.cde.ca.gov/sp/ch/documents/rescscomplaints.pdf>
2. Send Notice of Expulsion to your Authorizer (if required under the charter document or MOU).
3. Send Notice of Disenrollment to Student's District of Residence within 30 Days of Disenrollment (for any reason)



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## But Wait, There's More



1. Alternatives to Expulsions.
2. Voluntary Disenrollment in Lieu of Expulsion - may create issues with charter authorizer and/or student's next district or district of residence.
3. "Rehabilitation" plan requirements.
4. Readmission procedures.
5. Pupil's right to enroll elsewhere during term of expulsion.
6. Right of student under current expulsion order to enroll in your charter school.



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