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## Mastering the Suspension and Expulsion Process

Presented by:  
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### Overview

- 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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### I. Basic Legal Requirements for Student Expulsions




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**A. Right to a Public Education**

- “Disenrollment” label is irrelevant if disenrollment is involuntary
- Due process is required
- Detailed/legal procedures & policy are critical



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**B. Disciplinary Jurisdiction Over Offense(s)**

- “Related to school activity or attendance”
- Occurring “at any time”
- Truancy, tardiness or absences
- New “cyber-bullying” statute



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**C. The Education Code Framework**

- Detailed timelines and “due process” requirements
- A word on the suspension process
- Mandatory expulsions
- “Quasi-mandatory” expulsions
- “Permissive offenses”



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**C. The Education Code Framework (contd)**

- “Secondary findings” requirement for non-mandatory offenses:
  1. “Other means of correction”
  2. “Continuing danger”



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**D. Distinguishing the Education Code From Federal Due Process**

- Constitution requires procedural/substantive due process
- Less restrictive regarding actual timelines
- No need for secondary findings



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**E. Expulsion of Special Education Pupils**

- IEP or 504 meeting required within 10 days of initial suspension
- Manifestation of disability?
- Is conduct a direct result of failure to implement the student’s IEP?
- Interim alternative educational setting



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**F. Audit Your Process**

- Review charter/discipline policies
- Allow for board or panel process
- Plan for periodic reviews
- Establish “a system” from “A-Z”
- Establish investigation tools & protocols
- Consider periodic training



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**II. Investigation of Student Misconduct**



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**A. Objectively Gather Relevant Facts**

- Obtain signed written statements from percipient witnesses
- Speak with as many relevant witnesses as possible
- Keep basic search & seizure rules in mind
- Cooperate with law enforcement
- Know when you are working for law enforcement



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**A. Objectively Gather Relevant Facts (contd)**

- When to notify parents
- Document admissions of guilt
- Collect any relevant physical evidence
- Obtain any necessary third party reports
- Create a written summary of the investigation



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**B. Analyze the Evidence to Determine Consequences**

- Determine what, if any, offenses were committed
- Report the incident to law enforcement if required
- Analyze nexus between misconduct and school
- Recognize truancy/academic performance issues
- Review pupil's disciplinary history



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**C. Consider Alternatives to Expulsion if Case is Weak**

- Determine if pupil has special education or 504 status
- Be careful of setting precedent
- Use of behavior contracts
- Pros and cons of counseling out ("bluffing")
- Use of stipulated expulsion orders
- Other punitive or deterrent measures to consider



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**D. Extension Of Suspension Issues**

- Follow procedural suspension rules
- Extension of suspension procedure
- Consider and anticipate all applicable timelines
- Requirements for expulsion recommendation



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**III. The Charter School Board's Use of Administrative Panels to Conduct Expulsion Hearings**



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**A. Board Options for Conducting Expulsion Hearings**

- Hearing before board
- Administrative hearing panel
- Hearing officer
- Use of legal counsel



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**B. The Evidentiary Hearing Process**

- Mechanics of the process
- Administrative panel members
- Purpose of the panel
- Evidentiary standards
- Exclusionary rule/Miranda rights
- Evidentiary support for findings of fact limited to evidence adduced at hearing



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**C. Due Process Requirements for Hearings**

- Timely notice
- Fair hearing
- Right to closed or open hearing
- Right to counsel or non-attorney advisor
- Right to present evidence
- Right to cross examine witnesses
- Right to a copy of all documentary evidence to be used
- No automatic right to subpoenas



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**D. Review Your Process**

- Logistics of using an administrative panel
- Importance of consistency and disciplinary policies
- Panel chair responsibilities
- Post-hearing panel responsibilities
- Use of “script” and “check list”



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### IV. Presenting An Expulsion Case

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### A. Prepare for Presentation at the Administrative Hearing

- Prepare a case binder
- Determine what witnesses, if any, will serve as the basis for proving the facts alleged in the statement of charges and the secondary findings (if required)
- Organize documents/witness statements and prepare to question witnesses
- Analyze what facts will need to be proven to substantiate offense(s) and secondary findings (if required)

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### A. Prepare for Presentation at the Administrative Hearing (contd)

- Talk to witnesses in advance of hearing
- Consider the use of “expert opinion” testimony to prove secondary findings
- Review the administrative panel script and relevant board policy provision(s)
- Prepare four copies of all documents to be utilized at the hearing

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**B. Hearsay vs. Non-Hearsay & Admissions of Guilt**

- What is hearsay?
- Hearsay alone is not enough
- What is an admission?
- What is required to present an admission?



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**C. Tips for Working With a Witness**

- Keep it simple
- Use statements
- Avoid over coaching
- Avoid unimportant details
- Avoid leading questions
- Focus on facts
- Do not testify through questions



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**V. Charter School Board Consideration of Panel Findings and Recommendations**



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**A. Limitations on Charter School Board Action**

- Accept or reject findings
- Order supplemental hearing
- Practical consideration of “sentence” reduced



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**B. Parent Presentations to Charter School Board**

- Cannot be a hearing (board is not a trier of fact)
- Should be viewed as “sentence” mitigation



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**C. Rules for Board Deliberation on Panel Findings**

- Inviting others to deliberate
- Limited to consideration of panel’s findings



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**D. Right to Suspend Expulsion Order**

- May suspend enforcement of any order
- Probationary terms
- Mechanics of reinstatement of order



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**E. Stipulated Expulsion Orders**

- Usually executed to avoid hearing
- Right to hearing is waived



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**VI. County/District Appeal Issues**



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**A. Appeal Rights for Pupils**

- Review is limited to the written record
- County has no jurisdiction over charter school expulsions unless in charter
- The court’s focus: procedure, procedure, procedure
- County has limited appeal jurisdiction over district expulsions
- Other potential fallout




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**B. Problems on Appeal**

- Procedural lapses
- Lack of record at the hearing
- “Zero tolerance” offenses




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**C. Future Student Admission Issues**

- Right to enroll elsewhere
- Right of expelled pupil to enroll at charter school
- “Rehabilitation” plan requirements
- Readmission procedures
- Potential pitfalls of allowing voluntary disenrollment in lieu of expulsion




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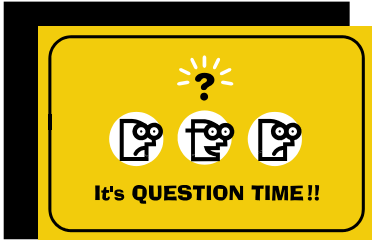
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# Questions?



It's **QUESTION TIME!!**



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