



Districts Are Not Required to Exhaust All Means of Correction Before Imposing Transfer to Continuation School

Upholding a district's decision to transfer a high school student to continuation school, the California Court of Appeal rejected the student's argument that the district was first required to exhaust all other means of correction to bring about pupil improvement. The court also determined that an involuntary transfer to continuation school under Education Code section 48432.5 does not substantially affect a student's fundamental right to an education and, therefore, judicial review of such transfer is limited to whether a district's decision is supported by "substantial evidence." (*Nathan G. v. Clovis Unified School Dist.* (3/25/14, No. F065485).)

In November 2011, Nathan G., then a senior at Clovis High School, was suspended after he admitted to school officials that he and other students had smoked marijuana prior to their arrival on campus, violating Education Code section 48900, subdivisions (c) and (k) and Clovis Unified School District ("CUSD") Board policy.

Nathan and his parents subsequently met with Crystal Cruz, the CUSD Superintendent's Designee to discuss Clovis's decision to recommend an involuntary transfer to continuation school or, in the alternative, the initiation of expulsion proceedings against Nathan. At the meeting, Nathan again admitted that he had smoked marijuana on the date in question. In addition, his record indicated that he was involved in an alcohol-related incident a month earlier resulting in a two-week suspension from extracurricular activities.

In her written decision, Ms. Cruz found that Nathan violated Education Code section 48900 and that "other means have failed to bring about pupil improvement," noting that he was previously reprimanded for the alcohol-related incident and other miscellaneous infractions. Alternatively, Ms. Cruz concluded that school officials properly determined that Nathan's presence at Clovis "cause[d] a danger to persons or property or threaten[ed] to disrupt the instructional process" in view of his admissions of wrongdoing. She ordered his immediate involuntary transfer to Gateway High School, a continuation school, for the remainder of the school year.

The Superior Court of Fresno County denied Nathan's request for an order compelling CUSD to set aside the transfer, expunge any mention of the transfer from his academic records, and reinstate him at Clovis.

Affirming the Superior Court's decision, the Court of Appeal examined the language of Education Code section 48432.5, which allows districts to transfer a student to continuation school based on a finding that the student committed an act enumerated in section 48900 (grounds for suspension or expulsion) or has been habitually truant. While the language of section 48432.5 allows such transfer when "other means fail to bring about pupil improvement," the court rejected Nathan's contention that the statute requires

districts to exhaust *all* other means of correction before a student can be involuntarily transferred to continuation school.

Nathan argued that his interpretation harmonized Education Code section 48432.5 with similar provisions contained in Education Code sections 48900.5 and 48915 relating to suspensions and expulsions, respectively. The court disagreed, noting that Education Code section 48900.5, subdivision (a), states, in pertinent part: “Suspension . . . shall be imposed only when other means of correction fail to bring about proper conduct.” Education Code section 48915, subdivision (b), reads, in pertinent part: “A decision to expel a pupil . . . shall be based on a finding of one . . . of the following: [o]ther means of correction are not feasible or have repeatedly failed to bring about proper conduct.” The court stated that “the plain language of these statutes does not require a school or district to exhaust *all* other corrective means before it could suspend or expel a student.” [Emphasis in original.]

The Court of Appeal also determined that an involuntary transfer to continuation school under Education Code section 48432.5 does not substantially affect a student’s fundamental right to an education. Therefore, the trial court’s review of the CUSD’s decision to transfer Nathan was limited to whether its findings were supported by “substantial evidence.” (Had the Court of Appeal found that such transfer affected a fundamental right, the trial court would have been obligated to use a stricter “independent judgment” test, in which it would be compelled to review the district’s administrative record for errors of law and conduct an independent review of the entire record to determine whether the weight of the evidence supported the administrative findings.)

The court explained that in contrast to a suspension or expulsion, an involuntary transfer does not deny access to public education. “While the student may be moved from a regular school, he or she still receives educational instruction at an alternative venue: by law, continuation schools are required to provide ‘[a]n opportunity for pupils to complete the required academic courses of instruction to graduate from high school’ (Ed. Code, § 48430).” The court also pointed to case law decisions recognizing the deference to be accorded to a school administrator’s decision to discipline a student.

Additionally, in the context of applying the proper provision of the California Code of Civil Procedure to judicial review of a district decision to transfer a student to continuation school, the court concluded that the “meeting” called for by Education Code section 48432.5 is an “adversarial hearing grounded in due process.” It noted that the statute affords the aggrieved student and his or her parent or guardian the chance to inspect and challenge the school’s or district’s documentary evidence, question the school’s or district’s witnesses, and present his or her own evidence and witnesses.

Along with reaffirming that courts will interpret the law using the “usual, ordinary meaning” of the statutory language, this case provides an instructive reminder for districts of the legal requirements for involuntary transfers of students to continuation schools under Education Code section 48432.5.

If you have any questions regarding this matter, please call one of our six offices.

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