

AN INFORMATIONAL
GUIDE TO ASSIST
EXPELLED STUDENTS
AND THEIR PARENTS
OR GUARDIANS IN
UNDERSTANDING
THE APPEAL
PROCESS AND THE
RIGHTS OF THE
STUDENT

EXPULSION APPEAL HANDBOOK

SACRAMENTO COUNTY
BOARD OF EDUCATION

REVISED
SEPTEMBER 2008

Sacramento
Office of Education **County**

The **Sacramento County Office of Education** serves the following districts:

Arcohe Union School District (K-8)

Center Unified School District (K-12)

Elk Grove Unified School District (K-12)

Elverta Joint School District (K-8)

Folsom Cordova Unified School District (K-12)

Galt Joint Union School District (K-8)

Galt Joint Union High School District (9-12)

Natomas Unified School District (K-12)

River Delta Unified School District (K-12)

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- Del Paso Heights School District (K-6)
- Grant Joint Union High School District (7-12)
- North Sacramento School District (K-6)
- Rio Linda Union School District (K-6)

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AS AUTHORIZED BY ADMINISTRATIVE RULES AND REGULATIONS - ARR 5114
SACRAMENTO COUNTY BOARD OF EDUCATION



Expulsion Appeal Handbook

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Introduction

The Sacramento County Office of Education has prepared this Handbook to assist expelled pupils and the Parent(s) or Guardian(s) of expelled pupils to understand the appeal process and the rights of the pupil. The Handbook constitutes the official procedures adopted by the Board for conducting expulsion appeals. *Particular attention should be paid to issues noted in "italics." These issues have been found confusing to parents filing past appeals.*

The Sacramento County Board of Education is committed to an objective review and deliberation of appeals of students expelled from local school districts.

This information must be reviewed in conjunction with the laws on student discipline and expulsion appeals within the *California Education Code, Sections 48900-48926*. You must also review the school district's policies and administrative procedures for suspension and expulsion. Remember, you are entitled to review the record of the school district's process hearing and supporting records or documents. You have the right to consult with and engage the services of an advocate or an attorney.

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What is the Purpose of an Appeal?

The County Board of Education has limited authority under law to review the procedures followed by the school district prior to expelling a pupil to determine: whether the Education Code was complied with; whether “due process” was afforded; and whether there is evidence to support the local governing board’s findings and decision supporting the expulsion.

- The issues that the County Board of Education may consider are described more fully in this Handbook under *“SCOPE AND LIMITATIONS OF THE HEARING” (page 12)*.
- The meeting at which the County Board of Education considers the appeal is not a new hearing to consider evidence about whether the pupil should have been expelled. The purpose of the appeal meeting is to listen to arguments as to whether the local school district followed proper procedure. The County Board will “hear” new evidence only in unusual circumstances.
- The County Board of Education does not have any authority to agree or disagree with the local school district governing board’s decision to expel. Nor does it have the authority to modify the expulsion on the basis that the penalty was too harsh for the misconduct.

The County Board of Education’s review of the appeal may result in:

- Upholding the expulsion decision
- Reversing the decision and returning the pupil to attend school in the local district as well as expunging the record of the expulsion
- Returning the case to the local school district to either consider additional evidence or revise the factual findings

A decision to overturn the expulsion and return the pupil to the local school district does not order attendance at the former school or at any particular school. The local school district has authority to determine attendance within district programs.

The County Board of Education decision will address only expulsion issues. It will not review or order any change in the pupil’s suspension pending expulsion.

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When May an Appeal Be Filed with the Sacramento County Board of Education?

The Parent of the expelled pupil may file an appeal with the County Board of Education *within thirty (30) calendar days of the date following the decision* by the school district's governing board to expel the pupil.

- "Parent" also includes guardian or legal counsel on behalf of the Parent. The pupil may also file an appeal independently of his/her Parents.
- *The thirty (30) day period starts on the first day after the date the school district's governing board takes action even if notice of the decision is not mailed to the Parent immediately. The appeal must be physically received by the County Office of Education within the thirty (30) day period, not just mailed. If the deadline is on a Saturday, Sunday or County Office holiday, the appeal may be filed on the next school day.*
- Only the governing board of a school district may expel a pupil. The principal of the pupil's school or the superintendent of the school district may only recommend the expulsion to the governing board. A hearing officer or an administrative panel may conduct the expulsion hearing, develop findings of fact, and make a recommendation to the governing board. However, there is no expulsion until the school district's board takes formal action to expel.
- An expulsion or a suspended expulsion (where the pupil is returned to school with conditions of probation) may be appealed. The thirty (30) day timeline applies from the initial suspended expulsion decision, not at a later date if the pupil is expelled from violating probation.

What if the Appeal is Filed Late?

The County Board of Education has no jurisdiction to consider a late appeal. Any appeal filed after the deadline will be returned accompanied by a cover letter indicating that the appeal was not processed.

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Questions Regarding Filing an Appeal

A Parent considering whether to file an expulsion appeal with the County Board of Education and/or having any questions should contact by either telephone or mail:

Deputy Superintendent
Sacramento County Office of Education
10474 Mather Boulevard
P.O. Box 269003
Sacramento, CA 95826-9003
Telephone: (916) 228-2409

The Sacramento County Office of Education staff will answer questions and clarify the procedures outlined in this Handbook. The staff will also contact the administration of the local school district which implemented the expulsion in order to coordinate the processing of the appeal.

Note: contacting the Sacramento County Office of Education with questions or a request to file an appeal does not constitute the filing of an appeal and has no impact on the deadline for filing an appeal.

Submitting the Expulsion Appeal

The notice of appeal may be submitted in person, by mail, or by fax to:

Deputy Superintendent
Sacramento County Office of Education
10474 Mather Boulevard
P.O. Box 269003
Sacramento, California 95826-9003
Fax: (916) 228-2403

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What Must Be Included in the Expulsion Appeal?

The written notice of appeal must contain all of the following information:

- Name, address, and date of birth of the expelled pupil
- Names, addresses and telephone numbers of the person(s) submitting the appeal (the appellant is usually the Parent(s) or Guardian(s) of the pupil and the person, if any, representing the pupil)
- School district, school, and grade from which the pupil was expelled
- The date of the school district governing board's decision to expel and the effective date of the expulsion
- A copy of the appellant's written request to the expelling school district to prepare a transcript of the district expulsion hearing
- A brief statement or set of statements which explains why, in your opinion or belief, the decision of the school district governing board should be reversed. The statement(s) must relate to one or more of the conditions described in this Handbook under "**SCOPE AND LIMITATIONS OF THE HEARING**" (page 12). It is your responsibility to explain as clearly as you can and provide specific information about why you believe the school district governing board's decision should be reversed.
- [Attach a copy of the notice of expulsion sent by the local school district.]
- *[Identifying New Evidence]* You must clearly indicate whether you plan to offer new evidence which was not raised at the time the original expulsion hearing was held and describe such evidence. See "**SCOPE AND LIMITATIONS OF THE HEARING**" (page 12) for a discussion of new evidence.

PARENTS ARE ENCOURAGED TO USE THE FORM FOR "**EXPULSION APPEAL AND REQUEST FOR HEARING**" (ADDENDUM C) IN THIS HANDBOOK IN LIEU OF WRITING A LETTER.

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Who is Responsible to File the Transcript and Supporting Records of the Original Expulsion Process?

A. Parent

The Parent is responsible for immediately requesting from the local school district a transcript of the expulsion hearing and a copy of all documents beginning with the first date of suspension.

- At the same time the Parent files the appeal with the County Board of Education, he/she must submit to the expelling school district a written request for a copy of the written transcript of the expulsion hearing and all supporting documents or records. A form for *“REQUEST FOR TRANSCRIPT AND SUPPORTING DOCUMENTS”* (Addendum D) is provided at the back of this Handbook.
- The Parent shall file a copy of the request for transcript with the County Board of Education at the same time as the filing of the appeal.

The Parent must pay the local school district for the cost of preparing the transcript and copies of supporting documents or records except in one of these situations:

- Where the Parent certifies to the school district that he/she cannot reasonably afford the cost of preparing the transcript because of limited income or exceptional necessary expenses, or both. A form for *“CERTIFICATION OF INABILITY TO AFFORD COST OF TRANSCRIPT”* (Addendum E) is provided at the back of this Handbook.
- In a case where the County Board reverses the decision of the school district governing board, the County Board shall require that the school district governing board reimburse a Parent who has paid for the cost of preparing the transcript and supporting documents or records.

B. Local School District

The local school district is responsible for preparing an accurate verbatim transcript of the expulsion hearing, as well as copies of all hearing exhibits and all correspondence regarding the suspension and expulsion. This includes documentation reflecting the findings of fact and recommendation of the panel conducting the hearing and the governing board’s action on the recommendation.

Within ten (10) school days following the Parent’s written request for the transcript, the school district shall prepare two copies of the transcript,

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supporting documents and records. Unless otherwise requested by the Parent, the school district shall mail one copy of these documents directly to the County Office of Education with a second copy mailed to the Parent.

- *If Parent requests that the district make the transcript and documents available to the Parent, then the Parent is responsible to deliver the transcript and documents to the County Office of Education within one school day of availability from the district.*

Setting a Date for Hearing the Appeal

Once the written transcript of the expulsion hearing and copies of the supporting documents or records have been filed with the County Office of Education, the County Superintendent of Schools will schedule a hearing date for the County Board of Education to consider the appeal.

- The County Board will hold a hearing within twenty (20) school days following receipt of the transcript and supporting documents prepared by the district, unless the Parent or the district requests a postponement.
- Either the Parent or the local school district may request a postponement by submitting a written request, including the reason, to the County Board of Education at least five (5) calendar days prior to the hearing. The request for postponement shall be acted upon by the County Superintendent of Schools within two (2) school days after determining whether the request is based upon good cause. Any request for postponement made less than five (5) calendar days prior to the hearing will be considered by the Board of Education at the hearing. The request will be granted only upon finding that a compelling reason or an emergency exists. If the request is not granted, the hearing will remain calendared on the scheduled date.
- *Both the Parent and the school district will be mailed notice of the hearing date no more than three (3) school days after receipt of the transcript and supporting documents from the district.* The notice will specify the date, time, and place of the hearing. The County Board of Education holds regular meetings on the second and fourth Wednesdays of each month at the Sacramento County Office of Education Board Room, 10474 Mather Boulevard, Mather, California. The County Board of Education may be required to schedule a special meeting on a different date to hear the appeal depending upon its regular business.
- Parents are required to keep the county office of education informed of any changes of address during the appeal process. Failure to secure a hearing notice or other mail sent to the last known address shall not constitute grounds to cancel the hearing.

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The hearing will be held in closed session unless the Parent requests an open (public) session in writing either by an indication in the space provided on the *"EXPULSION APPEAL AND REQUEST FOR HEARING"* (Addendum C) or by a separate written request filed with the County Office of Education at least five (5) calendar days prior to the hearing date.

Failure to Appear At the Hearing

Participation at the appeal hearing is required. If a Parent or representative of a student fails to appear at the hearing after filing an appeal, the County Board will dismiss the appeal without considering its merits.

Filing Written Arguments Prior to Hearing

The Parent or a representative may file a written argument or an appeal brief. Any written argument must be received by the County Office of Education within ten (10) calendar days of the receipt of transcript and supporting documents. The Parent shall also provide the district with a copy of his/her argument by in-person delivery or first class mailing, postmarked no later than the date from which the Parent's argument or brief is filed.

The school district also has the right to submit a written argument, which may consist of a reply brief. The District's argument must be filed within ten (10) calendar days of the receipt of transcript and supporting documents. The district shall also provide the Parent with a copy of its argument by in-person delivery or first class mailing, postmarked no later than the date from which the district's argument or brief is filed.

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Use of the Hearing Binder

Approximately four (4) calendar days prior to the hearing, the County Office of Education will make available the hearing binder which will include information that has been submitted during the appeal process. *Use of the binder is very important in preparing for the appeal hearing.*

The binder will contain:

- Tab 1 - Correspondence regarding the pupil's suspension, expulsion and appeal
- Tab 2 - Transcript of the original expulsion hearing
- Tab 3 - Documents presented at the original expulsion hearing
- Tab 4 - Local school district's expulsion policies
- Tab 5 - County Board of Education expulsion appeal policies
- Tab 6 - California Education Code laws regarding student discipline

All pages in the binder are numbered consecutively. Both parties are encouraged to refer to the page numbers of the original expulsion hearing transcript and other documents in this binder during their presentation. Referring to page numbers will assist the County Board of Education members in following the presentation.

Scope and Limitations of the Hearing

The Sacramento County Board of Education decides an appeal after:

- Reviewing the expulsion record which consists of the transcript and documents considered at the original expulsion hearing
- Considering the issues raised by the Parent in the appeal as well as issues apparent from the record itself and the school district's arguments
- Determining which issues it has authority under law to address

Please keep in mind that the County Board's charge is to determine if the pupil's due process rights were violated in a manner which resulted in the pupil receiving an unfair hearing. It is not the charge of the County Board to agree or disagree with the school district governing board's decision to expel the pupil, but to ensure that procedures were followed and that a fair hearing was conducted.

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A. New Evidence

A REQUEST TO OFFER NEW EVIDENCE MUST BE NOTED WHEN FILING THE NOTICE OF APPEAL.

The County Board will hear no “evidence” other than the information that is already contained in the binder to be used at the appeal hearing. That information should consist only of witness testimony, written witness statements, documents which were considered at the original expulsion hearing, official district records documenting the suspension, correspondence, and the appeal documents.

- **Examples of “evidence” which may not be raised for the first time at appeal:** Additional information about the facts surrounding the pupil’s misconduct; the pupil’s prior good behavior; or incidents occurring during the district’s investigation of the misconduct if the information was known or available prior to the original expulsion hearing. These examples of evidence should have been offered at that hearing rather than now.
- **Examples of proper “argument” to raise at the appeal hearing in support of an issue raised in the appeal:** “The pupil denied being present when the school property was stolen during the investigation of the incident and during his testimony at the expulsion hearing. (See testimony, page 112, and witness statement, page 143.) No other non-hearsay evidence exists in the record to support the finding of fact that he participated in the theft.” All the evidence being referred to in this statement was already presented at the expulsion hearing, and therefore, is not new evidence.

[Exception to Considering New Evidence] There is one very limited exception to the County Board not considering new evidence. If the Parent proposes to offer new evidence, the County Board will either allow an explanation of what the new evidence is and what issue it relates to [called an “offer of proof”] or will review the documentary evidence in question.

The County Board will vote to allow new evidence to be offered only if a majority of the members find that the evidence qualifies as:

- Relevant and material evidence which, in the exercise of reasonable diligence, could not have been produced at the school district expulsion hearing; or
- Relevant and material evidence which was improperly excluded at the school district expulsion hearing; and further, that
- The evidence, if received, would be a significant factor in determining the outcome of an issue in the case over which the County Board has jurisdiction to decide [Education Code § 48922].

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If the County Board votes to hear new evidence, it may:

- Remand (send) the matter back to the school district governing board for reconsideration, along with any instructions that the County Board may deem necessary, which may include reconsideration of the entire matter or any part thereof. The County Board may also order the pupil reinstated pending the reconsideration; or
- Grant a new hearing (a hearing *de novo*) before the County Board of Education upon reasonable notice to all parties and in conformance with regulations of the County Board; or
- Vote to allow new “sworn evidence” or documents limited to the issue raised, in the event that the County Board determines it is neither appropriate to remand the matter to the school district governing board for reconsideration or to conduct a new *de novo* hearing; however,
 - The County Board may recess the hearing to a future date to receive evidence relevant to the issue raised, if the taking of new evidence at the same hearing would be prejudicial to the school district (*e.g.*, because a rebuttal witness is not present at the hearing).

B. Legal Issues Which May Be Considered

The County Board of Education’s review of the case shall be limited to the following four questions. While these questions are phrased in “legal terminology” (based on Education Code §§ 48922), there are many factual issues which fall within these questions.

1. *Did the school district governing board act without or in excess of its jurisdiction?*

Explanation:

The California Education Code spells out the reasons for which a pupil may be expelled, the timelines that must be met during expulsion proceedings, and the relationship that must exist between the misconduct and the school activities or attendance. If any of the laws on these subjects were not complied with by the local school district, the final action to expel by the district governing board may have been in “excess of its jurisdiction.”

For Example:

- Was the offense for which the pupil was expelled one of the “grounds” for expulsion authorized by state law or local board rule? A pupil may not be expelled unless the offense is a violation of the *California Education Code* or school rules adopted under Education Code § 35291.5.

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- If the expulsion was based on a local board rule, was the rule a reasonable and valid one and consistent with state law?
- Did the situation involve conduct related to a school activity or to school attendance?
- Was the expulsion hearing commenced and a final decision issued within the time limits prescribed by law?

Note: The school district does not have jurisdiction to expel a special education student unless the special education meetings and procedures established by law preceding expulsion have been completed. Please contact the school district with questions.

2. *Was there a “fair hearing” before the governing board?*

The word “fair” is a legal term. It does not mean fair in the everyday sense of “fair play” or “fair treatment.” The County Board does not have authority to overturn an expulsion because another pupil received a suspension while your pupil was expelled arising from the same incident.

Explanation:

The school district is required to provide to the Parent timely notice of a hearing; allow the Parent to hear and examine all evidence submitted; and provide the Parent a reasonable opportunity to present evidence to deny, explain or mitigate the allegations. [Education Code § 48911(g) and § 48918.] Although only the governing board may take action to expel, the board may appoint an administrative panel or hearing officer to hear the case; develop “findings of fact”; and make a recommended decision to the governing board. Thus, an administrative panel or hearing officer may conduct the required fair hearing on behalf of the governing board, after which the governing board must approve the decision at a subsequent regular meeting.

For Example:

- Was the pupil denied the right to be represented by an advocate or by legal counsel?
- Was the pupil prohibited from introducing testimony of witnesses on his/her behalf?
- Was the evidence submitted in support of the expulsion the kind of evidence upon which reasonable persons are accustomed to relying upon in conduct of serious affairs?
- Was there a failure to introduce any evidence to support the decision to expel?

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- Was the pupil or the pupil's representative, if any, given an opportunity to confront and question any witnesses who testified at the hearing except as provided in Education Code § 48918(f)?
 - Was the Parent adequately advised of his/her rights to fully participate in the hearing?
3. *Was there a "prejudicial abuse of discretion" in the hearing [or in the processing of the expulsion]?*

Explanation:

[Abuse of Discretion] An abuse of discretion (although not necessarily a prejudicial abuse) would be established under any of the following circumstances:

- a. **If the school district governing board did not proceed with the expulsion in the manner required by law.**

A school district's violation of any statute governing the expulsion process which is not "jurisdictional" may still constitute an abuse of discretion.

For Example:

- Hearing panel member is from same school as pupil [Education Code § 48918(d)]
- Failure of governing board to issue subpoena for witness in a timely manner [Education Code § 48918(i)]
- Parent received notice of hearing eight (8) days in advance instead of ten (10) days in advance [Education Code § 48918(b)]
- Governing board issues expulsion decision with no date set to consider re-admission of the pupil [Education Code § 48916(a)]

- b. **If the decision to expel is not supported by the findings prescribed by Education Code section 48915.**

[Factual Findings] A "finding" must be written in the expulsion decision describing the conduct the pupil engaged in which is a basis for the expulsion. The finding must spell out the facts (where, when, what) sufficiently to verify that the pupil engaged in misconduct. The finding must be based upon evidence provided during the expulsion hearing, not information provided to the panel members or Board members at another time.

For Example:

- (Correct Factual Findings) John J. brought a knife to school on 9/12/00. John took the knife out of his backpack and showed it

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to two students during third period class.

- (Incorrect Factual Findings) John J. violated Education Code § 48900 (b) by bringing a dangerous weapon to school.

[Additional Findings] The law establishes five types of misconduct for which expulsion is “mandatory”: firearms, brandishing a knife, selling drugs, sexual assault, and possession of explosives [Education Code § 48915(c)]. For all other types of misconduct, the governing board must also find either of the following facts:

- (1) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct; or

For Example:

- The pupil has previously been warned and later suspended on three different occasions for using profanity toward his teacher in the classroom. These corrections have failed to curb his defiance of valid authority and disruption of the class [Education Code § 48900(k) and § 48915(e)(1)].
- (2) Due to the nature of the violation [misconduct], the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

The California Attorney General has advised that making this finding involves: (1) a generalized determination based upon the type of misconduct involved (*e.g.*, drinking alcohol on campus); and (2) a connection to the potential future impact on the safety of the pupil or on other pupils [1997 Attorney General Opinion No. 903]. *In practice, it is very difficult to determine whether the finding is justified because it is based upon conclusion and prediction rather than facts.*

The County Board has the option to return the case to the local district if it determines that the “findings of fact” are inadequate, but the evidence does exist in the record to support proper findings. Upon remand, the local school board would be required to revise the findings of fact consistent with the direction of the County Board. The second decision would be appealable again, but the likelihood of the decision being overturned by the County Board would be smaller. As an example, the County Board might return a case where the school board issued the (wrong) finding listed above and direct the school board to correct the finding. The rationale is that the error by the school board is a technical one and the evidence supports an expulsion if the technical error is corrected.

- c. If the “findings of fact” made following the hearing are not supported by the evidence.

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Misconduct must be proven by reliable “first-hand” evidence offered during the expulsion hearing. Such evidence may consist of testimony by a witness who observed the misconduct; an admission of the pupil involved; or in certain cases, by statements made and/or written down at the time the misconduct occurred and determined to be reliable. All other statements made outside the hearing are considered “hearsay” evidence. Misconduct may not be proven solely by hearsay evidence, although hearsay evidence may be offered to support other reliable evidence.

- The finding that a pupil started a fight was not proven where the only evidence offered at hearing was by the vice principal who testified that he talked to another who said “James started the fight.” Neither James nor the other student testified during the hearing.
- A written witness report from a yard duty aide was insufficient to prove that a pupil smoked marijuana where no other evidence was offered at the hearing.

d. **Abuse of discretion must be “prejudicial.”**

The County Board must find that an abuse of discretion was “prejudicial” to the outcome of the expulsion decision in order to overturn a decision. If an error occurred or a statutory requirement was only partially complied with, the violation must have a substantial impact on the process or decision to be “prejudicial.”

For Example:

- The Parent received the notice of hearing two (2) days late, but had plenty of time to prepare for the hearing. The Parent attended the hearing and made no showing at the hearing that the late notice affected her participation. [Abuse of discretion was not prejudicial.]
- The notice of hearing was sent to the wrong address. The Parent was never notified of the hearing and did not attend. The hearing was held anyway and the student expelled for misconduct. The Parent objected as soon as she learned that the hearing had been held. [The abuse was prejudicial to the right to participate in the hearing.]

4. *Is there relevant and material evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the governing board (or the administrative panel)?*

- See “New Evidence” (page 13, paragraph A).

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Conducting the Appeal Hearing

A. Closed Session

Expulsion appeals are heard by the County Board in closed session, unless the Parent requests, in writing, an open session hearing. In closed session, only the Parents, the Parent/Student representative, the pupil and representatives of the local school district are permitted in the room with the County Board Members and their staff. In an open hearing, any member of the public may attend the hearing.

B. Hearing Procedure

The Board President, or the designated presiding officer for the hearing, will call the hearing to order and describe the hearing procedures. Each person in the room will be asked to identify him or herself for the record. A tape recorder will be in operation throughout the hearing.

The Parent (or the Parent's representative) will be asked to indicate whether he/she noted on the expulsion appeal form a request to offer "new evidence" as part of the appeal hearing. If so, the County Board will listen to an "offer of proof" and decide whether new evidence should be allowed.

Next, the Parent will be asked by the Board President to present an opening statement. This is an opportunity for the Parent to summarize or provide an overview of the issues in the appeal or to provide any background information which will be helpful to County Board members.

The representative of the school district will be asked to make a statement reflecting the school district's position.

The Parent will then be allowed to identify the first issue identified in the appeal and to provide an argument in support of the appeal. The school district representative will be allowed to respond. Each issue will be identified in order by the Parent with equal time for the school district to respond.

It is important here to remember to remain focused upon the record of the expulsion hearing contained in the binder provided to each participant and on the four questions over which the County Board has authority to rule. They are:

1. *Whether the governing board acted without or in excess of its jurisdiction;*
2. *Whether there was a fair hearing before the district governing board;*
3. *Whether there was a prejudicial abuse of discretion in the hearing; and*

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4. *Whether there is relevant and material evidence that in the exercise of reasonable diligence could not have been produced or which was improperly excluded at the hearing before the local district governing board.*

The Parent need not be concerned about making a polished presentation, but it is important to prepare the presentation in advance. Having notes or a prepared script may be of great help.

C. Issues Raised By County Board Members

During and after each presentation, members of the County Board of Education may ask questions of the Parent and of the school district's representative(s). County Board members may raise issues during the hearing based upon their own review of the hearing record. The appeal decision may be based upon these issues even if they are not raised by the Parent. Examples of issues commonly raised by County Board members are:

- Has the *additional finding* been made that either: (1) *the pupil has received lesser corrections which have not been effective*; or (2) *the pupil presents a danger to the physical safety of others or him/herself because of the nature of the misconduct*? [See Education Code §48915 (e)]
- If such finding has been made, has the school district described the evidence in the record which supports the finding?
- Was the misconduct proven by evidence which shows first-hand knowledge or which is not hearsay (or an exception)?

You (the Parent) and the school district representative should review the entire hearing record prior to attending the hearing and be prepared to discuss any issue raised at the appeal.

D. County Board Deliberation

When the presentations and questioning are completed, the County Board will either retire to another room to deliberate or excuse from the Board Room all present except the County Board, the Board's legal counsel, the County Superintendent and any necessary staff. No representative of the school district or the Parent will be allowed to attend the deliberations.

In making its decision, the County Board will not:

- Substitute its judgment for the judgment of the school district governing board.
- Reverse a school district governing board's decision because of technical inadequacies in the hearing process unless it first determines that the error was prejudicial.

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- Consider evidence other than that contained in the record of the proceedings of the school district governing board except as noted in these rules.

E. County Board Decision

After deliberating, the County Board will reconvene in open session and announce its decision. As the County Board of Education consists of seven (7) members, four (4) affirmative votes are required to reverse an expulsion decision by a local school district governing board irrespective of the quorum present at the appeal hearing. If the County Board enters a decision reversing the school board's decision, the County Board may direct the school board to expunge the record of the pupil and the records of the district of any references to the expulsion action and the expulsion shall be deemed not to have occurred.

Although the County Board must render a written decision within three (3) school days of the hearing, it usually renders its verbal decision on the day of the hearing. The Parent and the governing board of the school district will be notified of the rationale and decision of the County Board, in writing, either by personal service or by certified mail. The order shall become final when rendered. (Education Code § 48924)

F. Appeal of County Board Decision

A final decision by the County Board of Education may be appealed to the Superior Court of Sacramento County.

1. Parent Appeal

A decision of the County Board to uphold the expulsion decision by a school district governing board is not a decision based upon an evidentiary hearing. The decision is in the nature of exhaustion of an administrative appeal. A Parent should contact an attorney to appeal the original decision by the school district which imposed the expulsion.

2. School District Appeal

A decision of the County Board to reverse the expulsion decision by a school district governing board may be reviewed by the Superior Court in a Writ of Administrative Mandamus [California Code of Civil Procedure § 1094.5] action filed by the local school district against the County Board. The timeline to file a Writ in the California Code of Civil Procedure 1094.6 does not apply. The County Superintendent of Schools will develop an administrative record of the appeal hearing upon receipt of notice from the Court. The order of the County Board to reinstate the student to attendance shall be complied with pending the outcome of the court case.

Expulsion Appeal Handbook

ADDENDUMS

- A ~ SACRAMENTO COUNTY BOARD OF EDUCATION POLICY 5114 - STUDENT EXPULSION APPEAL FROM DISTRICT

- B ~ EXPULSION APPEAL HEARING TIMELINE AND PROCESS

- C ~ FORM: EXPULSION APPEAL AND REQUEST FOR HEARING

- D ~ FORM: REQUEST FOR TRANSCRIPT AND SUPPORTING DOCUMENTS

- E ~ FORM: CERTIFICATION OF INABILITY TO AFFORD COST OF TRANSCRIPT

Expulsion Appeal Handbook

Addendum A ~ BOARD POLICY 5114

Sacramento County Board of Education

5000 – STUDENTS

STUDENT EXPULSION APPEAL FROM DISTRICT

BP5114

Page 1 of 1

The County Board of Education recognizes that the implementation of student discipline is within the authority of local school districts. The County board is given the legal responsibility of serving as the appeal body to safeguard the rights of students who are subject to expulsion.

The County Board shall hear expulsion appeals pursuant to the procedures provided in Education Code sections 48919 through 48924.

The County Board is given authority by law to adopt rules and regulations establishing procedures for expulsion appeals. In an effort to make such legal procedures “user friendly,” the County Board has reviewed and adopted the contents of the Expulsion Appeal Handbook dated October 3, 2000. The Handbook is established as an administrative regulation to govern expulsion appeals filed within the County Board.

References: Education Code Sections 48919-48924

5/1/90 Approved

9/22/95 Revised

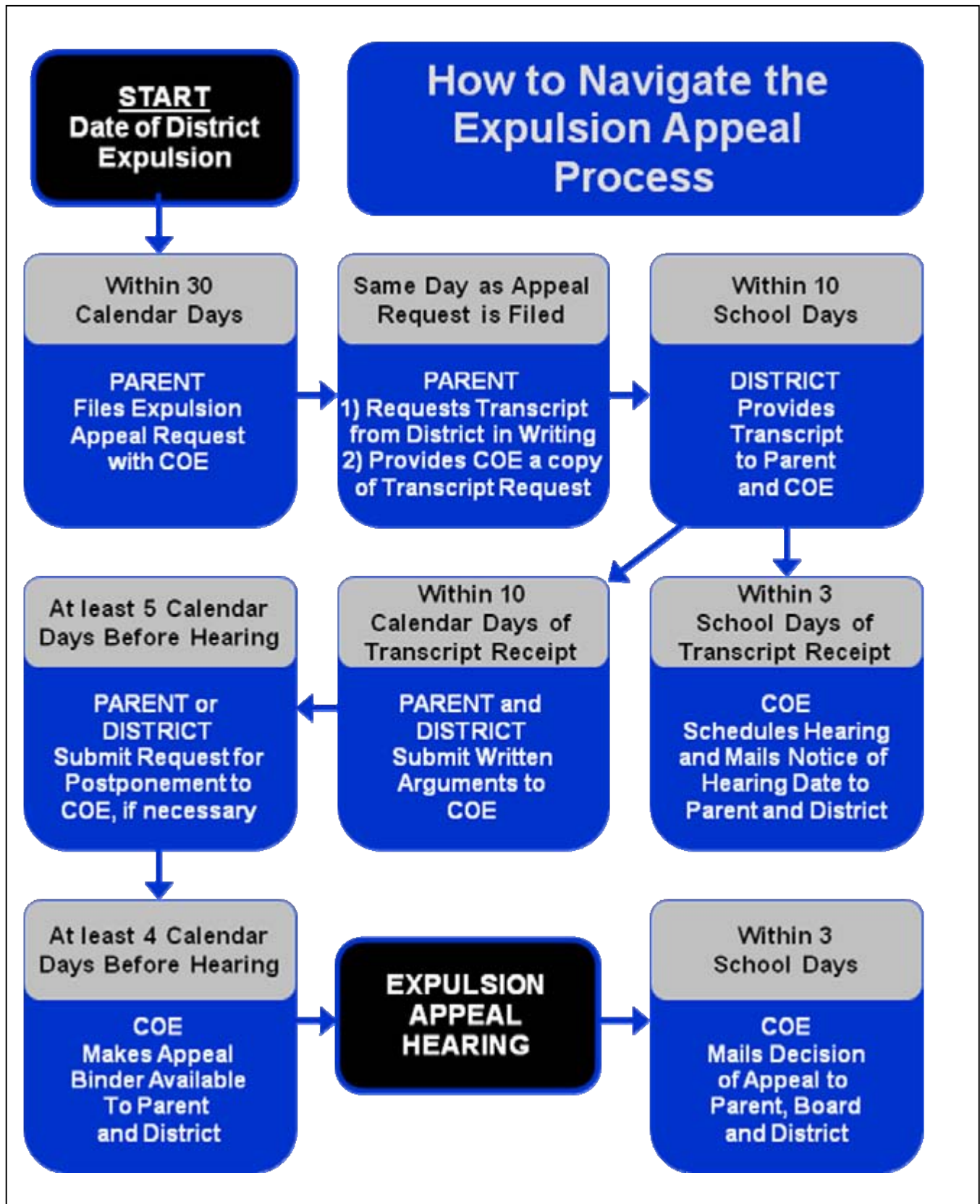
1/16/96 Approved

9/25/96 Revised

10/03/00 Repealed and New Policy Adopted

Expulsion Appeal Handbook

Addendum B ~ EXPULSION APPEAL HEARING TIMELINE AND PROCESS



Expulsion Appeal Handbook

Addendum B ~ EXPULSION APPEAL HEARING TIMELINE AND PROCESS

<i>Step</i>	<i>Procedure</i>	<i>Responsibility</i>	<i>Timeline</i>
1	<i>Parent files expulsion appeal with the County Office of Education (COE).</i>	<i>Parent</i>	<i>Within thirty (30) calendar days of the day after district expulsion</i>
2	<i>Parent submits written request to School District for the expulsion hearing transcript and completes "Inability to Pay" form if applicable; a copy of the request is provided to the COE.</i>	<i>Parent</i>	<i>Concurrently with submission of expulsion appeal</i>
3	<i>School District submits a transcript of the expulsion hearing and other pertinent documents, including attendance registers, discipline actions, grades, etc. to Parent and COE.</i>	<i>School District</i>	<i>Within ten (10) school days after the receipt of request from Parent</i>
4	<i>Appeal hearing is set by COE and the notice of hearing is mailed to Parent and School District within three (3) school days of receipt of transcript.</i>	<i>County Superintendent or designee</i>	<i>Within three (3) school days after receipt of transcript and other records</i>
5	<i>Parent submits to COE written argument or documents not delivered previously.</i>	<i>Parent</i>	<i>Within ten (10) calendar days after receipt of transcript</i>
6	<i>School district submits to COE written argument or documents not delivered previously.</i>	<i>School District</i>	<i>Within ten (10) calendar days after receipt of transcript</i>
7	<i>COE prepares appeal binder, which includes all information previously submitted and makes it available to the Parent, Student, School District, County Board, and Legal Counsel.</i>	<i>County Superintendent or designee</i>	<i>Approximately four (4) calendar days before appeal hearing</i>
8	<i>Expulsion appeal hearing is conducted in closed session unless open session is requested by Parent at least five (5) days in advance.</i>	<i>County Board of Education</i>	<i>As scheduled by the County Board of Education</i>
9	<i>Closed session deliberation by the County Board.</i>	<i>County Board and Counsel</i>	<i>Immediately following the appeal hearing</i>
10	<i>Decision is announced in open session following closed session deliberation.</i>	<i>County Board president or designee</i>	<i>Immediately following deliberation</i>
11	<i>Written decision is mailed to Parent, school district, county board members, and legal counsel via Certified Mail.</i>	<i>County Superintendent or designee</i>	<i>Within three (3) school days after hearing</i>

Expulsion Appeal Handbook

Addendum C ~ EXPULSION APPEAL AND REQUEST FOR HEARING

Note: This Notice of Appeal, or intent to fill such notice, shall be communicated to the Sacramento County Board of Education within 30 calendar days following the date of expulsion.

PLEASE PRINT OR TYPE ALL MATERIALS EXCEPT SIGNATURE.

NAME OF PUPIL (LAST, FIRST) 1.	BIRTHDATE 2.	GRADE 3.
ADDRESS (NUMBER, STREET, CITY AND ZIP CODE) 4.		
SCHOOL DISTRICT 5.		
SCHOOL 6.	DATE LOCAL SCHOOL BOARD VOTED TO EXPEL 7.	

Parents (if guardian, complete next section)

FIRST AND LAST NAMES OF PARENTS 8.	TELEPHONE NUMBER 9. ()
10.	()

Guardian

FIRST AND LAST NAME OF GUARDIAN 11.	TELEPHONE NUMBER 12.()
ADDRESS (NUMBER, STREET, CITY AND ZIP CODE) 13.	

Attorney

FIRST AND LAST NAME OF ATTORNEY 14.	TELEPHONE NUMBER 15.()
ADDRESS (NUMBER, STREET, CITY AND ZIP CODE) 16.	

17. Reason(s) given by the local school board for expulsion
(ATTACH A COPY OF NOTICE OF EXPULSION, IF POSSIBLE.)

<p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p>

Expulsion Appeal Handbook

Addendum C ~ EXPULSION APPEAL AND REQUEST FOR HEARING (page 2)

18. Why should the expulsion be set aside? (Attach documentation, if any.)

Note: An expulsion may be appealed only on one or more of the following grounds:

A. The local school board proceeded without or in excess of its jurisdiction.

(If applicable, state briefly why you believe this is true - see page 14.)

B. The local school board failed to provide for a fair hearing.

(If applicable, state briefly why you believe this is true - see page 15.)

C. There was a prejudicial abuse of discretion in the hearing as such abuse is described in Section 48922 of the Education Code.

(If applicable, state what abuse occurred and how it prejudiced the case - see page 16.)

D. There is new, relevant evidence which could not have been produced at the time of the hearing, or there was relevant evidence which was improperly excluded at the hearing.

(If applicable, explain circumstances and describe briefly the nature of the new or improperly excluded evidence - see page 18.)

19. Type of hearing requested (check one):

Closed to public or Open to public

X _____

Signature or Parent or Guardian or Adult Pupil Filing Appeal

SEND COMPLETED FORM TO:

Deputy Superintendent
Sacramento County Office of
Education
10474 Mather Boulevard
P.O. Box 269003
Sacramento, Ca 95826-9003

Note:

Only one (1) copy of this Expulsion Appeal and Request for Hearing is required to be filed with the Sacramento County Board of Education. The County Board will prepare a copy for the local school district. If you have not already received a copy of the procedures for completing your appeal, please notify the Sacramento County Office of Education as soon as possible by telephoning (916) 228-2409.

Expulsion Appeal Handbook

Addendum D - REQUEST FOR TRANSCRIPT AND SUPPORTING DOCUMENTS

(Note: This letter must be received by the school district superintendent's office on the date you file the Expulsion Appeal and Request for Hearing with the Sacramento County Board of Education.)

Date

District Superintendent's Name

School District Name

School District Address

Re: Request for Transcript and Supporting Documents from School District

This is to inform you that I am filing an Expulsion Appeal and Request for Hearing with the Sacramento County Board of Education relative to the district's expulsion of my child,

Student's name

Education Code Sections 48919 and 48921 require that I request from you a transcript of the school district's expulsion hearing, supporting documents, and records, certified by you or by the Clerk of the Board to be a true and complete copy.

I understand that these records will be prepared within ten (10) school days of this request and my filing of the Expulsion Appeal and Request for Hearing with the Sacramento County Board of Education, provided my request is within thirty (30) calendar days of the decision to expel by the district school board. California Education Code 48919 requires that I take responsibility for the delivery of the transcript and documents to the County Board of Education immediately upon receipt of these records. I am requesting (check one and complete):

_____ That you send a copy of the records directly to me at the following address:

Or

_____ That you contact me immediately when these records are ready at _____ .
I will then arrange for them to be picked up at your office. *(phone number)*

Once I have the documents, I will arrange for them to be copied and delivered to the Sacramento County Board of Education office immediately.

Sincerely,

Signature of Parent or Guardian

Print name of Parent or Guardian

Expulsion Appeal Handbook

Addendum E ~ CERTIFICATION OF INABILITY TO AFFORD COST OF TRANSCRIPT

Date

District Superintendent's Name

School District Name

School District Address

Re: Certification of Inability to Afford Cost of Transcript

This is to inform you that I, the parent of _____,

(Print Student's name)

for the reasons listed below, cannot reasonably afford the cost of the district's expulsion hearing transcript. I request that the transcript be provided to me without cost because of:

Limited income (explain):

Exceptional necessary expenses (explain):

Sincerely,

Parent/Guardian Signature

Expulsion Appeal Handbook

NOTES:



SACRAMENTO COUNTY BOARD OF EDUCATION

Greg Geeting
Trustee, Area I

Gretchen C. Bender, MPA
Trustee, Area II

Christopher W. Woods
Trustee, Area III

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Harold Fong
Trustee, Area VII

County Superintendent of Schools

David W. Gordon

10474 Mather Boulevard
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