

StudentsAppeal from Expulsion

The County Board of Education recognizes that student discipline is primarily the prerogative of the local district. Standards of behavior acceptable to the district and procedures to assure that the standards are observed are essential to an effective school climate. The County Board of Education also recognizes, however, that the rights to due process and the rights to a fair and just resolution of behavior issues are supported through the appeal process.

Expulsion is the most severe form of discipline which a local district may invoke. The County Board of Education is vested with the responsibility of serving as the final appeal body in such cases. The hearing of expulsion appeals is intended to safeguard the rights of the student(s) and the rights of the district.

The County Superintendent of Schools is charged with the development of regulations which will assure that expulsion appeals are conducted in a timely and equitable manner.

Policy
adopted: July 11, 1984

Students

APPEAL FROM EXPULSION (ADMINISTRATIVE REGULATION)

1. An expelled student or the student's parent(s) or guardian(s) (hereinafter "Appellant") may appeal the decision by the governing board of a school district (hereinafter "District Board") to expel the student to the County Board of Education (hereinafter "County Board") as provided herein.
2. The appeal must be filed within thirty (30) calendar days following the date of decision of the District Board to expel the student. The place for filing the appeal is the Office of the County Superintendent of Schools, 77 Santa Barbara Road, Pleasant Hill, CA 94523-4201, telephone (925) 942-3372.
3. The appeal shall contain the following information:
 - a. Name, address, and telephone number of parent(s) or guardian(s) of the student, and name, address, and telephone number of representative of the student, if any.
 - b. Name, mailing address, and telephone number of student.
 - c. School district, school, and grade most recently attended by the student.
 - d. The date of the school board's decision to expel and the period of the expulsion.
 - e. A copy of Appellant's written request to the governing board to prepare a record of the hearing.
 - f. A statement of the basis for the appeal. The grounds for appeal are limited to one or more of the following:
 - 1) The governing board acted without or in excess of jurisdiction.
 - 2) The appellant was denied a fair hearing before the governing board.
 - 3) There was a prejudicial abuse of discretion in the hearing.
 - 4) There is 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.

Students**APPEAL FROM EXPULSION (continued)**

4. Upon receipt of an appeal, the County Superintendent of Schools and/or his/her designee (hereinafter referred to as County Superintendent) shall send a copy of the appeal and any accompanying documents to the District. Thereafter, the County Superintendent shall send notice acknowledging receipt of the appeal to the Appellant and to the District. The notice shall include a statement that the Appellant is entitled to be represented by an attorney or other representative and that all hearings will be in closed session unless at least five days prior to the hearing date the County Board receives the Appellant's written request that the hearing be public. A copy of the County Board's policy and regulation, and procedure on appeals from expulsion shall be mailed with each notice. The County Superintendent shall contact the Appellant and Governing Board to confirm the arrangements for the Appellant to provide the certified written transcript of the District Board hearing which shall serve as the record for the County Board review. The County Superintendent shall set the hearing at a regular or special meeting of the County Board to be held within twenty (20) school days of the receipt of the appeal, unless the Appellant requests or agrees to a postponement.
5. A copy of the expulsion hearing before the District Governing Board, including a transcript, shall be made available to the County Superintendent. The record of the hearing shall be certified by the Secretary or Clerk of the District Board to be a true and complete copy of the record of the hearing at which the District Board determined to expel the student. The cost of such transcript shall be borne by the Appellant, except where 1) the Appellant certifies to the District Board that he or she cannot reasonably afford the cost of the transcript, because of limited income and/or exceptional necessary expenses, or both, or 2) the County Board reverses the decision to expel, in which case the cost of the transcription shall be borne by the District Board.
6. If, for unavoidable but justifiable reasons, a transcript is unavailable, a stipulated record of hearing may be substituted. If the transcript is not available and there is no stipulated record of hearing, the Respondent School Board shall be directed to rehear the Expulsion Action.
7. The County Superintendent shall no later than fourteen (14) days prior to the hearing, notify the Appellant, and the District Board expelling the student of the date, time, and place of the hearing, and of the matter to be heard. Such notices shall be by registered or certified mail, or by personal service.

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APPEAL FROM EXPULSION (continued)

8. In addition, the notice to the District Board shall require the District Board to forward to the County Superintendent at least seven (7) days prior to the hearing the following documents, each of which shall be certified by the Secretary or Clerk of the District Board to be a true and complete copy:
 - a. The Notice of Hearing to the Appellant.
 - b. A record of receipt by the Appellant of the Notice of Hearing.
 - c. If the hearing was conducted before a hearing officer or panel, then the findings of fact and recommendations of the hearing officer or panel.
 - d. The findings of fact and decision of the District Board.
 - e. The minutes of the meeting at which the District Board took action to expel the student.
 - f. The rules, regulations, and/or procedures adopted by the District Board relating to the conduct of hearings on the question of the expulsion of a student.
 - g. A statement of whether there exists relevant evidence, which, in the exercise of reasonable diligence, could not have been produced or which was excluded at the hearing. If such evidence exists, then full description of it and the reason for exclusion.
 - h. Certified copies of all correspondences in Respondent School Board's file, if any, relating to, concerning, or leading to the expulsion. If the correspondence was sent by Respondent School Board by certified or registered mail, copies of the return receipts should be attached to the appropriate copies of the correspondence.
 - i. Certified copies of all documentary evidence, if any, before Respondent School Board.
 - j. Certified copies of any other pertinent data relating to the expulsion proceedings (other than the transcript which is to be filed by Appellant)

The above documents shall be included as part of the record on appeal.

Students**APPEAL FROM EXPULSION (continued)**

9. The Appellant may, but is not required to, submit a written argument to the County Board. At least ten (10) calendar days before the hearing, the Appellant must file his/her written argument, if any, with the County Superintendent and must simultaneously provide it to the District. The District may, but is not required to, submit a written reply to the County Board. At least five (5) calendar days before the hearing, the District must file its written reply, if any, with the County Superintendent and must simultaneously provide it to the Appellant or the Appellant's representative, if any. At the hearing, or good cause shown, the County Board may excuse compliance with these time limits.
10. With the agenda for the meeting at which the appeal is to be heard, the County Superintendent shall forward to each member of the County Board of Education or the Administrative Hearing Panel, along with the agenda for the meeting at which the appeal is to be heard, a copy of the appeal, a complete copy of the record, and any written arguments and replies. Portions of the record which cannot be forwarded with the agenda may be supplied to the members of the County Board, or the Administrative Hearing Panel, at the meeting during which the appeal is heard.
11. Requests for continuances may be made either by Appellant or Respondent School Board and shall be directed to the Associate Superintendent of Student Programs and Services (hereinafter, "Associate Superintendent"). The Associate Superintendent shall grant a continuance in the following cases:
 - a. Stipulated Postponements. Where all parties jointly seek, in writing, a postponement to a later agreed upon hearing date, and file such written request with the Associate Superintendent; then the Associate Superintendent shall reset the hearing date to the date specified in the written request or to a date as soon thereafter as the matter can reasonably be heard by the County Board.
 - b. Request by Either Party. Either party may request one (1) postponement by means of a written notice at least forty-eight (48) hours in advance, except that a Respondent School District's request may not extend the hearing beyond twenty (20) school days following the filing of a request for hearing unless the pupil agrees. The Associate Superintendent shall upon receipt of said request reset the hearing date to the next regularly scheduled County Board meeting date and shall immediately notify all parties in writing of the new hearing date.
 - c. Subject to the limitations set forth in number 2 above, the County Board may grant a postponement at any time should it determine that such postponement is necessary to avoid injustice.

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APPEAL FROM EXPULSION (continued)

12. The County Superintendent or designee may retain counsel to sit with the County Board or the Administrative Hearing Panel to assist the County Board/Administrative Hearing Panel in the interpretation of any questions of law which may be raised.

13. Use of Administrative Hearing Panel:

- a. In lieu of conducting the hearing, the County Board may have an impartial administrative hearing panel of three (3) or more certificated persons hear expulsion appeals filed pursuant to Section 48919. The members of the hearing panel shall be selected by the County Superintendent or designee and shall not be members of the governing board of the school district nor employees of the school district, from which the pupil filing the appeal was expelled. A presiding officer shall be designated by the County Superintendent or designee.
- b. Upon completion of a hearing conducted by an administrative hearing panel, the panel shall prepare a recommended decision, including any findings of fact or conclusions required for that decision. The panel shall, within three (3) schooldays, submit that recommendation, including findings of fact and conclusions along with the record of the expulsion, to the County Board. All documents submitted to the County Board shall be sent to the pupil and the school district.
- c. Within 10 (ten) schooldays of receiving the recommended decision, findings of fact or conclusions and the record of the expulsion from the administrative hearing panel, the County Board shall review the recommendation along with the record and render a final decision.
- d. Prior to rendering a decision, the County Board shall provide the pupil and the school district an opportunity to address the County Board on the recommendation, including the findings and conclusion submitted by the administrative hearing panel. If requested, each party will be allowed 5 (five) minutes to address the County Board during public comment.
- e. The decision rendered by the County Board is final and shall constitute the final administrative appeal in all expulsion matters.
- f. A hearing conducted by an administrative hearing panel shall conform to the same procedures that apply to a hearing conducted by the County Board.

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APPEAL FROM EXPULSION (continued)

14. The hearing shall be conducted as follows:

- a. The hearing will be facilitated by the Associate Superintendent, Student Programs and Services or Superintendent's designee.
- b. Members of the County Board/Administrative Hearing Panel shall review any documents not previously submitted to them.
- c. The Appellant shall be allowed to argue concerning the basis for the appeal.
- d. The Respondent shall be allowed to argue concerning the basis for the District action.
- e. The members of the County Board/Administrative Hearing Panel may question the Appellant and Respondent.

15. Following the hearing, the Appellant and Respondent shall be excused and the County Board/Administrative Hearing Panel shall convene to a closed deliberation and shall consider the following subjects:

- a. Whether the District Board proceeded without or in excess of its jurisdiction in expelling the student:
 - 1) Was the expulsion hearing commenced within the time periods prescribed by law?
 - 2) Was the expulsion order based upon acts enumerated in the Education Code?
 - 3) Was the expulsion order based upon acts related to school activity or attendance?
- b. Whether the student was afforded a fair hearing before the District Board:
 - 1) Was adequate and timely notice of the hearing given to the Appellant?
 - 2) Was the Appellant or representative(s), if any, given the opportunity to hear and/or examine all evidence submitted against him/her?
 - 3) Was the Appellant, given the opportunity to present evidence to deny, explain and/or mitigate the allegations against him/her?

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APPEAL FROM EXPULSION (continued)

- 4) Was the pupil given notice and opportunity of the right to be represented by counsel?
 - 5) Was the pupil given the opportunity to introduce testimony of witnesses on his or her behalf?
 - 6) Did the District introduce substantial evidence to support a recommendation to expel?
 - 7) Is the evidence the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs?
 - 8) Was the pupil given the opportunity to confront or question any witnesses who testified at the hearing except as provided in California Education Code section 48918 (f).
- c. Whether there was a prejudicial abuse of discretion by the District Board:
- 1) Did school officials meet the procedural requirements of Article 1 (commencing with Section 48900) of Chapter 6 of Part 27 of the Education Code?
 - 2) Was the decision to expel the student supported by the findings prescribed by Section 48915 of the Education Code?
 - 3) Are the findings supported by the evidence?
- d. Whether there exists relevant and material evidence which, in the exercise of reasonable diligence, could not have been produced or was improperly excluded from the hearing before the District Board?
16. The Board shall convene in public session to announce its findings, order, and the vote of each Board member thereon. The County Board may authorize the Board President to sign the Board's findings after they are reduced to writing.
- a. Where the County Board/Administrative Hearing Panel finds that relevant and material evidence exists which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded from the hearing before the District Board (Question 15. d. above) the Board may:

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APPEAL FROM EXPULSION (continued)

- 1) Remand the matter to the District Board for reconsideration and may, in addition, order the student re-enrolled in the schools of the district pending such reconsideration; or:
 - 2) Grant a hearing de novo before the County Board/Administrative Hearing Panel upon reasonable notice to the Appellant and Respondent.
- b. Where the County Board/Administrative Hearing Panel makes any other findings, it shall either affirm or reverse the decision of the District Board.
- c. If the County Board determines that the decision of the Respondent School Board is not supported by the secondary findings required to be made by Education Code section 48915, but evidence supporting the required secondary findings exists in the record of the proceedings, the County Board shall remand the matter to Respondent School Board for adoption of the required secondary findings. The remand for adoption and inclusion of the required findings shall not result in an additional district hearing pursuant to Education Code section 48918, except that final action to expel the pupil based on the revised findings of fact shall meet all requirements of subdivisions (j) and (k) of section 48918.
17. If the County Board/Administrative Hearing Panel finds there was abuse of discretion by the District Board, the County Board must also find that the abuse of discretion was prejudicial.
18. Where the County Board/Administrative Hearing Panel enters a decision reversing the District Board, the County Board will determine whether to order the District Board to expunge the record of the student, and the records of the district, of any references to the expulsion action.
19. The County Board/Administrative Hearing Panel shall render its decision within three (3) school days of the hearing, unless the Appellant agrees to a postponement.
20. The decision of the County Board/Administrative Hearing Panel shall be final and binding upon the Appellant and upon the District Board.
21. The County Superintendent or designee shall notify the parties of the County Board's final order and findings, in writing, either by certified mail or by personal service.

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APPEAL FROM EXPULSION (continued)

22. The County Superintendent or designee shall maintain all records of the appeal as permanent records of the County Board.

23. Termination by Abandonment

- a. Failure of the pupil to reasonably pursue the appeal with diligence within the time frames set forth in these rules and regulations shall be deemed abandonment of such appeal.
- b. Abandonment of the appeal may warrant any of the following actions:
 - 1) The County Board, on its own motion, may dismiss the appeal.
 - 2) Unless the statutory time frames governing filing and hearing expulsion appeals (including failure to submit the record of proceeding) are extended and/or waived by the pupil, the Associate Superintendent may dismiss the appeal administratively. However, no appeal shall be administratively dismissed if failure to submit the record of proceeding is caused by delays caused by the school district.

24. Termination by Agreement. The parties may agree to terminate proceedings under whatever terms deemed appropriate by them. The parties will be expected to promptly notify the Associate Superintendent of any such agreement.

25. Failure to Attend Hearing

Failure by either party to send a representative to the hearing will not result in a postponement of the hearing. If either party fails to send a representative to the hearing, the hearing will be conducted at the scheduled date and time provided in the notification. If the unrepresented party has previously submitted written statements, the statements will be read in to the record during the hearing.

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APPEAL FROM EXPULSION (continued)

Legal Reference: EDUCATION CODE
48919 *Expulsion Appeals to County Board of Education*
48919.5 *Expulsion Appeals: hearing officer or impartial
administrative panel*
48920 *County Board; Manner of Hearing Expulsion Appeal*
48921 *Expulsion Appeals to County Board; Transcripts*
48922 *County Board; Scope of Review*
48923 *Decision of County Board*
48924 *Finality of County Board Decision*

Regulation
approved: July 11, 1984

Regulation
amended: January 9, 1985 June 23, 2004
 May 14, 1997 October 5, 2005
 October 14, 1998 September 25, 2013

CONTRA COSTA COUNTY OFFICE OF
EDUCATION

Expulsion Appeal and Request for Hearing

TO: County Superintendent of Schools
77 Santa Barbara Road
Pleasant Hill, CA 94523-4201

In accordance with Education Code Sections 48919 - 48924 and the Contra Costa County Board of Education's Administrative Regulation (#5114.7), an Expulsion Appeal Hearing is hereby requested.

Expelled pupil's name: _____

Age: _____ Grade: _____

Name of school attended: _____

Parent/legal guardian: _____

Home address: _____

Telephone number (Home): _____ (Work): _____

Name, Address, and Phone Number of legal counsel or other designated representative of the Appellant (if any):

Name: _____

Address: _____

_____ Phone: _____

Name of expelling school district: _____

Date Respondent Board voted to expel: _____

Period of the Expulsion: _____

STATEMENT OF BASIS FOR THE APPEAL

The County Board's review of the district's decision is limited to the following issues: 1) whether the district board acted without or in excess of its jurisdiction; 2) whether there was a fair hearing before the district board; 3) whether there was a prejudicial abuse of discretion; 4) whether there is 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. (See Education Code section 48922). Please check one or more of the following items and describe how such item(s) apply to your case.

___1. Explain how the governing board acted without or in excess of its jurisdiction in expelling the pupil. (See Education Code §48900, 48900.2, 48900.3, 48900.4, or 48915, 48918.)

___2. Explain how the pupil was not afforded a fair hearing before the district governing board. (See Education Code §48918, §48922.)

___3. Explain how there was a prejudicial abuse of discretion by the district governing board in the hearing. (See Education Code §48900, 48900.2, 48900.3, 48900.4, or 48915, 48918, 48922.)

___4. Explain if there is relevant 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. (See Education Code §48918, §48922.)

(Please use another sheet of paper for additional comments, if necessary. Attach documentation, if any.)

Expulsion hearings are closed to the public unless you request a session open to the public.

_____ I am requesting an open (public) session.

I hereby certify that I requested in writing that the district superintendent prepare a record of the expulsion hearing on _____. A copy of my request is attached.

I understand that this form **must** be filed with the Contra Costa County Board of Education, to the attention of the Associate Superintendent, Student Programs & Services, **within 30 days** from the date the district board voted to expel my student.

Parent/Legal Guardian Signature (or pupil, if 18 years or older)

Date

<p>EXPULSION APPEAL HEARING PROCEDURES Before The County Board of Education or Administrative Hearing Panel</p>

_____ 1. Opening: by the Hearing Facilitator who will explain the procedures as follows:

Documents not previously submitted, if any, will be requested and reviewed at this time.

_____ 2. Presentation: by the Appellant to argue the basis for the appeal. (10 minutes)

_____ 3. Presentation: by the District to argue the basis for the expulsion. (10 minutes)

Questioning: Board/Administrative Hearing Panel members may question the Appellant and/or the District.

Closed Session: Following the questioning, the Appellant, District, and all persons shall be excused from the hearing room and the Board/Administrative Hearing Panel will close the hearing into a closed deliberation and consider the following:

- A. Whether the District Board proceeded without or in excess of its jurisdiction in expelling the student.
- B. Whether the student was afforded a fair hearing before the District Board.
- C. Whether there was a prejudicial abuse of discretion by the District Board.
- D. Whether there exists relevant and material evidence, which, in the exercise of reasonable diligence, could not have been produced or was improperly excluded from the hearing before the District Board.

Following deliberation and action, the Board shall convene in public session and the Board President will announce the Board's findings and action, which may be to:

- 1. Affirm the decision of the District Board. (Deny the appeal.)
- 2. Reverse the decision of the District Board. (Affirm the appeal.)
- 3. Remand the matter back to the District for a rehearing, or
- 4. Grant a hearing de novo before the County Board of Education.

If the hearing is before an Administrative Hearing Panel, the Panel will reconvene with all parties and the Chair of the panel will announce the Panel's recommendation, which may be one of the above. (1-4).

CLOSED DELIBERATION Information for Board/Administrative Hearing Panel Consideration.
Headings (A B C D) refer to headings listed on page 1:

A. ...jurisdiction: (Must deny the appeal, if questions are affirmative.)

Was the expulsion hearing commenced within the time periods prescribed by law?

Was the expulsion order based upon acts enumerated in the Education Code? (For legal bases for expulsions, Refer to Ed. Code section 48900 to 48915, article 1, Chapter 6, part 27)

Was the expulsion order based upon acts related to school activity or attendance?

B. ...fair hearing: (Must deny the appeal, if questions are affirmative.)

Was adequate and timely notice of the hearing given to the Appellant?

Was the Appellant or representatives, if any, given the opportunity to hear and/or examine all evidence submitted against him/her?

Was the Appellant given the opportunity to present evidence to deny, explain and/or to mitigate the allegations against him/her?

Was the pupil given notice and opportunity of the right to be represented by counsel?

Was the pupil given the opportunity to introduce testimony of witnesses on his or her behalf?

Did the District introduce substantial evidence to support a recommendation to expel?

Is the evidence the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs?

Was the pupil given the opportunity to confront or question any witnesses who testified at the hearing except as provided in California Education Code section 48918 (f)?

C. ...prejudicial abuse of discretion: (Must also find that the abuse was prejudicial in order to affirm the appeal.)

Did District officials meet the procedural requirements of the Education Code?

Was the decision to expel supported by the findings prescribed by the Education Code?

Are the findings supported by the evidence?

D. ...existing relevant, material evidence: If such evidence exists, the Board may:

...remand the matter back to the District for reconsideration and may, in addition, order the student re-enrolled in a District school pending such reconsideration, or

...grant a hearing de novo before the County Board of Education upon reasonable notice to the Appellant and Respondent.

Board's findings:

If the appeal is affirmed, the Board must also determine separately whether to order the District Board to expunge the record of the student and the records of the District of any references to the expulsion action.

The decision of the County Board shall be rendered within three (3) school days, shall be final and binding, and shall be delivered in writing to both parties by certified mail or personal service.