

## **STUDENT EXPULSION APPEALS**

- A. Purpose. The purpose of this policy is to implement Education Codes 48919-48926 relating to student expulsion appeals to the Monterey County Board of Education (County Board).
- B. Definitions. As used in this policy:
1. Appellant means the student, student's parent/guardian or legal counsel that files an appeal of an expulsion decision.
  2. Day means a calendar day unless otherwise specifically provided.
  3. Expulsion means removal of a student from (a) the immediate supervision and control, or (b) the general supervision, of school personnel, as those terms are used in Section 46300 of the Education Code.
  4. Student includes a student's parent/guardian or legal counsel.
  5. School day means a day upon which the schools of the school district are in session or weekdays during the summer recess.
- C. Notice of Appeal and Record. If a student is expelled from a school district that is within the jurisdiction of the County Board, the student, his or her parent/guardian or legal counsel may file an appeal to the County Board, which shall hold a hearing thereon and render its decision.
1. *Time Limits for Filing Notice of Appeal.* The appeal shall be filed within 30 days following the decision of the school district governing board to expel the student. The period within which an appeal is to be filed shall be determined from the date the school district governing board votes to expel, even if enforcement of the expulsion action is suspended and the student is placed on probation pursuant to Education Code 48917. A student who fails to appeal the original action of the school district governing board within the prescribed time may not subsequently appeal a decision of the school district governing board to revoke probation and impose the original order of expulsion.

2. *Contents of Notice of Appeal.* In order to file a notice of appeal, the form in Addendum B of the Expulsion Appeal Handbook (BP 5144.3 Exhibit), titled "Expulsion Appeal and Request for Hearing," or an alternative written notice of appeal, must be completed writing and delivered to the Monterey County Office of Education (MCOE) by U.S. mail or in person and shall contain, but need not be limited to, the following information:
  - (a) Name, address, email address, and telephone number of the person filing the notice of appeal.
  - (b) Name, address and date of birth of the expelled student.
  - (c) Grade level in which student was enrolled immediately prior to expulsion.
  - (d) School and school district from which student was expelled.
  - (e) The date the school district governing board voted to expel the student, the effective date of the expulsion, and the length of the expulsion.
  - (f) A brief statement describing the actions, if any, taken by or on behalf of the student to obtain reconsideration of the school district governing board's decision to expel the student, including the date(s) and name(s) of school district personnel contacted and the response(s) of such school district personnel.
  - (g) A brief statement of the reason(s) why the expulsion order should be reversed and the student re-enrolled or other action taken.
3. *Record on Appeal.* The Appellant shall submit a request for a copy of the certified written transcripts and supporting documents of from the expulsion hearing from the school district (Addendum C of the Expulsion Appeal Handbook) simultaneously with the filing of the notice of appeal with the County Board.
  - (a) The school district shall provide the Appellant with the transcriptions, supporting documents, and records within ten school days following the request by the student. The Appellant shall immediately file suitable copies of these records with the County Board.

- (b) It shall be the responsibility of the student to submit a written transcript for review by the County Board. The cost of the transcript shall be borne by the student except in either of the following situations: [Education Code (EC) 48921]
    - (1) Where the student's parent or guardian certifies to the school district that he/she cannot reasonably afford the cost of the transcript because of limited income or exceptional necessary expenses, or both (Addendum D of the Expulsion Appeal Handbook).
    - (2) In a case in which the County Board reverses the decision of the school district governing board, the County Board shall require that the school district reimburse the student for the cost of such transcription.
  - 4. *Noncompliance.* Failure or refusal of a student to comply with the requirements of Section C shall constitute sufficient grounds for denial of the appeal. [EC 48919]
    - (a) If the notice of appeal does not set forth information required by Subsections C-2 and C-3 above, the person filing the notice of appeal shall be so notified in writing and shall be given a reasonable opportunity to submit such supplementary information. Such supplementary information shall be provided in writing within the time limits for filing the notice of appeal (see Section C-1) or within five school days after filing the incomplete notice of appeal, whichever period of time is greater.
  - 5. *Notice to School District.* Within three days after the notice of appeal is filed with the County Board, the County Board shall notify the school district governing board in writing, either by personal service or by certified mail that a notice of appeal has been filed and shall enclose a copy of the notice of appeal and any additional written materials provided by the student in support of the appeal.
- D. Hearing by the County Board. The County Board shall hold the hearing within 20 school days following the filing of the written notice of appeal, and shall render a

decision within three school days of the hearing unless the Appellant requests postponement for good cause shown. [EC 48919]

1. *Notice of Hearing.* Written notice of the hearing shall be given, either by personal service or by certified mail, to the student, to the person filing the notice of appeal, and to the school district governing board at least ten days prior to the date of the hearing. The notice shall include: The date, time, and place of hearing; a copy of this policy and the accompanying exhibit, the Expulsion Appeal Handbook; the opportunity for the student to appear in person or employ and be represented by counsel, the opportunity for the parties to inspect and obtain copies of all documents to be considered at the hearing; and the opportunity for the parties to present oral and written argument pursuant to Sections D-3 and D-4 of this policy.
2. *Manner of Hearing.* The County Board shall hear an appeal of an expulsion order in closed session, unless the student requests in writing, at least five days prior to the date of the hearing, that the hearing be conducted in a public meeting. Upon the timely submission of a request for a student hearing, the County Board shall conduct the hearing in a public meeting unless another student's privacy rights would be violated, in which case parts of the hearing may be held in closed session as necessary to protect the other student's privacy. [EC 48920] Regardless of whether the hearing is conducted in a closed session or a public meeting, the County Board may meet in closed session for the purpose of deliberations. If the County Board admits any representative of the student or the school district, the County Board shall at the same time admit representatives from the opposing party.
3. *Written Arguments.* The Appellant may file a written argument or an appeal brief with the County Board. Any written argument must be filed at least ten (10) calendar days prior to the date set for the hearing before the County Board. The Appellant must send or deliver a copy of the argument to the school district at the same time.

The school district also has the right to submit a written argument, or a reply brief. The district's initial argument must be filed at least ten (10) calendar days prior to the hearing date. The district must send or deliver a copy of the argument to the Appellant at the same time.

The school district and the Appellant may file written responses to one another's written arguments. Any response shall be filed not less than five (5) days prior to the date of the hearing and shall be provided by the responding party to the other party by personal service or U.S. Mail no later than the date upon which the response is filed.

4. *Conduct of Hearing.* The hearing shall be conducted as follows:
  - (a) The County Board President or his/her legal substitute shall conduct the hearing expeditiously, but with fairness to all parties.
  - (b) The County Board shall read aloud the notice of appeal filed by or on behalf of the student.
  - (c) The student or his/her designated representative shall present those reasons why the expulsion order should be reversed and such other information as may be pertinent to the issues on appeal before the County Board.
  - (d) The school district shall present those reasons why the expulsion order should be affirmed and such other information as may be pertinent to the issues on appeal before the County Board.
  - (e) The student or his/her designated representative may present additional argument, if desired.
  - (f) The school district may present additional argument, if desired.
  - (g) The County Board may question either party or persons appearing on behalf of either party.
  - (h) The hearing will then be closed and the County will commence its deliberations as provided in Section D-2 of this policy.
  - (i) The County Board shall determine the appeal from a student expulsion upon the record of the hearing before the school district governing board, together with such applicable documentation or regulations as may be ordered. No evidence other than that contained in the record of the proceedings of the school district governing board shall be heard unless a de novo proceeding is considered as provided in Section 48923 of the Education Code and Subsection D.56(a)(2) of this policy. [EC 48921]

5. *Scope of Review.* The County Board's review shall be limited to: [EC 48922]
- (a) Whether the school district governing board acted without or in excess of its jurisdiction.
    - (1) As used herein, a proceeding without or in excess of jurisdiction includes, but is not limited to, a situation where an expulsion hearing is not commenced within the time periods prescribed by Education Code 48900 et seq.
    - (2) A situation where an expulsion order is not based upon the acts enumerated in Education Code 48900, or as applicable in Education Code 48900.2, 48900.3, 48900.4, or 48900.7.
    - (3) A situation involving acts not related to school activity or attendance.
  - (b) Whether there was a fair hearing before the school district governing board.
  - (c) Whether there was a prejudicial abuse of discretion in the hearing. As used herein, an abuse of discretion is established in any of the following situations:
  - (d) If school officials did not meet the procedural requirements of Education Code 48900-48926.

If the decision to expel the student is not supported by the findings prescribed by Education Code 48915.
  - (e) If the findings are not supported by the evidence:
  - (f) The County Board shall not reverse the decision of the school district governing board to expel the student based upon a finding of an abuse of discretion unless the County Board also determines that the abuse of discretion was prejudicial.

- (g) 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 school district governing board.
  - (h) If the expulsion appeal is for a special education student (or if the school district had a basis of knowledge that the student had a disability prior to the occurrence of the student's misconduct), the following shall have been done: [EC 48915.5; 24 C.F.R. 300.534]
  - (i) An IEP team was convened prior to the expulsion hearing to determine whether the student's conduct was a manifestation of his/her disability and to review whether the student's academic program and placement were appropriate at the time of the infraction. [20 U.S.C. §1415(k)(1)(E).]
6. *Decision of County Board of Education.* The decision of the County Board shall be limited as follows:
- (a) Where the County Board finds that relevant and material evidence exists which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the school district governing board, it may do either of the following:
    - (1) Remand the matter to the school district governing board for reconsideration and may in addition order the student reinstated pending such reconsideration.
    - (2) Grant a hearing *de novo* upon reasonable notice thereof to the student and to the school district governing board. The hearing shall be conducted in conformance with the procedures set forth in Section 48919 of the Education Code insofar as is practicable.
  - (b) If the County Board determines that the decision of the school district's governing board is not supported by the findings required to be made by Section 48915, but evidence supporting the required

findings exists in the record of the proceedings, the County Board shall remand the matter to the governing board for adoption of the required findings.

- (c) In all other cases, the County Board shall enter an order either affirming or reversing the decision of the school district governing board. In any case in which the County Board enters a decision reversing the school district governing board, the County Board may direct the school district governing board to expunge the record of the student and the records of the school district of any references to the expulsion action and such expulsion shall be deemed not to have occurred.

7. *Finality of Decision.* The decision of the County Board shall be final and binding upon the student and upon the school district's governing board. The student and the school district governing board shall be notified of the final order of the County Board, in writing, either by personal service or by certified mail. The order shall become final when rendered. [EC 48924]

- E. Record of Appeal. A record of the expulsion appeal hearing shall be preserved by the County Board by any means, as long as a reasonably accurate and complete written transcript of the proceedings can be made. [EC 48919] The record shall include all written documents, materials, and regulations submitted either by or on behalf of the student or by the school district; a copy of all notices mailed or personally delivered to the County Board to either or both of the parties to the appeal; and such other written documents and materials deemed necessary by the County Board for a proper disposition of the appeal.

*Legal References:*

EDUCATION CODE

- 1981 Enrollment of students
- 17292.5 Program for expelled students
- 35145 Public meetings
- 48900-48918.6 Suspension and expulsion
- 48919-48927 Expulsion appeals to county boards of education

GOVERNMENT CODE

- 11455.20 Contempt
- 51950-54962 Ralph M. Brown Act



U.S. CODE

20 U.S.C. § 1415 Procedural Safeguards

CODE OF FEDERAL REGULATIONS

24 C.F.R. 300.500-537 Protections for children not determined eligible for special education services

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