

**FRESNO COUNTY SUPERINTENDENT OF SCHOOLS
FRESNO COUNTY BOARD OF EDUCATION****Students****STUDENT EXPULSION ORDER APPEALS**

When expelled by the governing board of a school district that is within the jurisdiction of the Fresno County Board of Education ("County Board"), a student or the student's parent/guardian may appeal the expulsion to the County Board within 30 days of the district's action.

These rules of procedure are intended to serve as a guideline for all involved parties. The student and/or the parent or guardian who appeal an expulsion shall be referred to as "Appellant" and the expelling school board shall be referred to as "Respondent."

The following rules are to be liberally construed so as to allow the County Board a fair and impartial review of the proceedings conducted by the Respondent. However, these rules will remain within the scope of appropriate law.

The County Board shall hear and determine an appeal of an expulsion order issued against a student by a school district within the jurisdiction of the County Board.

Appellant must file an appeal of an expulsion to the County Board within 30 calendar days of the school district's action. The County Board lacks the jurisdiction to hear any appeal not filed within the 30 day period following the school district's decision.

Prehearing ProcedureNotice of Appeal of Expulsion and Request for Transcript and Hearing

The expelled student of a school in Fresno County and/or the parent or guardian of that student may appeal the expulsion by the school board to the County Board by filing with the Fresno County Superintendent of Schools Legal Services Department ("Legal Services Department") a completed "Notice of Appeal of Expulsion and Request for Transcript and Hearing" form.

The "Notice of Appeal of Expulsion and Request for Transcript and Hearing" form will be provided to the Appellant upon request to the Legal Services Department. The appeal becomes official on the day the Legal Services Department receives a complete, timely filed "Notice of Appeal of Expulsion and Request for Transcript and Hearing" form. Failure to timely file a complete form shall foreclose the Appellant's right to appeal, and the Respondent's decision shall be the final decision.

The "Notice of Appeal of Expulsion and Request for Transcript and Hearing" shall be in writing and shall include the following information:

1. Name of the Appellant;
2. Contact address and telephone number of the Appellant and/or parent/guardian;
3. Name of Respondent;
4. Date of Respondent's action to expel student;
5. Ground(s) on which appeal is based; and
6. A copy of the Respondent's order to expel shall be attached.

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At the same time that "Notice of Appeal of Expulsion and Request for Transcript and Hearing" is filed with the County Board, Appellant shall serve a copy of the "Notice of Appeal of Expulsion and Request for Transcript and Hearing" on the Respondent school district.

Confirmation of Timely Filed Notice of Expulsion Appeal

Upon a timely filing of the "Notice of Appeal of Expulsion and Request for Transcript and Hearing" with the County Board, the Legal Services Department shall within two (2) school days serve upon Appellant and Respondent, a "Notice of Filing of Expulsion Appeal" with a completed copy of the filed Notice of Appeal of Expulsion and Request for Transcript", a copy of the County Board's Policy No. 5144.3, and a copy of the relevant Education Code sections 48919 through 48925.

Appellant's Duty to Deliver Transcript and Hearing Documents to County Board

The Appellant shall submit a written request for a copy of the written transcripts and supporting documents from the school district simultaneously with the filing of the notice of appeal with the County Board. After receipt from the school district, the Appellant shall submit to the County Board, copies of the written transcripts and supporting documents of the proceedings before the school district. It shall be the responsibility of the Appellant to provide the Legal Services Department with the transcripts of Respondent's hearing and supporting documents ten (10) days before the hearing date before the County Board.

Upon receipt of the expulsion records, the Legal Services Department will prepare and disperse copies of the appeal hearing file to appropriate persons. A copy of the appeal hearing file shall be available to the Appellant and Respondent on or before the expulsion appeal hearing.

Notice of Hearing and Optional Written Arguments

The County Board shall hold a hearing within twenty (20) school days of the filing of the appeal. (Education Code 48919)

No later than ten (10) days prior to the hearing, the Legal Services Department shall serve upon the Appellant and the Respondent, by certified mail, return receipt requested, a Notice of Hearing including details such as the date, time, and place of the hearing. The notice shall also contain a statement that the hearing shall be in closed session unless the County Board receives Appellant's request in writing at least five (5) days prior to the hearing, that the hearing be conducted in open session. If such request is made, the hearing shall be public unless another student's privacy rights would be violated. (Education Code 48920)

The notice shall also inform Appellant and Respondent of their right to submit written arguments/documents not exceeding four (4) pages total to the Legal Services Department no later than five (5) calendar days after receipt of the notice of the hearing unless otherwise allowed by County Superintendent or his/her designee. Copies of any timely submitted written documentation from the Appellant or Respondent shall be provided to County Board for review.

At least forty-eight (48) hours prior to the hearing, Appellant and Respondent shall each notify the Legal Services Department of the names of the persons known to them who intend to make

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presentations at the hearing. A written form will be sent to each party by the Legal Services Department.

Appellant and Respondent may each be accompanied by an attorney or representative advocate of choice, and the attorney or advocate shall be afforded an opportunity to speak on behalf of the client.

Either the Appellant or the Respondent may request a postponement of the hearing by submitting a written request, including the reason, to the County Superintendent or designee at least five (5) calendar days prior to the hearing. The request shall be acted upon by the County Superintendent within two (2) days after determining whether the request is based upon a showing of good cause. Any request for postponement made less than five (5) calendar days prior to the hearing will be considered by the County Board at the hearing. The request will be granted only upon a finding that a compelling reason or an emergency exists.

Withdrawal of Expulsion Appeal

Appellant may withdraw the appeal for any reason, including the parties having reached a satisfactory agreement before the hearing. The Legal Services Department will provide a form that Appellant must sign to officially withdraw the expulsion appeal. If Appellant does not withdraw the appeal, the County Board will hear the case as scheduled whether parties are present or not. Appellant may request withdrawal of appeal at the hearing.

Conduct of Expulsion HearingClosed Session

Notwithstanding the provisions of Government Code 54953 and Education Code 35145, the County Board shall hear an appeal of an expulsion order in closed session, unless the Appellant requests in writing at least five (5) days prior to the hearing that the hearing be conducted at a public meeting. Whether the expulsion hearing is held in closed or public session, the County Board may meet in closed session to deliberate on the appeal. If the County Board admits one of the parties or their representative(s) to the closed session, the other party or their representative(s) shall also be allowed to attend the closed session. (Education Code 48920)

Record of Hearing

A record of the hearing shall be made and may be maintained by any means, including electronic recording, as long as a reasonably accurate and complete written transcription of the proceedings can be made. (Education Code 48919)

Scope of Review

The County Board shall determine the appeal based on the record of the hearing before the Respondent and other applicable documentation and/or regulations. No evidence other than that contained in the record of proceedings of the Respondent shall be heard except in a de novo proceeding, granted pursuant to Education Code 48923. (Education Code 48921)

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A de novo proceeding involves an independent determination by the County Board, of all the issues previously considered by the school district's governing board.

The County Board's review shall be limited to: (Education Code 48922)

1. Whether the governing board acted without or in excess of its jurisdiction, which includes, but is not limited to:
 - a. Expulsion hearing is not commenced within the legal time periods;
 - b. Expulsion order is not based on a violation of acts enumerated in Section 48900 et seq. of the Education Code; or
 - c. Expulsion is based on acts not related to school activity or attendance.
2. Whether there was a fair hearing before the governing board.
3. Whether there was a prejudicial abuse of discretion in the hearing. Abuse of discretion is established if:
 - a. School officials did not meet the procedural requirements of Education Code 48900-48926;
 - b. The decision to expel the student is not supported by the findings prescribed by Education Code 48915; or
 - c. The findings are not supported by the evidence
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.

The County Board may not reverse the decision of the Respondent to expel the Appellant based upon a finding of an abuse of discretion unless it also determines that the abuse of discretion was prejudicial. (Education Code 48932)

Final Order of the County Board

The County Board shall render its final decision within three (3) school days of the hearing unless the Appellant requests a postponement. (Education Code 48919) The County Board's decision shall be limited as follows: (Education Code 48923)

1. 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 Respondent, the County Board may remand the matter to the Respondent for reconsideration or grant a hearing de novo.
2. Where the County Board determines that the Respondent's decision is not supported by findings required to be made by Education Code 48915, but evidence

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supporting such findings exists in the record of the proceedings, the County Board shall remand the matter to the Respondent for adoption and inclusion of the required findings.

3. In all other cases, the County Board shall either affirm or reverse the decision of the Respondent. If the County Board reverses the Respondent's decision, the County Board may direct the Respondent to expunge all references to the expulsion action from the Respondent and Appellant's records, and the expulsion shall be deemed not to have occurred.

The decision of the County Board shall be final and binding upon the Appellant and Respondent. The Appellant and Respondent 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. (Education Code 48924)

Preservation of Record

A copy of the expulsion appeal records before the County Board will be kept with other County Board files. The minutes will state the names of those present at the hearing and the vote of each member.

The Legal Services Department will maintain expulsion appeal records until the Appellant's 21st birthday. At that time, the Legal Services Department may destroy these records with the exception of the County Board's decision. The written decision will be kept in such format as is permitted for the maintenance of permanent education records, e.g., hard copy, digital scan, microfiche.

Adopted: 04/16/1998

Amended: 12/10/2009, 10/15/2020, 04/20/2023

Legal Reference**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

49073-49079 Privacy of student records

GOVERNMENT CODE

11455.20 Contempt

54950-54962 Ralph M. Brown Act (re closed sessions)

COURT DECISIONS

Board of Education of Sacramento City Unified School District v. Sacramento County Board of Education and Kenneth H. (2001) 85 Cal.App.4th 1321

Garcia v. Los Angeles Board of Education (1991) 123 Cal.App.3d 807

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Fremont Union High School District v. Santa Clara County Board (1991) 235 Cal. App. 3d 1182
John A. v. San Bernardino School District (1982) 33 Cal. 3d 301, 308

Management Resources

WEBSITES

CDE: <http://www.cde.ca.gov>

CSBA: <http://www.csba.org>