

Riverside County Office of Education
Board Policy 5144.3 Student Expulsion Appeals

STUDENTS

SUBJECT: Student Expulsion Appeals

When expelled by the governing board of a school district that is within the jurisdiction of the County Board of Education, a student or the student's parent/guardian may appeal the expulsion to the County Board within 30 calendar days after the district governing board's action. The appeal shall be filed in writing and shall include the following information:

1. Name of the expelled student
2. Contact address and telephone number of the student and/or the student's parent/guardian
3. School district from which the student was expelled
4. Date of the district governing board's action to expel the student
5. Ground(s) on which the appeal is based

The student or the student's parent/guardian shall submit a written request for a copy of the written transcripts and supporting documents from the district simultaneously with the filing of the notice of appeal with the County Board in accordance with Education Code 48919. If the transcript and supporting documents are not requested at the same time the appeal is filed, the County Board shall direct the student or the student's parent/guardian to request the documents from the district immediately, and shall inform the student or the student's parent/guardian that the district is required by law to provide the documents within 10 school days after the request is made. The County Board shall also inform the student or the student's parent/guardian that the County Board is required by Education Code 48921 to decide the appeal based upon the record of the hearing before the district governing board and applicable documentation or regulation, and that without them, the County Board may have to request the student or student's parent/guardian to agree to delay the hearing.

No later than 10 days prior to the hearing, the secretary to the County Board shall serve upon the student, or the student's parent/guardian, and the district governing board, by certified mail return receipt requested, a notice of the hearing which shall include details such as the date, time, and place of the hearing. The notice shall contain a statement that the hearing shall be in closed session unless the student requests in writing, at least five days prior to the hearing, that the hearing be conducted in open session.

Conduct of Appeal Hearing

The County Board, or its appointed hearing officer or administrative panel if applicable, shall hold a hearing within 20 school days of the filing of the appeal. (Education Code 48919)

Every expulsion appeal hearing shall be conducted in accordance with the following procedures:

1. Closed 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 student requests in writing at least five days prior to the hearing that the hearing be conducted in open session. (Education Code 48920)

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If such a request is made, the hearing shall be public unless another student's privacy rights would be violated, or as may otherwise be prohibited under other applicable law. Legal counsel shall be consulted if a hearing will be conducted in which other students are named.

Regardless of whether the expulsion hearing is held in closed or open 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)

2. Record of Hearing: A record of the expulsion appeal 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 an appeal based on the record of the hearing before the district governing board and other applicable documentation and/or regulations. No evidence other than that contained in the record of proceedings of the district governing board shall be heard unless a de novo proceeding is granted pursuant to Education Code 48923, as described in the section "Final Order of the County Board" below. (Education Code 48921)

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

1. Whether the district governing board acted without or in excess of its jurisdiction

A district governing board may be determined to have acted without or in excess of its jurisdiction in certain situations including, but not limited to, where an expulsion hearing is not commenced within time periods required by law, an expulsion order is not based upon any act enumerated in Education Code 48900 or, as applicable, in Education Code 48900.2, 48900.3, 48900.4, or 48900.7, or a student's act is not related to school activity or attendance.

2. Whether there was a fair hearing before the district governing board

3. Whether there was a prejudicial abuse of discretion in the hearing before the district governing board

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
- 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 before the district governing board or which was improperly excluded at that hearing.

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Final Order of the County Board

The County Board shall render its final decision within three school days of the hearing unless the student requests a postponement. (Education Code 48919)

The County Board's decision on every expulsion appeal 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 before the district governing board or which was improperly excluded at the hearing, the County Board may remand the matter to the district governing board for reconsideration and may order the student reinstated pending the reconsideration or may grant a hearing de novo.
2. A de novo hearing means a new hearing by the County Board to determine all the issues previously considered by the district governing board. The de novo hearing shall be conducted in accordance with the procedures established by the County Board.
3. If the County Board determines that the district governing board's decision is not supported by findings required to be made by Education Code 48915 but evidence supporting such findings exists in the record of the proceedings, the County Board shall remand the matter to the district governing board for adoption and inclusion of the required findings.
4. In all other cases, the County Board shall either affirm or reverse the decision of the district governing board.
5. The County Board may not reverse the decision of a district governing board based on a finding of an abuse of discretion unless the County Board also determines that the abuse of discretion was prejudicial. (Education Code 48922)
6. If the County Board reverses the district governing board's decision, it may direct the district governing board to expunge all references to the expulsion action from the district and student'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 student and the district governing board. The student and the 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. (Education Code 48924)

Legal Reference:

EDUCATION CODE

1981 Enrollment of students

17292.5 Program for expelled students

35145 Public meetings for districts

48900-48918.6 Suspension and expulsion

48919-48927 Expulsion appeals to county boards of education

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GOVERNMENT CODE

54950-54963 Ralph M. Brown Act

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

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

Garcia v. Los Angeles Board of Education (1981) 123 Cal.App.3d 807

Management Resources:

WEB SITES

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

California Department of Education: <http://www.cde.ca.gov>