

CSBA Sample County Board Policy

Student expulsion appeals

BP 5144.3

Note: Certain decisions by the governing boards of school districts may be appealed to the County Board. Education Code 48919 gives County Boards appellate jurisdiction over expulsion of students by school districts.

For appeals of denials of charter school petitions, see BP/E 0420.4 Charter Schools and for interdistrict attendance appeals, see BP 5117 Interdistrict Attendance Appeals.

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

Note: Education Code 48919 **mandates** County Boards to adopt rules and regulations establishing procedures for expulsion appeals. The rules adopted must include the requirements for filing a notice of appeal, the setting of the hearing date, notification of the student and school district regarding the appeal, furnishing of expulsion hearing records by the district to the County Board, procedures for the conduct of the hearing, and the preservation of the record of appeal.

A student expelled by the governing board of a school district or his/her parent/guardian (appellant) may appeal the expulsion to the County Board within 30 days of the school district'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 parent/guardian
3. Name of respondent school board
4. Date of respondent school board's action to expel student
5. Ground(s) on which appeal is based

The appellant shall submit to the County Board, a certified copy of the written transcripts and supporting documents of the proceedings before the school district. Because delay in receiving the transcripts may prejudice the student's case, the student is encouraged to request a copy of the transcripts and other related records from the district no later than the date on which the appeal is filed. (Education Code 48921)

Note: Education Code 48919.5 allows counties with a minimum of 180,000 ADA to appoint a

hearing officer or an impartial administrative panel to hear appeals on behalf of the County Board. Even when a hearing officer or administrative panel is appointed, the following timelines must be complied with.

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

Note: The time stated in the following paragraph to notify the parties about the hearing, is suggested to ensure compliance with the timelines set by law for the hearing and the County Board's decision. The County Board may revise it to reflect its practice.

No later than 10 days prior to the hearing, the secretary to the County Board shall serve upon the student and the respondent school board, by certified mail, return receipt requested, a notice of the 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 student requests in writing at least five days prior to the hearing, that the hearing be conducted in open session.

Conduct of Expulsion Hearing

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 at a public meeting. If such request is made, the hearing shall be public unless another student's privacy rights would be violated. (Education Code 48920)

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)

2. 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 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 except in a *de novo* proceeding, granted pursuant to Education Code 48923. (Education Code 48921)

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.
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.

Final Order of the County Board

Note: Option 1 is for County Boards that hear expulsion appeals. Option 2 is for County Boards that appoint hearing officers or administrative panels to hear expulsion appeals.
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OPTION 1:

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

OPTION 2:

The hearing officer/administrative panel shall submit a recommended decision and the record to the County Board within three school days of hearing the appeal. The County Board shall review the recommended decision and render its final decision within 10 school days of receiving the recommended decision. (Education Code 48919.5)

Note: The following paragraph applies to all County Boards.

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 governing board, the County Board may remand the matter to the governing board for reconsideration or grant a hearing de novo.
2. Where the County Board determines that the 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 governing board 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 governing board. If the County Board reverses a governing board's decision, the County Board may direct the 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 governing board. The student and the 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

35146 Closed sessions (re suspensions)

35291 Rules (for government and discipline of schools)

35291.5 Rules and procedures on school discipline

48660-48666 Community day schools

48900-48926 Suspension and expulsion

48950 Speech and other communication

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

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:

CDE PROGRAM ADVISORIES

0306.96 Expulsion Policies and Educational Placements, SPB 95/96-04

WEB SITES

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

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

08/02

Policy Reference UPDATE Service