

SCHOOL DISTRICT EXPULSION APPEALS

1. An expelled student or the student's parent/guardian (Appellant) may appeal the decision by the governing board of a school district (District Board) to expel the student to the County Board of Education (County Board).
2. The appeal must be filed within thirty (30) calendar days following the date of decision of the District Board to expel the student.
3. The appeal shall contain the following information:
 - a) Name, address and telephone number of parent(s)/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) Grade most recently attended by the student.
 - d) A copy of Appellant's written request to the District Board to prepare a record of the hearing.
 - e) A statement of the basis for the appeal. The grounds for appeal are limited to one or more of the following:
 - The District Board acted without or in excess of jurisdiction.
 - The Appellant was denied a fair hearing before the District Board.
 - There was a prejudicial abuse of discretion in the hearing.
 - 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 District Board.
4. Upon receipt of an appeal, the County Superintendent of Schools and/or designee shall give written notice of the request to the Appellant and the District Board. The notice shall include a statement that the Appellant or the District Board is entitled to be represented by an attorney or other representative and that all hearings will be in closed sessions unless at least five (5) days prior to the hearing date the County Board received the Appellant's written request that the hearing be public. Each party must disclose to the Secretary of the County Board of Education in not less than two (2) days from the notice of hearing whether or not they will be using representatives.

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5. The County Superintendent shall contact the Appellant and County 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 appeal at a regular or special meeting of the County Board to be held within twenty (20) school days of the receipt of the appeal.
6. A record of the hearing before the District Board, including a transcript, shall be made available to the County Superintendent. The cost of such transcript shall be borne by the Appellant except where the Appellant certifies to the District Board by declaration under penalty of perjury that he/she cannot reasonably afford the cost of the transcript because of limited income and/or exceptional necessary expenses, in which case the cost of the transcription shall be borne by the District Board.
7. Where the district cannot produce a written transcript of its hearing, the County Board will reverse the decision to expel. (Under Education Code 48923, the County Board’s authority to remand the matter to the County Office of Education for reconsideration or grant a “hearing de novo” (a new hearing) is limited to instances where relevant and material evidence was unavailable at the time of the hearing or was improperly excluded from district hearing.
8. The County Superintendent shall no later than ten (10) days prior to the hearing, notify the Appellant, and the District Board expelling the student of the date, time and place of the appeal and of the matter to be heard. Such notices shall be by registered or certified mail or by personal services.
9. In addition, the notice to the District Board shall require the District Board to forward to the County Superintendent at least five (5) days prior to the appeal 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 expulsion to Appellant.
 - b) A record of receipt by the Appellant of the notice of expulsion.
 - c) The finding of facts and recommendations from the district level hearing.
 - d) The minutes of the meeting at which the District Board took action to expel the student.

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- e) The rules, regulations and/or procedures adopted by the District Board relating to the conduct of hearing on the question of the expulsion of a student.

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

- 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 a copy of the appeal and a complete copy of the record. Portions of the record which cannot be forwarded with the agenda may be supplied to the members of the County Board at the meeting during which the appeal is heard.
- 11. The County Superintendent may, after consultation with the president of the County Board, retain counsel to sit with the County Board to assist the County Board in the interpretation of any questions of law which may be raised.
- 12. Hearing Procedures:
 - a) A record of oral proceedings before the County Board shall be preserved. Preservation may be by means of tape recorded or stenographic notes. The minutes of the meeting shall contain a record of all persons present at the hearing.
 - b) The President of the County Board or a designee shall preside over the hearing. The order, or presentation and the time limits for presentation, will be regulated at the discretion of the President or a designee. Ordinarily, the order and limits of presentations will be as follows:
 - Call to order by the President.
 - Introduction of appeal by the Secretary to the Board.
 - Appropriate remarks by the County Board or representative(s).
 - Appellant’s argument based upon the record (20 minutes).
 - District Board’s argument based upon the record (20 minutes).
 - Summary and rebuttal remarks by Appellant (10 minutes).
 - Summary and rebuttal remarks by District Board (10 minutes)

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- During and after any of the above presentations members of the County Board may be recognized by the President or designee for the purpose of directing questions to any persons who appeared before the Board.
 - At the conclusion of the presentations and the questioning by the Board members, the President or designee will declare the hearing at an end. The Board may exclude the Appellant and District Board and continue in closed session for the purpose of deliberating and reaching a decision on the matter accompanied by the Secretary and counsel to the County Board. If during such deliberations, any member of the Board wishes to ask additional questions of any person who appeared before the Board, then the President or designee may reopen the hearing for that purpose and both Appellant and District Board will be given an opportunity to comment in response to the Board member's inquiry.
 - After its deliberation, the Board shall take action in public session.
 - The County Board of Education shall render a decision within three (3) school days of the hearing and a written decision shall be delivered to the Appellant and District Board by certified mail within a reasonable time limit thereafter.
13. The County Board of Education is required to base its appeal consideration upon the written record of the hearing conducted in the pupil's district. Only under special circumstances discussed in item d) below may a county board of education actually consider new evidence. The County Board may prepare itself for an appeal hearing by focusing on the four questions listed below:
- a) Did the District Board proceed without or in excess of its jurisdiction in expelling the student?
Explanation: California Education Code §48900 and 48918 specify the reasons for which a student may be expelled, the timelines that must be honored during expulsion proceedings, and that the act or acts must be related to school activities or attendance.
 - b) Was the student afforded a fair hearing before the District Board?

Explanation: The district is required to provide a timely notice of hearing; to allow time to hear and examine all evidence submitted; and a reasonable opportunity to present evidence to deny, explain or mitigate the allegations.

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- Was there substantial evidence of commission of the offense?
 - Was there a complete record of the expulsion hearing?
 - If the district board conducted the factual hearing by using a hearing officer or administrative panel rather than a direct hearing before the district board, was a copy of the written report and an opportunity to comment before the district board provided?
 - Were the parent or guardian and student informed of their right to appeal before the County Board of Education and of their right to request re-admission?
 - Was an opportunity provided to hear and/or examine all evidence submitted against the student? (Education Code §48918(b))
 - Was an opportunity provided to present evidence on the student’s behalf?
 - Is there now relevant and material evidence which, with reasonable diligence, could not have been revealed or was improperly excluded during the hearing before the District Board?
- c) Was there a prejudicial abuse of discretion by the District Board?

Explanation: California Education Code §48915 requires that a recommendation for expulsion (or a statement that expulsion is inappropriate) be made by the principal or the superintendent for acts involving physical injury, possession of weapons or dangerous objects, drug sales, robbery and extortion. The California Education Code states that student may also be expelled for other specific violation(s) when other means of correction are not feasible or have repeatedly failed to bring about proper conduct or when due to the nature of the violation the student’s continued presence at school is a danger to the student or others (Education Code 48900.5). This second group of violations includes damage or attempted damage to property; stealing, receiving stolen property; possession or use of tobacco; obscene acts; disrupting school activities; willful defiance; and possession of or negotiating to sell drug paraphernalia. If the violation is not listed in Education Code §48900, it is not grounds for expulsion. The district must also meet procedural requirements, and its finding must be supported by the evidence contained in the transcript.

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- d) Is there now relevant and material evidence which, with reasonable diligence, could have been revealed in the hearing before the district board, and was not produced, or was improperly excluded?
- e) Explanation: Sometimes evidence is not known or available at the time of a hearing which reasonably could have altered the district board's decision. When it is determined that this information could not have been reasonably produced and is deemed significant, or was improperly excluded, the County Board of Education has more options: (1) the case may be sent back to the governing District Board for reconsideration; (2) the County Board may conduct its own hearing de novo.

If the County Board finds there was abuse of discretion by the District Board, the County Board must also find that the abuse of discretion was prejudicial.

- 14. Following discussion, the County Board shall convene in public (open) session and adopt its findings and order.
 - 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 from the hearing before the District Board (question 13d above) the County Board may:
 - (1) Remand the matter to the District Board for reconsideration and may, in addition, order the student reenrolled in the schools of the County Office of Education pending such reconsideration.
 - (2) Grant a hearing de novo before the County Board upon reasonable notice to the Appellant and respondent.
 - b) Where the County Board makes any other findings, it shall either affirm or reverse the decision of the District Board.
- 15. Where the County Board 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 record of the County Office of Education of any references to the expulsion action.
- 16. The County Board shall render its decision within three (3) school days of the hearing, unless the Appellant agrees to a postponement.

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17. The decision of the County Board shall be final and binding upon the Appellant and upon the District Board. Both parties may, however, appeal the decision to Superior Court.
18. The final order of the County Board shall be in writing and shall be delivered to the Appellant and to the District Board by certified mail or personal service.
19. The County Superintendent shall maintain all records of the appeal as permanent records of the County Board.

MENDOCINO COUNTY BOARD OF EDUCATION

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