

PLACER COUNTY OFFICE OF EDUCATION

Gayle Garbolino-Mojica, County Superintendent of Schools

Expulsion Appeal Handbook

To aid parents or guardians

of expelled students

in understanding the appeal process

and the rights of the student

PCOE

GOLD IN EDUCATION

Revised & Approved:

02/09/2017

TABLE OF CONTENTS

I.	INTRODUCTION.....	2
II.	INFORMATION & INSTRUCTIONS	
	• WHEN MAY I FILE AN APPEAL WITH THE PLACER COUNTY BOARD OF EDUCATION?	3
	• HOW DO I REQUEST A HEARING?	4
	• WHAT HAPPENS NEXT?	5
	• SCOPE AND LIMITATIONS OF THE HEARING	6
	• WHAT WILL HAPPEN AT THE HEARING?.....	8
	• SAMPLE EXPULSION APPEAL HEARING SCRIPT	10
	• HOW DO I PREPARE FOR THE HEARING?	13
	• ADDITIONAL CONSIDERATIONS FOR SPECIAL EDUCATION OR DISABLED PUPILS	15
	• RIGHT TO HAVE ATTORNEY OR NON-ATTORNEY ADVISOR PRESENT	16
	• WHAT ARE PARENTAL OPTIONS/RESPONSIBILITIES IN CASE MY APPEAL IS DENIED?	17
	• SUMMARY OF TIME REQUIREMENTS IN EXPULSION PROCEEDINGS	18
IV.	PLACER COUNTY BOARD OF EDUCATION BOARD BYLAW 9520 EXPULSION APPEALS	19
V.	FORMS	
	• REQUEST FOR APPEAL	23
	• REQUEST FOR TRANSCRIPT AND SUPPORTING DOCUMENTS FROM DISTRICT	25
VI.	CALIFORNIA EDUCATION CODE	
	• EDUCATION CODE SECTIONS 48919 – 48924	26

INTRODUCTION

One of the duties and responsibilities of the Placer County Board of Education (“County Board”) is to hear expulsion appeals from students of districts under its jurisdiction. These include: Ackerman Charter, Alta-Dutch Flat, Auburn Union, Colfax Elementary, Dry Creek Joint Elementary, Eureka Union, Foresthill Union, Loomis Union, Newcastle Elementary, Placer Hills Union, Roseville City, Rocklin Unified, Placer Union High, Roseville Joint Union High, Tahoe-Truckee Unified and Western Placer Unified school districts.

The Expulsion Appeal Handbook (“Handbook”) is intended to provide you with information necessary should you need to file an appeal of the expulsion order of your school district’s governing board. While this handbook is designed to be both understandable and informative, it is not a substitute for important original sources of information such as the California Education Code (“Education Code” or “EC”) §§ 48900 through 48926 or your school district’s policies and procedures for suspension and expulsion to which you may also refer. As part of the appeal process, you must request the district to prepare a written transcript of the expulsion hearing. To assist you with the appeal, you may consult and engage the services of an attorney or a nonattorney adviser.

WHEN MAY I FILE AN APPEAL WITH THE PLACER COUNTY BOARD OF EDUCATION?

1. The pupil, the parent or the legal guardian of the pupil (“Appellant”), may file an appeal of an expulsion order with the County Board within thirty (30) calendar days after the district governing board’s decision to expel the pupil. Once the thirty (30) days have passed, an appeal may not be filed.
2. An appeal may be made when the Appellant believes that one or more of the procedural conditions described under “*Scope and Limitations of the Hearing*” have been violated.

It is helpful for the Appellant to understand that an appeal before the County Board, is not a rehearing of the district’s decision to expel, but rather a procedural review to determine if the statutory requirements governing expulsions and expulsion hearings were met and/or if the pupil received a fair hearing.

You are encouraged to carefully review “*Scope and Limitations of the Hearing*” and to contact the Placer County Office of Education (“County Office”) if you have any questions whether the reason(s) supporting your appeal meet these conditions.

HOW DO I REQUEST A HEARING?

The pupil, the parent, or legal guardian of the pupil, may file an appeal by submitting a written request or the completed “*Request for Appeal*” form to the County Office in person, by email, or by mail. The appeal shall be addressed as follows:

**Placer County Office of Education
Attn: Gayle Garbolino-Mojica,
Placer County Superintendent of Schools
360 Nevada Street
Auburn, CA 95603
(sarcu@placercoe.k12.ca.us)**

The County Board recommends that you use the two forms enclosed with this Handbook when requesting an appeal. If you choose not to use the “Request for Appeal” *and* “Request for Transcript and Supporting Documents from District” forms, your written request for an appeal must contain the following information:

1. Name and address of the parent or legal guardian of the pupil and the name and address of the attorney or non-attorney adviser, if any, who will be representing the pupil at the hearing.
2. Name of the pupil.
3. Grade most recently attended by the pupil.
4. A statement of the basis for the appeal which relates to one or more of the reasons described in the section of the Handbook titled “Scope and Limitations of the Hearing.”
5. A statement that you have requested a transcribed copy of the electronic hearing record of the hearing from the school district which must be certified by the district’s superintendent or designee.

You are responsible to request the written transcript of the hearing and all supporting documents and pay for the cost of the transcription. If your appeal is granted by the County Board, the district will be required to reimburse you for the cost of the transcript. If you cannot afford the cost of preparing the transcript due to your “limited income” or if the cost may be considered an “exceptional necessary expense,” the transcripts will be provided to you at no cost. [EC § 48919 and 48921]

Please note: The appeal hearing will not be held until the County Board has received the transcript of the expulsion hearing.

WHAT HAPPENS AFTER I FILE THE APPEAL?

Once the County Office of has received your written request to appeal an expulsion, a hearing date will be set.

Remember: It is your responsibility to simultaneously request from the district a written transcript of the expulsion hearing and make sure that the transcript is delivered to the County Office at least ten calendar (10) days before the hearing.

The appeal hearing will be held within twenty (20) school days after the County Office receives the written appeal request. The hearing will not be conducted without a certified copy of the transcript of the school district expulsion hearing. Both you and the local school district will receive notices by registered or certified mail regarding the date, time and place of the hearing.

The notice of the hearing will contain a statement that the County Board intends to hold the hearing in closed session and that the County Board will be represented by an attorney. If you will be represented by an attorney or a non-attorney adviser at the hearing, you must notify the County Office at least five (5) calendar days before the hearing. Please note: The Education Code requires that the hearing be held in closed session unless the Appellant requests that the hearing be open to the public. If you wish to have the hearing open to the public, you must request so in writing at least five (5) days prior to the hearing date. If you elect to open the hearing to the public, please indicate so on item number 16 on the Request for Appeal form included with this Handbook.

Prior to the hearing, the County Board will also request that the school district provide its policies and regulations regarding student discipline. This information, along with the hearing record will be provided to the County Board for review prior to the hearing.

Filing Written Arguments Prior to the Hearing

The Appellant may file an initial written argument or an appeal brief with the County Board at least fourteen (14) calendar days prior to the hearing date. The parent or legal guardian must send or hand deliver a copy of the written argument/appeal brief to the school district at the same time.

The school district also has the right to submit a written argument or an appeal brief. The district's initial argument must also be filed at least fourteen (14) calendar days prior to the hearing date. The district must either send, email or hand deliver a copy of the written argument or appeal brief to the parents/legal guardians concurrently with filing the brief with the County Office.

If the Appellant or district files a written argument, a reply by either party shall be filed not less than ten (10) days prior to the date of the hearing. The district and/or the Appellant shall provide the other party with a copy of its reply by personal service, by mailing or by emailing it on the same day the reply is filed.

SCOPE AND LIMITATIONS OF WHAT MAY BE CONSIDERED BY COUNTY BOARD AT THE HEARING

Unless in the very limited instance when a new hearing is ordered, the County Board is required to base its decision upon the written record of the expulsion hearing conducted by the district governing board. With the exception of paragraph number 4 below, the County Board will hear no “evidence” other than what is already contained in the hearing transcript and the supporting documents submitted by the Appellant and district to be used at the appeal hearing. That information should consist only of witness testimony, written witness statements and other documents which were considered at the expulsion hearing, plus the official district records documenting the suspension and expulsion.

Only under the limited circumstances discussed in paragraph number 4 below, may the County Board hold its own hearing to consider new evidence. The County Board’s charge is to determine if the pupil’s procedural due process rights were violated. It is not the charge of the County Board to agree or disagree with the school board’s decision to expel, but solely to assure that statutory legal procedures were followed and that a fair hearing was conducted.

In order to determine whether you have a legal right to file an appeal, at least one of the four questions below must be answered “yes”:

1. Did the district governing board act without or in excess of its jurisdiction in expelling the pupil?

Explanation: The Education Code identifies the misconduct for which a pupil may be expelled, the timelines that must be honored during expulsion proceedings, and that the misconduct was related to school activities or attendance. (EC 48922(b))

2. Was the pupil afforded a fair hearing before the district governing board?

Explanation: The district is required to provide you timely notice of a hearing to allow you to hear and examine all evidence submitted; the right to be represented by a non-attorney adviser or legal counsel; and a reasonable opportunity to present your evidence to deny, explain or mitigate the allegation(s). (EC § 48918)

3. Was there a prejudicial abuse of discretion by the district governing board?

Explanation: Pursuant to EC § 48922(c), an abuse of discretion (although not necessarily a “prejudicial” abuse of discretion) may be established by any of the following situations:

- a. School officials have not met procedural requirements for expulsion.
- b. When applicable, if the decision to expel is not supported by the findings prescribed in EC § 48915.

c. The findings are not supported by the evidence.

The County Board may not reverse the decision of the district governing board to expel a pupil based upon a finding of abuse of discretion (e.g., technical inadequacies in the hearing process), unless the County Board also determines that the abuse of discretion was prejudicial.

“Prejudicial abuse of discretion” is an error that affects or presumptively affects the outcome of the expulsion hearing. In other words, the expulsion would probably not have occurred, but for the error. A non-prejudicial or “harmless error” is one where the student would have been expelled regardless of the error because no substantive right was affected.

4. Is there now relevant and material evidence which, in the exercise of reasonable diligence, could not have been produced at the hearing, or which was improperly excluded at the hearing before the district governing board?

Please note: A request to offer new evidence that was either improperly excluded or could not have been reasonably produced at the hearing must be noted when filing the appeal. (See number 15 D on the Request for Appeal form).

If the Appellant requests at least five (5) calendar days before the hearing to offer new evidence, the County Board at the hearing will ask for an explanation under oath of what the new evidence is and what issue it relates to (called an “*offer of proof*”). The County Board may review the document and/or hear any witness testimony before deciding whether the new evidence could not have been produced or was improperly excluded at the expulsion hearing.

The County Board may vote to allow new evidence to be offered but only if a majority of the members find that the evidence qualifies as:

- Relevant and material evidence which, in the exercise of reasonable diligence, could not have been produced at the school district expulsion hearing; or
- Relevant and material evidence which was improperly excluded by the school district at the expulsion hearing.

If the County Board votes to permit the new evidence to be introduced, it must then either:

- Remand (send) the matter back to the district governing board for reconsideration, along with any instructions that the County Board may deem necessary. The County Board may order reconsideration of the entire matter or any part thereof. The County Board may also order the pupil reinstated pending such reconsideration; or
- Grant a new hearing “*de novo*” before the County Board but after providing reasonable notice to all parties

WHAT WILL HAPPEN AT THE HEARING?

Hearings are typically conducted in closed session during a County Board meeting held at the:

**Placer County Office of Education
Burns Room
360 Nevada Street
Auburn, CA 95603**

At the time your appeal is scheduled on the agenda, unless you have requested that the hearing be open to the public, the County Board meeting will be closed and all those not involved in the matter will be excused from the room. You, your representative and the representatives of the school district will be asked to take seats at a table in front of the County Board. You (the Appellant), the district, and the County Board all have the right to have legal counsel present. You will appear before seven (7) board members, the County Superintendent, and members of his/her staff who are necessary to conduct the hearing. If you request an open meeting, the public may also attend.

In addition to the attorney representing the County Board at the hearing, the County Board may have a hearing officer conduct the hearing and make recommendations to the County Board on any evidentiary issues including any motions filed or presented by the parties.

All of those presenting to the County Board during the hearing will be sworn in at the beginning of the hearing.

The appeal hearing will be conducted as follows:

1. If the parent or legal guardian has any new evidence that was improperly excluded or that could not reasonably have been produced at the expulsion hearing, the County Board may review that evidence to determine whether to remand the matter back to the district or to hold a new hearing. Otherwise, the hearing will begin in the manner described below.
2. The Appellant will be asked to make an opening statement (limited to ten (10) minutes).
3. The representative(s) of the school district will be asked to make an opening statement (limited to ten (10) minutes).
4. County Board members will then ask questions first of the Appellant and then of the district.
5. When the questioning of both parties has been completed, the Appellant will be asked to make a closing statement followed by the closing statement of the school district. After closing statements, all present will be excused by the Board President except for the County Superintendent, any necessary PCOE staff, and the legal counsel

representing the County Board. The County Board will deliberate in closed session. If during deliberations, the County Board calls back any party associated with the appeal for further questions, all parties and their representatives will be asked to return.

6. Following deliberations, the County Board will re-convene in open session. The County Board has up to three (3) school days to make its decision, however a decision is usually made by the County Board and announced at the hearing. The Board President will, at that time, ask the County Superintendent to read the proposed "Order of the County Board." The order will fit one of the following five (5) categories:
 - a. Affirm the school board's decision and deny the appeal; or
 - b. Reverse the school board's decision and grant the appeal.
 - c. Remand the matter back to the district to make the findings required in EC 48915 but only if evidence exists in the expulsion hearing record to support those findings. Any remand back to make the EC 48915 findings will not result in a new hearing; or
 - d. Remand the matter back to the school district for reconsideration of new relevant and material evidence, which could not have been reasonably produced during the original hearing or which was improperly excluded; or
 - e. Conduct a new hearing "*de novo*" in order to consider the improperly excluded evidence or the new relevant and material evidence and render its own decision, which shall include findings of fact supported by substantial evidence.
7. After the County Superintendent has read the proposed "Order of the County Board," the Board President will call for a motion. A County Board member will make a motion to adopt the proposed Order and the motion once seconded, will be voted upon.

The decision of the County Board is final. There is no further administrative appeal process.

SAMPLE EXPULSION APPEAL HEARING SCRIPT
(CLOSED SESSION)

- I. Board president convenes the Hearing, asks the Board and staff to introduce themselves, and then explains the following:

The purpose of this meeting is to conduct a hearing in the matter of an appeal of the Expulsion of (Name of student here) from the _____ School District. This appeal, filed by Appellant, will be heard in closed session.

- II. ***At this time, for the record, would the representatives for the parties please identify themselves?***

For the Appellant: _____.

For the Respondent School District: _____.

- III. ***Before we proceed to opening statements by the parties, I would like to note for the record that documents, which include the Notice of Appeal and a transcript of the expulsion, have been filed by the Appellant in support of the appeal. Documents in support of the expulsion order have also been filed by the District.***

Are there any objections to including these documents into the record of tonight's hearing?

If there are NO objections, ask for a motion to move the documents into the expulsion hearing record as Exhibit 1.

If YES, have the Hearing Officer then entertain arguments by the parties as to the objection(s) to including the documents as part of the expulsion appeal hearing record.

Following argument, the Hearing Officer shall recommend to the Board whether or not to entertain a motion to move the documents or a specific list of documents into the expulsion hearing record as Exhibit 1.

(After the decision regarding the inclusion of the Appellant's and the Respondent's documents into the hearing record, then go to opening statements unless the Appellant has submitted new evidence for the County Board to consider. If so, turn this portion of the hearing over to the Hearing Officer to conduct.)

- IV. ***The order of presentation this evening shall be as follows:***

- ***First, the Appellant***
- ***Second, the Respondent***
- ***And, finally both parties will be given an opportunity to present a closing statement.***

Following closing statements, the Board will deliberate in closed session. At that time representatives of the Appellant and of the District will be excused.

Board members may ask questions following after the opening statements of both parties. The Board may ask questions first of the Appellant and then of the District representatives. In addition, all persons presenting during the hearing will do so under oath.

Are there any questions regarding the hearing procedure?

- V. ***The review by the County Board tonight will be limited to the following questions:***

- A. *Whether the Governing Board acted without or in excess of its jurisdiction.*
- B. *Whether there was a fair hearing before the Governing Board.*
- C. *Whether there was a prejudicial abuse of discretion by the governing board in the hearing.*
- D. *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.*

Are there any questions regarding the scope of the County Board's appellate review tonight?

(Every person presenting at the hearing will now be sworn in. The County Superintendent will ask every presenter to stand and take the following oath.

SUPERINTENDENT GARBOLINO-MOJICA

“Every person presenting to the Board tonight will now be sworn in. If you are intending to present during the hearing or be available to respond to questions tonight, please stand and raise your right, hand and after I read the oath, please indicate that you understand and agree with the oath by stating ‘I do’.

Do you promise to tell the truth, the whole truth, and nothing but the truth?”

(The oath may be given at any time during the hearing to swear in a person who did not take the oath at the beginning of the hearing.)

To start the Hearing, the Board President declares:

- VI. ***Appellant Representative, you may address the Board.***
(Presentation of opening statement by Appellant—limited to ten (10) minutes.)
- VII. ***District Representative, you may address the Board.***
(Presentation of opening statement by Respondent—limited to ten (10) minutes.)
- VIII. ***Are there any questions by members of the County Board for the Appellant?***
- IX. ***Are there any questions by members of the County Board for the Respondent?***
- X. ***Appellant, you may present your closing statement***—limited to ten (10) minutes.
- XI. ***Respondent District, you may present your closing statement***—limited to ten (10) minutes.

Following closing statements, the Board President states:

The hearing is now concluded and the County Board will deliberate in closed session.

- XII. Board President reconvenes the hearing and asks for a motion:

(The following motions A-D are SAMPLE motions which may be used by Board members after discussion and deliberation)

- A. I move that this Board AFFIRM the decision of the District Governing Board to expel the Student because the grounds in Ed. Code Section 48922 have not been

established by Appellant or have any of the conditions in Ed. Code Section 48923 been met.

-OR-

- B. I move that this Board REVERSE the decision of the District Governing Board in expelling the Student for the following reason(s):

-OR-

- C. I move that the Board REMAND this matter back to the Governing Board for the following reason(s):

-OR-

- D. I move that the Board GRANT a hearing "de novo" to be held by the County Board following reasonable notice to the parties for the following reason(s):
-

HOW DO I PREPARE FOR THE HEARING?

If you are the presenter, it is useful to prepare your statement in advance. It is helpful to know that the hearing is conducted in a manner so that no legal expertise is necessary. Your opening statement should convey the facts supporting the appeal and should focus on responding to any of the four (4) questions presented in “Scope and Limitations of the Hearing” that are applicable to the appeal.

Remember that no matter how compelling your appeal is to you, the scope of the County Board’s review is limited to the four (4) questions described earlier in the Handbook. The County Board will focus on the previous hearing before the district governing board, so your appeal should be built on the expulsion hearing transcript and any of the supporting documents presented at the expulsion hearing.

In preparing your statement, you may wish to review the policies and procedures of the school district to determine if any procedures or timelines were not met.

If the following questions cannot be answered satisfactorily, you may have cause that could support your appeal:

- Was the expulsion based on acts listed in EC §§ 48900, 48900.2, 48900.3, 48900.4, or 48900.7?
- Was the expulsion order based on an act or acts related to school activity or attendance that occurred at anytime while on school grounds, going to or from school, during the lunch period whether on or off school grounds, during or while going to or coming from a school sponsored activity or acts occurring within another school district. (EC § 48900(r))
- Did you receive proper notice regarding hearings and did hearings occur within timelines specified by law (see Timelines, page 15)?
- Were you invited to appear at all expulsion proceedings?
- Were all proceedings held in closed session (unless you requested open session)?
- Was there substantial evidence that the pupil committed an expellable act?
- Was there a complete record of the expulsion hearing?
- If the school district conducted the factual hearing by using a hearing officer or administrative panel rather than conducting an evidentiary hearing before the school district board, were you provided with a copy of the written recommendation for expulsion and the Findings of Fact?
- Were you informed of your right to appeal before the County Board and of the process to request readmission?
- Were you given the opportunity to present evidence on the pupil’s behalf?

- Is there now relevant and material evidence which, with reasonable diligence, could not have been produced or was improperly excluded during the hearing before the school board?
- Where applicable, were the findings required by the EC § 48915 made by the school board?

ADDITIONAL CONSIDERATIONS FOR SPECIAL EDUCATION OR SECTION 504 STUDENTS

If your child is a pupil with exceptional needs and was under an Individualized Education Plan ("IEP") or Section 504 Accommodation Plan at the time of the suspension, please review and answer the following questions:

- Was there a pre-expulsion meeting of the IEP Team for Special Education students or of the Student Study Team ("SST") meeting for Section 504 students prior to the expulsion hearing?
- Were you notified of your right to attend the pre-expulsion IEP Team or SST meeting?
- Was it determined during the pre-expulsion meeting that:
 1. The conduct in question was not caused by or had a direct and substantial relationship to the child's disability?
 2. The conduct in question was not the direct result of the District's failure to implement the IEP or Accommodation Plan?
- Was the suspension pending the expulsion hearing for more than ten (10) consecutive school days without either your agreement or by court order?
- Was the student removed to an alternative placement or did you agree to a change of placement?

RIGHT TO HAVE ATTORNEY OR NON-ATTORNEY ADVISER PRESENT

It is the intention of the County Board to conduct the hearing in a manner which does not require an attorney. This handbook has been prepared to help you understand the appeal hearing process. While attorneys are not required, it is your right, the right of the County Board, and the right of the district to all have their attorney's present. If it is your intention to bring an attorney or non-attorney adviser to the hearing, you must notify the County Board five (5) calendar days prior to the hearing or so indicate your intention on item number 11 of the "Request for Appeal" form.

A non-attorney adviser in this instance means an individual who you have selected to represent the pupil who is not an attorney, but who is an individual that is familiar with the facts of the case and the reason(s) for the appeal.

The County Office will work with you to help clarify any questions you may have regarding the expulsion appeal process. Please call the County Superintendent's Designee at (530) 889-5941 if you have any questions.

WHAT ARE PARENTAL OPTIONS/RESPONSIBILITIES IN CASE MY APPEAL IS DENIED?

1. Contact your local school district and ask for a copy of its procedures for the readmission of the expelled pupil.
2. If you move to another school district, you may apply for enrollment but you are required by law to notify the new district of the expulsion or any pending expulsion. (EC § 48915.1, 48918 and 48915.2) Students expelled for the following serious offenses cannot attend schools in other districts for the period of the expulsion: 1) causing serious physical injury to another person, except in self-defense; 2) possession of any knife or other dangerous object of no reasonable use to the student; 3) unlawful sale or possession of any controlled substance listed in Health and Safety Code § 11053, et seq; 4) robbery or extortion; 5) possessing, selling or otherwise furnishing a firearm; 6) committing or attempting to commit a sexual assault or battery; 7) brandishing a knife at a person; 8) assault or battery on a school employee; or 9) possession of an explosive.
3. You may seek an opportunity to enroll the pupil in another school district. You may apply directly to the desired district and you must inform its staff of the expulsion order or any pending expulsion. *Again, students expelled for serious offenses, stated above, cannot attend school in another district during the term of the expulsion.*
4. You may apply for admission to a private school and you must inform its staff of the expulsion order.
5. You may employ a credentialed teacher to instruct your child in the appropriate grade level (home tutoring).
6. You may request placement in County Office's Community School Program.
7. When a child age 6 to 18 years is expelled from a school district, a parent or legal guardian is still responsible to seek educational opportunities for the child. (EC § 48200)
8. At the time an expulsion of a pupil is ordered, the local district board must ensure that an education program is provided to the pupil who is subject to the expulsion order for the period of the expulsion. (EC § 48916.1)

SUMMARY OF TIME REQUIREMENTS IN EXPULSION PROCEEDINGS

STEP	TIME REQUIREMENT
Determination of Conduct in Violation of EC § 48900, 48900.2, 48900.3, 48900.4 and 48900.7	Day 1.
Suspension	Not more than five (5) consecutive school days [EC § 48911].
Recommendation for Expulsion/Extension of Suspension	Within the five (5) school days of the suspension. It may be extended pending decision on the recommended expulsion [EC § 48911 (g)]. Requires an invitation to meet with superintendent or superintendent's designee.
Notice of Hearing	At least ten (10) calendar days prior to hearing [EC § 48918 (b)].
Pupil Request for Open Hearing	Within five (5) calendar days preceding hearing [EC § 48918 (c)].
District Extension of Hearing Date	Up to five (5) school days "for good cause" [EC § 48918 (a)].
Pupil Postponement	Entitled to one period of not more than thirty (30) calendar days, additional days at district board's discretion.
EXPULSION HEARING	To be conducted within thirty (30) school days of determination of pupil violation, without pupil-requested postponement or district extension of hearing date [EC § 48918(a)].
Administrative Panel or Hearing Officer Recommendation If Used	Within three (3) school days after the hearing or by the thirty-third (33rd) day without postponements [EC § 48918(e)].
Decision of Governing Board	Within ten (10) school days after hearing or by the fortieth (40 th) day without postponements [EC § 48918(a)].
Readmission/Rehabilitation Plan	At the time of the decision to expel the pupil [EC § 48916].
APPEAL to County Board	Within thirty (30) calendar days following local board decision [EC § 48919].
Appeal Hearing	Within twenty (20) school days following filing of formal request to appeal the expulsion [EC § 48919].
Decision of the County Board	Within three (3) school days of hearing, absent pupil request for postponement [EC § 48919].

(See "Additional Consideration for Special Education and Section 504 Timelines")

PLACER COUNTY BOARD OF EDUCATION BOARD BYLAW 9250

Board Bylaw 9250 offers a good introduction to the expulsion appeal process and to the legal procedures governing appeal hearings conducted by the County Board. Board Bylaw 9250 specifically incorporates the expulsion appeal process and procedures included in this Handbook.

EXPULSION APPEALS

BB 9520

One of the duties and responsibilities of the County Board of Education is to hear appeals of expulsion orders issued by school districts under its jurisdiction.

Appeal Process

1. The student, parent or legal guardian of the student (“Appellant”) may file an appeal of an expulsion order with the County Board within thirty (30) calendar days after the decision by the district’s governing board to expel the student. Once the 30 days have passed, the County Board will no longer accept or hear the appeal.
2. An appeal may be made when the student parent or legal guardian of the student believes that any of the four procedural conditions as described under "Scope and Limitations" as specified below has been violated. All appeals filed with the Placer County Office of Education must state the grounds upon which the appeal is based.

Except in the limited instance when a new hearing is ordered, an appeal before the County Board is not a rehearing of the evidence presented at the district expulsion hearing but rather a review of the hearing record to determine if the district had jurisdiction to expel the student and if a fair and proper hearing was conducted.

Scope and Limitations

The County Board is required to base its consideration solely upon the written record of the hearing conducted by the district. The County Board’s charge is to determine if the student's due process rights were violated in a manner which resulted in the governing board acting without or in excess of its jurisdiction or if the student did not receive a fair hearing. (See items 1-3 below). In limited circumstances involving the introduction of new evidence, the County Board may hold a new hearing or remand the matter back to the district for reconsideration. (See item 4 below).

The review by the County Board of the decision to expel is limited to the following:

1. Whether the governing board acted without or in excess of its jurisdiction in expelling the student.
2. Whether there was a fair hearing before the governing board.
3. Whether there was a prejudicial abuse of discretion in the hearing by the Governing board.
4. Whether there is relevant and material evidence which, in the exercise of reasonable diligence, could not have been produced or that was improperly excluded at the hearing

before the governing board.

Additional Considerations for Students with Special Needs

If the student being expelled is under an Individual Education Plan or Section 504 Plan at the time of the suspension, or if a request for assessment was initiated, the district must follow certain procedural requirements in federal and state law. These requirements include conducting a meeting where the parents and/or legal guardian are invited to attend in order to determine whether the student's IEP was being implemented and whether the student's conduct in question was a manifestation of his/her disability. The district must also review whether at the time of the conduct in question the student's placement was appropriate.

Procedures

Specific procedures for filing the appeal and for assistance in preparing for the expulsion appeal hearing can be found in the PCOE Expulsion Appeal Handbook prepared by the County Office. The County Board specifically incorporates into Bylaw 9520 the expulsion appeal process and procedures included in the Expulsion Appeal Handbook.

The student, parent or person having legal custody of the student may file an appeal by submitting a letter and the hearing transcript in person or by mail to:

Placer County Office of Education
360 Nevada Street
Auburn, California 95603
Attn: Placer County Superintendent of Schools

Once the County Office has received a written request to appeal an expulsion order a hearing date will be set. The hearing must be scheduled within twenty (20) school days after the County Office receives the written appeal. Simultaneously with filing the appeal, the student shall submit to the school district a written request for a copy of the written transcripts of the expulsion hearing and all supporting documents. The hearing may not be held until the County Board has received the written transcript of the expulsion hearing conducted by the district. The transcript must be provided to the County Office at least ten (10) calendar days before the hearing.

Other than the transcript, any documents submitted to the County Board by the Appellant or by the district relating to the appeal shall be provided to the other party. Documents to be considered by the County Board at the expulsion appeal hearing must be received by the County Office at least five (5) calendar days before the hearing.

The expulsion appeal hearing shall be closed to the public unless a request is made by the student that the hearing be open to the public. Any request for the hearing to be open to the public must be submitted in writing by the Appellant at least five (5) calendar days prior to the scheduled hearing date. (Education Code 48920)

The County Board will be represented by legal counsel at the hearing. In addition, the County Board may have a hearing officer conduct the hearing and make recommendations to the County Board on any evidentiary issues. All persons presenting at the hearing shall do so under

oath.

The Appellant must notify the County Office at least five (5) calendar days before the hearing if legal counsel or a non-attorney adviser will attend the expulsion appeal hearing.

Any new evidence that is material and that was either improperly excluded or could not have been reasonably produced at the hearing, must be provided by the Appellant to the County Office at least five (5) calendar days before the hearing.

Hearings will be recorded and are typically held at the:

Placer County Office of Education
Burns Room
360 Nevada Street
Auburn, CA 95603

The County Board shall render a decision on the appeal within three (3) schooldays of the hearing unless the student requests a postponement. The County Board's decision is final. There is no further administrative appeal process.

Legal References:

EDUCATION CODE

48900 *Grounds for Suspension or Expulsion*
48911 *Suspension by Principal, Principal's Designee, or Superintendent*
48915 *Expulsion; Particular Circumstances*
48918 *Rules Governing Expulsion Procedures and Hearings*
48919 *Expulsion Appeals to County Board of Education*
48920 *County Boards; Manner at Hearing Expulsion Appeal*
48921 *Expulsion Appeals to County Board; Transcripts*
48922 *Scope of Review*
48923 *Decision by the County Board*
48924 *Finality of County Board Decision*
48925 *Definitions*

UNITED STATES CODE

20 USC 1415 *Procedural Safeguards*
CODE OF FEDERAL REGULATIONS
34 CFR 104.35 *Placement of Section 504 Students*
34 CFR 300.530 *Manifestation Determination*
34 CFR 300.536 *Change of Placement Resulting From Discipline*

Management Resources:

PCOE Expulsion Appeal Handbook

Adopted: August 10, 2006
Revised: February 14, 2013
Adopted: March 14, 2013
Revised: PENDING

FORMS TO FILE FOR APPEAL OF EXPULSION

1. "Request for Appeal" form front and back.
2. "Request for Transcript and Supporting Documents from District."

**TO: PLACER COUNTY BOARD OF EDUCATION
360 Nevada Street
Auburn, CA 95603**

**ATTN: Gayle Garbolino-Mojica
Placer County Superintendent of Schools**

REQUEST FOR APPEAL
(Student Expulsion)

(Please print or type all material except signature)

In accordance with Education Code Section 48919 and Placer County Board of Education Board Bylaw 9520(a)(b)(c), we are hereby requesting a hearing for the purpose of an Expulsion Appeal.

Please note: This Request for Appeal shall be submitted to the County Board of Education within thirty (30) calendar days following the date of expulsion.

- 1. _____ 2. _____
Name Student
- 3. _____ 4. _____
Street Address City Zip Student's Current Grade
- 5. _____ 6. _____
School District School
- 7. **Date Local Board Voted to Expel:** _____
- 8. _____ 9. _____
Parent(s)/Legal Guardian Phone
- 10. _____
Street Address City Zip
- 11. _____ 12. _____
Attorney (or non-Attorney Adviser) Phone
- 13. _____
Street Address City Zip

Request for Appeal *(continued)*

14. Appellant's (student/parent/legal guardian) understanding of the reason(s) given by the local board for the expulsion (attach copy of notice of expulsion, if possible).

15. Why should the expulsion be overturned? (Attach documentation or additional pages, if any.)
An expulsion may be appealed only on one or more of the following grounds:

A. Explain how the district governing board acted without or in excess of its jurisdiction. For example, were all the timelines set forth in the Education Code complied with?.

B. Explain how the hearing before the governing board was not fair (For example, was the hearing conducted fairly allowing for evidence on both sides to be presented?).

C. Explain if there was prejudicial abuse of discretion in the hearing, such as not meeting procedural requirements, not making the required findings, or making findings that were not supported by substantial evidence.

D. Explain if there is new relevant and material evidence which either a) could not have been produced at the hearing or b) was improperly excluded at the hearing. If applicable, explain the circumstances and describe either the new or improperly excluded evidence.

16. The hearing will be in closed session unless at least five (5) calendar days before the hearing the Appellant requests the hearing to be open to the public. Do you wish the hearing to be open to the public?

Yes No

17. I hereby certify that I am the parent/legal guardian (unless adult student) possessing legal custody of the student referenced and that this information as provided is true and correct to the best of my knowledge.

Signature of Parent/Legal Guardian or Adult Student Filing Appeal Date

Note: Only one completed Request for Appeal is required to be filed with the County Board of Education. The Placer County Office of Education will prepare a copy for the local school district. If you have not already received a copy of the Parent Handbook useful in completing your appeal, please notify the County Office as soon as possible at (530) 889-5941.

REQUEST FOR TRANSCRIPT AND SUPPORTING DOCUMENTS FROM DISTRICT

Please Note: This letter must be received by the school district superintendent before or at the same time when filing the Request for Appeal form with the Placer County Board of Education.

Date: _____

Dear District Superintendent:

This is to inform you that I am filing a "Request for Appeal" on the expulsion of my daughter/son, _____, with the Placer County Board of Education. Education Code Section 48919 requires that I request from you a transcript of the expulsion hearing and supporting documents certified by you or by the Clerk of the Board to be a true and complete copy.

I understand that these documents must be provided by the District within ten (10) school days of this request, provided my request is within thirty (30) calendar days of the school board's decision to expel. I am requesting that:

You send a copy of the documents directly to the Placer County Office of Education and a copy to me at the following address:

OR

I be informed immediately when these documents are ready. I will arrange for their pick up at your office, the duplication of a second copy, and delivery to the Placer County Office of Education within one (1) working day of notice of their availability by your office.

You may contact me regarding this request at: _____
(Area Code) Phone Number

I understand that I must pay for the transcription of the expulsion hearing unless I certify below that I am unable to reasonably afford the cost of the transcription because of limited income or because its an exceptional necessary expenses, or both.

By checking the box to the left, I hereby certify that I cannot pay for the transcription for the reason(s) stated above and request the school district provide the transcript to me at no cost.

Sincerely,

Signature

(Print Name)

Date

Original: Local School District

Copies: Placer County Board of Education & Appellant

EDUCATION CODE

SECTION 48900-48927

48919. If a pupil is expelled from school, the pupil or the pupil's parent or guardian may, within 30 days following the decision of the governing board to expel, file an appeal to the county board of education which shall hold a hearing thereon and render its decision.

The county board of education, or in a class 1 or class 2 county a hearing officer or impartial administrative panel, shall hold the hearing within 20 schooldays following the filing of a formal request under this section. If the county board of education hears the appeal without a hearing conducted pursuant to Section 48919.5, then the board shall render a decision within three schooldays of the hearing conducted pursuant to Section 48920, unless the pupil requests a postponement.

The period within which an appeal is to be filed shall be determined from the date a governing board votes to expel even if enforcement of the expulsion action is suspended and the pupil is placed on probation pursuant to Section 48917. A pupil who fails to appeal the original action of the board within the prescribed time may not subsequently appeal a decision of the board to revoke probation and impose the original order of expulsion.

The county board of education shall adopt rules and regulations establishing procedures for expulsion appeals conducted under this section. If the county board of education in a class 1 or class 2 county elects to use the procedures in Section 48919.5, then the board shall adopt rules and regulations establishing procedures for expulsion appeals conducted under Section 48919.5. The adopted rules and regulations shall include, but need not be limited to, the requirements for filing a notice of appeal, the setting of a hearing date, the furnishing of notice to the pupil and the governing board regarding the appeal, the furnishing of a copy of the expulsion hearing record to the county board of education, procedures for the conduct of the hearing, and the preservation of the record of the appeal.

The pupil 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 of education. The school district shall provide the pupil with the transcriptions, supporting documents, and records within 10 schooldays following the pupil's written request. Upon receipt of the records, the pupil shall immediately file suitable copies of these records with the county board of education.

48919.5. (a) A county board of education in a class 1 or class 2 county may have a hearing officer pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Title 3 of the Government Code, or an impartial administrative panel of three or more certificated persons appointed by the county board of education, hear appeals filed pursuant to Section 48919. The members of the impartial administrative panel shall not be members of the governing board of the school district nor employees of the school district, from which the pupil filing the appeal was expelled. Neither the hearing officer, nor any member of the administrative panel, hearing a pupil's appeal shall have been the hearing officer or a member of the administrative panel that conducted the pupil's expulsion hearing.

(b) A hearing conducted pursuant to this section shall not issue a final order of the county board. The hearing officer or impartial administrative panel shall prepare a recommended decision, including any findings or conclusions required for that decision, and shall submit that recommendation and the record to the county board of

education within three schooldays of hearing the appeal.

(c) Sections 48919, 48920, 48921, 48922, 48923, and 48925 are applicable to a hearing conducted pursuant to this section.

(d) Within 10 schooldays of receiving the recommended decision and record from the hearing officer or the impartial administrative panel, the county board of education shall review the recommended decision and record and render a final order of the board.

(e) For purposes of this article, the following definitions shall apply:

(1) "Countywide ADA" means the aggregate number of annual units of regular average daily attendance for the fiscal year in all school districts within the county.

(2) "Class 1 county" means a county with 1994/95 countywide ADA of more than 500,000.

(3) "Class 2 county" means a county with 1994/95 countywide ADA of at least 180,000 but less than 500,000.

48920. Notwithstanding the provisions of Section 54950 of the Government Code and Section 35145 of this code, the county board of education shall hear an appeal of an expulsion order in closed session, unless the pupil 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 public meeting, the county board of education shall be required to honor the request. Whether the hearing is conducted in closed or public session, the county board may meet in closed session for the purpose of deliberations. If the county board admits any representative of the pupil or the school district, the board shall, at the same time, admit representatives from the opposing party.

48921. The county board of education shall determine the appeal from a pupil expulsion upon the record of the hearing before the 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 board may be heard unless a de novo proceeding is granted as provided in Section 48923.

It shall be the responsibility of the pupil to submit a written transcription for review by the county board. The cost of the transcript shall be borne by the pupil except in either of the following situations:

(1) Where the pupil's parent or guardian certifies to the school district that he or she cannot reasonably afford the cost of the transcript because of limited income or exceptional necessary expenses, or both.

(2) In a case in which the county board reverses the decision of the local governing board, the county board shall require that the local board reimburse the pupil for the cost of such transcription.

48922. (a) The review by the county board of education of the decision of the governing board shall be limited to the following questions:

(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.

(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.

(b) As used in this section, 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 this article, a situation where an expulsion order is not based upon the acts enumerated in Section 48900, or a situation involving acts not related to school activity or attendance.

(c) For purposes of this section, an abuse of discretion is established in any of the following situations:

(1) If school officials have not met the procedural requirements of this article.

(2) If the decision to expel a pupil is not supported by the findings prescribed by Section 48915.

(3) If the findings are not supported by the evidence.

A county board of education may not reverse the decision of a governing board to expel a pupil based upon a finding of an abuse of discretion unless the county board of education also determines that the abuse of discretion was prejudicial.

48923. The decision of the county board shall be limited as follows:

(a) If 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, it may do either of the following:

(1) Remand the matter to the governing board for reconsideration and may in addition order the pupil reinstated pending the reconsideration.

(2) Grant a hearing de novo upon reasonable notice thereof to the pupil and to the governing board. The hearing shall be conducted in conformance with the rules and regulations adopted by the county board under Section 48919.

(b) If the county board determines that the decision of the 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. This remand for the adoption and inclusion of the required findings shall not result in an additional hearing pursuant to Section 48918, except that final action to expel the pupil based on the revised findings of fact shall meet all requirements of subdivisions (j) and (k) of Section 48918.

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

48924. The decision of the county board of education shall be final and binding upon the pupil and upon the governing board of the school district. The pupil 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.

Retrieved January 15, 2013 from: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=edc&group=48001-49000&file=48900-48927>.