

**CLASSIFICATION: Students****ADOPTED: 12/13/95****REVISED: 8/10/16****REVIEWED: 8/10/16****SUBJECT: Expulsion, Right of Appeal****PAGE: 1 of 10**

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This policy is adopted to implement Education Code section 48919 pertaining to appeals of expulsions from school districts, which, in part, reads as follows:

If a pupil is expelled from school, the pupil or the pupil's parent or guardian may, within 30 [calendar] 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 shall hold the hearing within 20 schooldays following the filing of a formal request under this section and shall render a decision within three schooldays of the hearing, unless the pupil requests a postponement.

This Board policy presents requirements and procedures to be followed by the County Board of Education (County Board) in hearing an expulsion appeal and reaching its decision. To ensure that appeals heard before the County Board comply with all legal and procedural requirements, the County Board directs the County Superintendent of Schools or designee to provide to a pupil filing an expulsion appeal or his/her parent/guardian and to the expelling school district written information regarding submitting an appeal and preparing for an expulsion appeal hearing.

The County Board shall comply with all requirements of law in fulfilling its responsibilities related to expulsion appeal hearings. However, it is the intent of the County Board that, in discretionary matters, rules and procedures shall be liberally construed in order to provide to both parties a fair and impartial review of the expulsion proceedings conducted by the expelling school district board.

#### PREHEARING PROCEDURE

##### Notice of Appeal of Expulsion and Request for Hearing

The parent/guardian of a pupil, or the pupil, if of the age of majority, expelled from a public school in San Diego County (pupil or parent/guardian) may initiate an appeal of an expulsion by a school district governing board to the County Board by filing a written Notice of Appeal of Expulsion and Request for Hearing (Notice of Appeal) with the

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County Superintendent of Schools, as Secretary to the County Board, within 30 days of the action to expel the pupil. The 30-day period within which an appeal is to be filed shall begin accruing on the date that a school district governing board votes to expel, even if enforcement of the expulsion is suspended. The Notice of Appeal shall contain the following information:

1. Name of expelled pupil
2. Name of person filing the appeal (e.g., pupil or parent/guardian)
3. Relationship of person filing the appeal to expelled pupil (e.g., parent, guardian) if other than the expelled pupil
4. Address and telephone number of the person filing the appeal
5. Name of school district from which the pupil was expelled
6. Date of district school board's action to expel
7. A statement of the basis of the appeal that relates to one or more of the conditions described in "Scope of Review by County Board"

#### Notice of Filing of Expulsion Appeal

Within two (2) school days of receipt of the Notice of Appeal, the County Superintendent of Schools, as Secretary to the County Board, shall serve upon the expelled pupil or his/her parent/guardian and the expelling school district board, by certified mail, a Notice of Filing of Expulsion Appeal.

The notice shall describe the procedures and timelines for submission of the transcript of the expulsion hearing conducted by the district board and supporting documents and for the hearing of the expulsion appeal by the County Board. The notice shall contain a statement that the hearing shall be conducted in closed session unless the expelled pupil or his/her parent/guardian submits, at least five (5) days prior to the date of the hearing, a written request for the hearing to be conducted in open session. A copy of this Board policy shall be included in the mailing.

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### Hearing Date

The County Superintendent of Schools, as Secretary to the County Board, shall set the date of the hearing for not more than twenty (20) schooldays following the receipt of a formal written request for a hearing.

### Filing of Transcript of Hearing with County Board

It shall be the responsibility of the pupil or parent/guardian to file the transcript of the expulsion hearing conducted by the school district board with the County Superintendent of Schools as the Secretary to the County Board. If the transcript is not received at least ten (10) calendar days before the date set for the hearing, the appeal shall be deemed withdrawn.

If, for unavoidable but justifiable reasons, a transcript is unavailable, a stipulated record of hearing may be substituted. If the transcript is not available and there is no stipulated record of hearing, the County Board shall not conduct the expulsion appeal hearing, and the expelling school board shall be directed to rehear the expulsion action and to create an audio recording of the proceeding.

### Filing of Written Record of Proceedings Conducted Before Expelling School District Board

At least ten (10) calendar days prior to the date set for hearing before the County Board, the expelling school district board shall file with the County Board all documents, other than the transcript of the hearing, that are on file with the expelling school district board that relate to the expulsion proceedings.

Failure to file within the time allowed, without just cause, shall constitute grounds for reversal of the expulsion order. The County Superintendent of Schools, as Secretary to the County Board, may extend the time for the expelling school district board to file the documents upon a showing of good cause.

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### Filing of Written Arguments

1. The expelled pupil or his/her parent, as appropriate, may, if desired, submit a written argument or an appeal brief limited to arguments based upon the records of the hearing before the expelling school district board. Such written argument or brief must be received by the County Superintendent of Schools at least ten (10) calendar days prior to the date set for hearing before the County Board. The County Superintendent of Schools and/or designee shall send a copy of the argument or brief and all other filed documents to the expelling school district.
2. The expelling school district shall have the right to respond by submitting any documents constituting a part of the record that were not submitted by the expelled pupil or his/her parent/guardian. In addition, the expelling school district shall have the right to submit a written argument or reply brief. The response, if any, shall be received by the office of the County Superintendent of Schools not less than six (6) calendar days prior to the date of the hearing. The expelling school district shall also serve a copy of its reply brief or written argument upon the person filing the appeal or his/her legal counsel or advocate, if any. Such service shall be by personal service or by certified mailing not later than the date upon which the reply argument or brief is filed with the County Board.

### Inspection and Copying of Documents in County Board File

The County Superintendent of Schools, as Secretary to the County Board, shall send the expelled pupil or his/her parent/guardian, as appropriate, copies of all documents submitted in connection with the expulsion appeal.

Upon request, the County Board's file relating to the hearing shall be open for inspection by both parties to the appeal at all reasonable times prior to the hearing. Copies of any papers filed therein may be obtained upon payment of the reasonable cost of reproduction.

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Notice to County Board of Names of Persons Who Will Make Presentations at the Hearing

At least forty-eight (48) hours prior to the hearing, the expelled pupil or his/her parent/guardian and the expelling school district shall each notify the County Superintendent of School, as Secretary to the County Board, of the names of the persons known to them who intend to make presentations at the hearing. The expelled pupil or his/her parent/guardian and the expelling school district board have the right to be represented at the appeal hearing by legal counsel or a non-attorney advisor, who shall be afforded an opportunity to speak at the hearing.

Continuances of Hearing Date

Requests for continuances of the County Board hearing date may be made by either the expelled pupil or his/her parent/guardian or the expelling school district board and shall be directed to the County Superintendent of Schools, as Secretary to the County Board, who shall grant a continuance in the following cases:

1. Stipulated Postponements. All parties may jointly seek, in writing, a postponement to a later agreed upon hearing date and file such written request with the County Superintendent of Schools, as Secretary to the County Board, who shall reset the hearing date to the date specified in the written request or to a date as soon thereafter as the matter can reasonably be heard by the County Board.
2. Request by Either Party. Either party may request one (1) postponement by means of a written request stating good cause at least forty-eight (48) hours in advance, except that a request by the expelling school district board may not extend the hearing beyond twenty (20) schooldays following the filing of a request for appeal unless the pupil or his/her parent/guardian agrees. Upon receipt of a request for postponement, the County Superintendent of Schools, as Secretary to the County Board, shall reset the hearing date to the next regularly scheduled County Board meeting date and shall immediately notify all parties in writing of the new hearing date.

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3. Subject to the limitations set forth in number 2 above, the County Board may grant a postponement at any time should it determine that such postponement is necessary to avoid injustice.

### HEARING PROCEDURES

#### Preservation of a Record of the Appeal Hearing before the County Board

Whether the hearing is conducted in closed or open session, the record of the public proceedings, but not the deliberations of the County Board, shall be preserved. Preservation may be by any means, including electronic recording, as long as a reasonably accurate and complete written transcription of the proceedings can be made. All present shall be informed if a recording device is used, and each person who speaks during the hearing (and each time he/she speaks) shall be required to give his/her name. The minutes of the meeting shall contain a record of all persons present at the hearing.

#### Conduct of Hearing

Hearings shall commence promptly at the time designated by the County Board. If good cause prevents a hearing from commencing promptly, notification of such good cause shall be given to the County Board at least twenty (20) minutes prior to the hearing time designated. Absent exceptional circumstances, if the person filing the appeal (pupil or his/her parent/guardian) does not appear at the designated time, or within twenty (20) minutes thereafter, the appeal shall be deemed withdrawn.

The hearing shall be conducted in closed session unless the expelled pupil or his/her parent/guardian has submitted a written request at least five (5) days prior to the date of the hearing that the hearing be public. If such a request is timely served upon the County Superintendent of Schools, as Secretary to the County Board, the hearing shall be public unless another pupil's privacy rights would be violated.

The President of the County Board shall preside over the hearing. The order of presentation and the time limits for presentations will be regulated at the discretion of the President of the County Board. During and after such presentations, members of the

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County Board may direct questions to any person appearing before the County Board. Ordinarily, the order of presentation will be as follows:

1. Brief summary of case by the County Superintendent of Schools, as Secretary to the County Board, or designee
2. Presentation by the person filing the appeal (expelled pupil or his/her parent/guardian or other representative)
3. Presentation by expelling school district
4. Concluding remarks by the person filing the appeal (expelled pupil or his/her parent/guardian or other representative)
5. Declaration by the President of the County Board that the hearing is ended
6. Deliberations of County Board

Whether a hearing is conducted in closed or public session, the County Board, the County Superintendent of Schools, as Secretary to the County Board, and Counsel may convene in closed session for the purpose of deliberations. If, during such deliberations, any member of the County Board wishes to ask additional questions of any person who appeared before the County Board, the President of the County Board may reopen the hearing and recall such person, provided the pupil, the pupil's parent/guardian, and the pupil's attorney or advocate representative are first given an opportunity to be present.

#### SCOPE OF REVIEW BY COUNTY BOARD

1. An appeal before the County Board is not a rehearing but a procedural review to determine whether the expelling school board's decision was procedurally proper and fair. The County Board shall determine the appeal upon the record of the hearing before the expelling school district board, together with such applicable documentation and/or regulations as may be ordered. The County Board shall not receive any evidence other than that contained in the record of the proceedings of the district

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governing board unless a de novo proceeding is granted pursuant to Education Code section 48923, as explained below.

2. The review by the County Board of the decision of the expelling school district board shall be limited to the following scope:
  - A. Whether the expelling school district board acted without, or in excess of, its jurisdiction. Proceeding without or in excess of jurisdiction includes, but is not limited, to a situation in which:
    - (1) An expulsion hearing is not commenced within the time prescribed by law
    - (2) An expulsion order is not based upon acts enumerated in Education Code section 48900 or, as applicable, Education Code section 48900.2, 48900.3, 48900.4, or 48900.7
    - (3) Acts not related to school activity or attendance were the basis for the expulsion
  - B. Whether there was a fair hearing before the expelling school district board
  - C. Whether there was a prejudicial abuse of discretion at the hearing before the expelling school district board. An abuse of discretion is established by any of the following circumstances:
    - (1) If school officials did not meet the procedural requirements of Article 2 commencing with section 48900 of Chapter 6 of Part 27 of the Education Code
    - (2) If the decision to expel the pupil is not supported by findings prescribed by Education Code section 48915
    - (3) If the findings are not supported by the evidence



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The expelling school district board's decision may not be reversed upon a finding of abuse of discretion unless the County Board also determines that the abuse of discretion was prejudicial.

- D. Whether there is relevant and material evidence that, in the exercise of reasonable diligence, could not have been produced or that was improperly excluded at the hearing before the expelling school district board.

#### Decision of County Board

The decision of the County Board shall be limited as follows:

1. If the County Board finds that relevant and material evidence exists that, in the exercise of reasonable diligence, could not have been produced or that was improperly excluded at the hearing before the expelling school district board, the County Board may either:
  - A. Enter an order remanding the matter to the expelling school district board for reconsideration and may, in addition, order the pupil reinstated pending the reconsideration; or,
  - B. Grant a hearing de novo upon reasonable notice thereof to the pupil or parent/guardian and to the expelling school district board. The de novo hearing shall be conducted in conformance with the procedures set forth in Education Code section 48919.
2. If the County Board determines that the decision of the expelling school district board was not supported by the findings required by Education Code section 48915, but evidence supporting the required findings exists in the record of the proceedings, the County Board shall remand the matter to the expelling school district board for adoption of the required findings. This remand for adoption and inclusion of the required findings shall not result in an additional hearing pursuant to Education Code 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.

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3. In all other cases, the County Board shall enter an order either affirming or reversing the decision of the expelling school district board. In any case in which the County Board enters a decision reversing the decision of the expelling school district board, the County Board may direct the expelling school district to expunge the record of the pupil and records of the district of any references to the expulsion action. The expulsion shall be deemed not to have occurred. In any case in which the County Board enters a decision reversing the expelling school district board, the County Board shall order the expelling school district board to reimburse the pupil or parent/guardian for costs incurred by the pupil or parent/guardian for the transcript of the hearing before the expelling school district board.

The County Board's decision shall be made within three (3) schooldays of the hearing unless the pupil requests a postponement.

#### Finality of Order of County Board

The decision of the County Board shall be final and binding upon the pupil and upon the expelling school district board. The final order of the County Board shall be in writing, and copies of the decision shall be delivered to the pupil and/or the parent/guardian, as appropriate, and to the expelling school district board by personal service or by certified mail. The order shall become final when rendered.

**Derivation: Former Board Policy No. 5515, Adopted 10/26/77. Amended 2/8/84, 8/11/93. Renumbered and Amended 10/11/95. See now Board Policy No. 5144. Amended 7/11/01, 3/12/03, 8/10/16.**

**Administrative Regulation No.: 5144**

**Legal Reference: Education Code  
48900 – 48918.6, 48919 – 48927**

**Management Resources:**

***Expulsion Appeal Handbook: Rules and Procedures Concerning Expulsion Appeals, San Diego County Office of Education: [sdcoe.net/student-services/student-support/Documents/expulsion-appeal-handbook.pdf](http://sdcoe.net/student-services/student-support/Documents/expulsion-appeal-handbook.pdf)***