



MONTEREY COUNTY OFFICE OF EDUCATION
EXPULSION APPEAL HANDBOOK

ADOPTED: JANUARY 21, 2009

REVISED: MARCH 16, 2011; AUGUST 9, 2017

MONTEREY COUNTY OFFICE OF EDUCATION
Expulsion Appeal Handbook

Table of Contents

Introduction 1

What is the Purpose of an Appeal Hearing? 1

Timely Filing of an Appeal 2

What if the Appeal Is Late? 2

Questions Regarding Filing an Appeal..... 2

Submitting the Expulsion Appeal 3

What Must be Included in the Expulsion Appeal? 3

Who is Responsible to File the Transcript and Supporting Records of the Original Expulsion Process?3

Setting a Date for Hearing the Appeal..... 4

Filing Written Arguments Prior to the Hearing 5

Conducting the Appeal Hearing 5

Legal Issues to Be Considered..... 6

New Evidence 11

County Board Deliberation 12

County Board Decision 12

Appeal of County Board Decision 13

Addenda 14

Addendum A 15

Addendum B 22

Addendum C 23

Addendum D 24

Expulsion Appeal Handbook

Introduction

The Monterey County Board of Education "County Board") has prepared this Expulsion Appeal Handbook ("Handbook") to assist expelled pupils and the parent(s) or guardian(s) of expelled pupils in understanding the appeal process and the rights of the pupil. The Handbook constitutes the official procedures adopted by the County Board for conducting expulsion appeals. *Particular attention should be paid to issues noted in "italics." These issues have been found confusing to appellants filing past appeals.*

The County Board committed to an objective review and deliberation of appeals of students expelled from local school districts.

This information should be reviewed in conjunction with the laws on student discipline and expulsion appeals within the *California Education Code, §48900-48926*. You should also review the school district's policies and administrative procedures for suspension and expulsion. You are entitled to review the record of the school district's administrative hearing and supporting records or documents. You have the right to consult with and engage the services of an advocate or an attorney.

What is the Purpose of an Appeal Hearing?

The purpose of the appeal hearing is to allow the County Board to listen to arguments as to whether the local school district procedures and the requirements of the California Education Code were followed properly.

The County Board's review of the appeal for legal or procedural errors may result in: (1) upholding the expulsion decision; (2) reversing the decision and returning the pupil to attend the local school district; (3) returning the case to the local school district either to consider additional evidence or to reevaluate the factual findings; or, in rare cases (4) granting a new hearing (a hearing *de novo*) before the County Board.

- Under Education Code §48923, the County Board's authority to remand the matter to the school district for reconsideration or grant a hearing *de novo* is limited to instances where relevant and material evidence was either unavailable at the time of the hearing or was improperly excluded from the school district hearing or evidence supporting required findings exists in the record.

The County Board's deliberation and decision will address only expulsion issues. It will not review or order any change in the pupil's suspension pending expulsion.

Timely Filing of an Appeal

The parent of the expelled pupil may file an appeal with the County Board *within thirty (30) calendar days* following the decision by the school district's governing board to expel the pupil.

- "Parent" also includes guardian or legal counsel on behalf of the Parent. The pupil may also file an appeal independently of his/her Parents. The term "Appellant" will be used throughout this handbook to refer to the party that filed the appeal.
- The thirty (30) day period normally starts on the first day after the date the school district's governing board takes action even if notice of the decision is not mailed to the Appellant immediately. The appeal must be actually received by the Monterey County Superintendent of Schools ("County Superintendent") within the thirty (30) days, not just mailed. If the deadline is on a Saturday, Sunday or County Office holiday, the appeal may be filed on the next business day.
- Only the governing board of a school district may expel a pupil. The principal of the pupil's school or the superintendent of the school district may only recommend the expulsion to the governing board. A hearing officer or an administrative panel may conduct the expulsion hearing, develop findings of fact, and make a recommendation to the governing board. However, there is no expulsion until the school district's board takes formal action to expel.
- An expulsion or a suspended expulsion (where the pupil is returned to school with conditions of probation) may be appealed. The thirty (30) day timeline applies from the initial suspended expulsion decision, not at a later date if the pupil is expelled from violating probation.

What if the Appeal Is Late?

Failure to appeal within the required time will result in denial of your appeal unless you can show "good cause" for the late appeal. The explanation of "good cause" must be filed with the appeal. An example of "good cause" would be where the Appellant's appeal is mailed timely, but the Appellant proves that the appeal document was misdirected in the mail.

Questions Regarding Filing an Appeal

Appellant considering whether to file an expulsion appeal with the County Board and/or having any questions should contact by telephone, facsimile or mail:

Monterey County Office of Education
Administrative Officer, Office of the County Superintendent
901 Blanco Circle
Salinas, CA 93912-0851
Phone: (831) 755-0303
Fax: (831) 755-6473

The Monterey County Office of Education ("MCOE") staff will answer any appropriate questions and clarify the procedures outlined in this Handbook. However, the staff cannot give legal advice or discuss non-procedural matters regarding your student's case. The staff will also contact the administration of the local school district which implemented the expulsion in order to coordinate the processing of the appeal.

Submitting the Expulsion Appeal

The notice of appeal may be submitted in person to:

Monterey County Superintendent of Schools
Monterey County Office of Education
901 Blanco Circle
Salinas, CA 93901

The notice of appeal may be mailed to:

Monterey County Superintendent of Schools
Monterey County Office of Education
P.O. Box 80851
Salinas, CA 93912-0851

What Must be Included in the Expulsion Appeal?

The written notice of appeal must be filed on the "Expulsion Appeal and Request for Hearing" form or an alternative written notice of appeal. It is in back of this Handbook (Addendum B). *Also required are a transcript of the hearing conducted by the district and all other supporting documents.* For details, see the next section.

Who is Responsible to File the Transcript and Supporting Records of the Original Expulsion Process?

A. Appellant

The pupil, pupil's parent or guardian or legal counsel that files an appeal (the "Appellant") is responsible for requesting the local school district to provide a certified transcript of the expulsion hearing and a copy of all documents from the first date of suspension.

- At the same time the appeal is filed with the County Board, the Appellant must submit to the expelling school district a written request for a copy of the written transcript of the expulsion hearing and all supporting documents or records. A "Request for Transcript and Supporting Documents" form is in the back of this Handbook (Addendum C).
- The Appellant shall file a copy of the request for transcript from the expelling school district with the County Board at the time of filing the appeal.

The Appellant must pay the local school district for the cost of preparing the transcript and copies of supporting documents or records except in one of these situations:

- Where the pupil's parent certifies to the school district that he/she cannot reasonably afford the cost of preparing the transcript because of limited income or exceptional necessary expenses, or both. A "Certification of Inability to Afford Cost of Transcript" form is in the back of this Handbook (Addendum D).
- In a case where the County Board reverses the decision of the school district governing board, the County Board shall require that the school district governing board reimburse Appellant who has paid for the cost of preparing the transcript and supporting documents or records.

B. Local School District

The local school district is responsible for preparing an accurate verbatim transcript of the expulsion hearing and copies of all hearing exhibits and all correspondence regarding the suspension and expulsion. This includes documentation reflecting the findings of fact, the recommendation of the panel conducting the hearing and the governing board's action on the recommendation.

- The school district shall prepare two copies of the transcript, supporting documents, and records following receipt of the Appellant's written request. The school district shall mail one copy of these documents directly to the County Board with a second copy mailed to the Appellant.
- Special Education Records. If the expelled pupil was enrolled in special education (or if the school district had a basis of knowledge that the student had a disability prior to the occurrence of the student's misconduct), the school district must identify substantiation in the hearing record (or provide additional documentation) that the legally required procedures were completed prior to commencing the expulsion hearing (*e.g.*, compliance with Education Code §48915.5 and related federal law [34 CFR 300.530 – 300.537]).

Where the local school district cannot produce a written transcript of its hearing, the County Board will reverse the decision to expel except upon good cause being shown. The Board may remand the matter in order to produce a record for written transcription. (Under Education Code §48923, the County Board's authority to remand the matter to the school district for reconsideration or grant a hearing *de novo* is limited to instances where relevant and material evidence was either unavailable at the time of the hearing or was improperly excluded from the school district hearing or to adopt required findings where evidence supporting required findings exists in the record.)

Setting a Date for Hearing the Appeal

Once the written transcript of the expulsion hearing and copies of the supporting documents or records have been filed with MCOE, the County Superintendent will schedule a date for a meeting of the County Board to consider the appeal.

- The County Board shall hold a hearing within twenty (20) school days following the filing of the written notice of appeal, and shall render a decision within three school days of the hearing unless the Appellant requests a postponement for good cause shown.
- Either the Appellant or the local school district may request a postponement by submitting a written request, including the reason, to the County Office of Education at least five (5) calendar days prior to the hearing. The request shall be acted upon by the County Superintendent within two (2) days after determining whether the request is based upon good cause. Any request for postponement made less than five (5) calendar days prior to the hearing will be considered by the County Board at the hearing. The request will be granted only upon a finding that a compelling reason or an emergency exists.
- Both the Appellant and the school district will be sent notice of the hearing date by mail before the hearing. The notice will specify the date, time, and place of the hearing. The County Board generally holds regular meetings on the first and third Wednesdays of each month at the MCOE Board Room, 901 Blanco Circle, Salinas, CA. Expulsion appeals are

normally scheduled to begin at 1:00 or 1:30 p.m. The County Board may be required to schedule a special meeting on a different date to hear the appeal depending upon its regular business.

The hearing will be held in closed session unless the Appellant has requested public session in writing filed with MCOE at least five (5) calendar days prior to the hearing date. Whether the hearing is conducted in closed or public session, the County Board may meet in closed session for the purpose of deliberations.

Filing Written Arguments Prior to the Hearing

The Appellant may file a written argument or an appeal brief with the County Board. Any written argument must be filed at least ten (10) calendar days prior to the date set for the hearing before the County Board. The Appellant must send or deliver a copy of the argument to the school district at the same time. The school district also has the right to submit a written argument. The district's initial argument must be filed at least ten (10) calendar days prior to the hearing date. The district must send or deliver a copy of the argument to the Appellant at the same time.

The school district and the Appellant may file written responses to one another's written arguments. Any response shall be filed not less than five (5) days prior to the date of the hearing and shall be provided by the responding party to the other party by personal service or U.S. Mail no later than the date upon which the response is filed

Conducting the Appeal Hearing

A. Closed Session

Expulsion appeals are heard by the County Board in closed session, unless the Appellant has requested, an open session hearing in writing, filed with MCOE at least five (5) calendar days prior to the hearing date. In closed session, only the parents or guardians, any representative, the pupil and representatives of the local school district are permitted in the room with County Board members, County Board legal counsel, and the secretary and recorder to the County Board. In public session, any member of the public may attend the hearing.

B. Hearing Procedure

The County Board President, County Superintendent, or designee, will serve as the Hearing Facilitator and will call the hearing to order and describe the hearing procedures. Each person in the room will be asked to identify him or herself for the record. It is anticipated that legal counsel will also be present.

If the Appellant offers "new evidence" as part of the appeal hearing, the County Board will listen to an "offer of proof" and decide whether new evidence should be allowed. (See *New Evidence* section)

The Appellant will present an opening statement and give reasons for requesting the appeal. The speaker will have a specified amount of time (normally ten [10] minutes) to summarize his/her position. During this time, the speaker will also respond to questions from the County Board, if any.

The representative of the school district will be given the opportunity to describe its position and the action(s) taken by the district (normally ten [10] minutes). During that time, the district representative will respond to questions from the County Board, if any.

You will be given additional time to present any rebuttal information to the information presented by the school district and give any closing remarks. The school district will also have additional time for closing and/or response.

Members of the County Board may ask questions to clarify the issues. The County Board may also ask questions of the staff and/or legal counsel if appropriate.

The County Superintendent or legal counsel may, at this time, present any factual information or other consideration not already covered by others present.

It is important to remain focused upon the four (4) questions over which the County Board has authority to rule. They are:

1. *Whether the governing board acted without or in excess of its jurisdiction?*
2. *Whether there was fair hearing by the school district's governing board?*
3. *Whether there was a prejudicial "abuse of discretion" by the school district's governing board in the hearing, as described in Education Code section 48922, subdivision (c)?*
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?*

The Appellant need not be concerned about making a polished presentation, but it is important to prepare the presentation in advance. Having notes or a prepared script may be of great help.

C. Issues Raised by County Board Members

During and after each presentation, members of the County Board may ask questions of the Appellant and of the school district's representative(s). County Board members may raise issues during the hearing based upon their own review of the hearing record. The appeal decision may be based upon these issues even if they are not raised by the Appellant.

You and the school district representative should review the entire hearing record prior to attending the hearing and be prepared to discuss any issue raised at the appeal.

Legal Issues to Be Considered

In making its decision, the County Board will take into consideration all of the following:

- The County Board *may not* reverse a school district governing board's decision because of technical inadequacies in the hearing process unless it first determines that the error was prejudicial.
- The County Board *may not* consider evidence other than that contained in the record of the proceedings of the school district governing board.

- The County Board of Education *does not* have any authority to modify the expulsion on the basis that the penalty was too harsh for the misconduct.

Basic Legal Issues

The County Board review of the case will consider the following four questions:

1. *Whether the school district's governing board acted without or in excess of its jurisdiction?*
2. *Whether there was fair hearing by the school district's governing board?*
3. *Whether there was a prejudicial abuse of discretion by the school district's governing board in the hearing, as described in Education Code section 48922, subdivision (c)*
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?*

While these questions are phrased in "legal terminology" [based upon Code of Civil Procedure §1094.5(b) and (c)], there are many factual issues which fall within these questions:

1. *Whether the school district governing board acted within or in excess of its jurisdiction?*

The California Education Code spells out the reasons for which a pupil may be expelled, the timelines that must be met during expulsion proceedings, and that the misconduct must be related to school activities or attendance. If any of the laws on these subjects were not strictly complied with by the local school district, the final action to expel by the district governing board may have been in "excess of its jurisdiction."

For Example:

- Was the offense for which the pupil was expelled one of the "grounds" for expulsion authorized by the state education code or local board rule? A pupil may not be expelled unless the offense is a violation of the California Education Code.
- Did the situation involve conduct related to a school activity or to school attendance occurring within a school under the school district's jurisdiction or within another school district?
- Was the expulsion hearing commenced and a final decision issued within the time limits prescribed by law?

Special Education:

If the pupil receives special education services (or if the school district had a basis of knowledge that the student had a disability prior to the occurrence of the student's misconduct), the County Board will also consider the following: [24 CFR 300.534]

- Did the school district conduct a manifestation determination at a meeting of the individual education program ("IEP") team?
- Was it determined during the manifestation determination IEP team meeting that the misconduct was not a manifestation of the student's disability? [E.C. § 48915.5(a); 24 CFR 300.530 (e); U.S.C. Title 20 Section 1415 (k)]

NOTE: Expelling a special education student if his or her conduct was a manifestation of his or her disability is impermissible under state and federal law [see EC §48915.5].

2. *Whether there was a "fair hearing" before the governing board?*

[The word "fair" is a legal term. It does not mean fair in the everyday sense of "fair play" or "fair treatment." The County Board does not have authority to overturn an expulsion because another pupil received a suspension while your pupil was expelled arising from the same incident.]

The school district is required to provide an Appellant timely notice of a hearing; allow the Appellant to appear in person or to be represented by legal counsel or by a non-attorney adviser, to inspect and obtain copies of all documents to be used at the hearing, to confront and question all witnesses who testify at the hearing, to question all other evidence presented, and to present oral and documentary evidence on the pupil's behalf, including witnesses. [E.C. §48918] Although only the governing board may take action to expel, the board may appoint an administrative panel or hearing officer to hear the case; develop "findings of fact;" and make a recommended decision to the governing board. Thus, an administrative panel or hearing officer may conduct the required fair hearing on behalf of the governing board. A subsequent hearing before the governing board is not required if the expulsion hearing is conducted by an administrative panel or a hearing officer.

For Example:

- Was the pupil denied the right to be represented by an advocate or by legal counsel?
- Was the pupil prohibited from introducing testimony of witnesses on his/her behalf?
- Was the submitted evidence the kind of evidence which reasonable persons are accustomed to rely on in the conduct of serious affairs?
- Was there a failure to introduce any non-hearsay evidence to support the decision to expel?
- Was the pupil or the pupil's representative, if any, given an opportunity to confront and question any witnesses who testified at the hearing except as provided in Education Code §48918(b)(5) and 48918(b)?
- Was the Appellant adequately advised of his/her rights to fully participate in the hearing?

3. *Whether there was a "prejudicial abuse of discretion" in the hearing [or in the processing of the expulsion]?*

An abuse of discretion (although not necessarily a prejudicial abuse) would be established under any of the following circumstances:

- a. If the school district governing board did not proceed with the expulsion in the manner required by law;

A school district's violation of any statute governing the expulsion process which is not "jurisdictional," may still constitute an abuse of discretion.

For Example:

- Hearing panel member is from same school as pupil [E.C. §48918(d)];
- Failure of governing board to issue subpoena for witness in a timely manner [E.C. §48918(i)];
- Written notice was not forwarded to the Appellant at least ten (10) days prior to the date of the hearing.[E.C. §48918(b)];
- Governing board issues expulsion decision with no date set to consider readmission of the pupil [E.C. §48916(a)].

- b. If the decision to expel is not supported by the findings prescribed by Education Code §48915;

[Factual Findings] A "finding" must be written in the expulsion decision describing the conduct the pupil engaged in which is a basis for the expulsion. The finding must spell out the facts (where, when, what) sufficiently to verify that the pupil engaged in misconduct. The finding must be based upon evidence provided during the expulsion hearing, not information provided to the panel members or Board members at another time.

For Example:

- (Sufficient detail) John J. brought a knife to school on 9/12/00. John took the knife out of his backpack and showed it to two students during third period class.
- (Not enough detail) John J. violated Education Code §48900(b) by bringing a dangerous weapon to school.

[Additional Findings] The law establishes five types of misconduct for which expulsion is "mandatory" (firearms, brandishing a knife, selling drugs, sexual assault and possession of an explosive) [E.C. §48915(c)]. For all other types of misconduct, the governing board must also find either of the following facts: [E.C. §48915(b) and (e)(1)].

- (1) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct;

For Example:

- The pupil has previously been warned and later enrolled in a program for teaching prosocial behavior or anger management for using profanity toward his teacher in the classroom. These corrections have failed to curb his defiance of valid authority and disruption of the class [E.C. 48900.5].

or

- (2) Due to the nature of the violation [misconduct], the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

The California Attorney General has advised that making this finding involves: (1) a generalized determination based upon the type of misconduct involved (*e.g.*, drinking alcohol on campus); and (2) a connection to the potential future impact on the safety of the pupil or on other pupils [97 Op. Att’y Gen. No. 903]. *In practice, it is very difficult to determine whether the finding is justified because it is based upon conclusion and prediction rather than facts.*

The County Board has the option to return the case to the local district if it determines that the “findings of fact” are inadequate, but that evidence does exist in the record to support proper findings. Upon remand, the local school board would be required to revise the findings of fact consistent with the direction of the County Board. The second decision would be appealable again, but the likelihood of the decision being overturned by the County Board would be smaller. As an example, the County Board might return a case where the school board issued the (wrong) finding listed above and direct the school board to correct the finding.

The rationale is that the error by the school board is a technical one and the evidence supports an expulsion if the technical error is corrected.

- c. If the “findings of fact” made following the hearing are not supported by the evidence.

Misconduct must be proven by substantial evidence offered during the expulsion hearing. Such evidence may consist of documents and other writings; physical objects; testimony by a witness who observed the misconduct; circumstantial evidence; or an admission of the pupil involved. Misconduct may not be proven solely by hearsay evidence, although hearsay may be admitted. [E.C. 48918(f)(2)]

For Example:

The finding that a pupil started a fight was not proven where the only evidence offered at hearing was testimony by the vice principal who said only that he talked to another student who said “James started the fight.”

d. Abuse of discretion must be “prejudicial.”

The County Board must find that an abuse of discretion was “prejudicial” to the outcome of the expulsion decision in order to overturn a decision. If an error occurred or a statutory requirement was only partially complied with, the violation must have a substantial impact on the process or decision to be “prejudicial.”

For Example:

- The parent received the notice of hearing two (2) days late, but had plenty of time to prepare for the hearing. The parent attended the hearing and made no showing that the late notice affected her participation. [Abuse of discretion was not prejudicial.]
- The notice of hearing was sent to the wrong address. The parent was never notified of the hearing and did not attend. The hearing was held anyway and the student expelled for misconduct. The parent objected as soon as she learned that the hearing had been held. [The abuse was prejudicial to the right to participate 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 (or the administrative panel)?

New Evidence

The County Board will hear no “evidence” other than the information that is already contained in the records submitted to be used at the appeal hearing. That information should consist only of witness testimony, written witness statements and documents which were considered at the original expulsion hearing plus official district records documenting the suspension, correspondence and the appeal documents.

- Examples of “evidence” which may not be raised for the first time: Additional information about the facts surrounding the pupil’s misconduct; the pupil’s prior good behavior; or incidents occurring during the district’s investigation of the misconduct if the information was known or available prior to the original expulsion hearing. The evidence should have been offered at the District hearing rather than a hearing with the County Board.
- Examples of a proper “argument” to introduce at the appeal hearing in support of an issue: “The pupil denied being present when the school property was stolen during the investigation of the incident and during his testimony at the expulsion hearing. (See expulsion hearing testimony, page XXX, and witness statement, page YYY of the expulsion hearing transcript.) No other non-hearsay evidence exists in the record to support the finding of fact that he participated in the theft.” All the evidence being referred to in this statement was already presented at the expulsion hearing.

Exception to Considering New Evidence

There is one (1) very limited exception to the County Board not considering new evidence. If the Appellant proposes to offer new evidence, the County Board will either allow an explanation

of what the new evidence is and what issue it relates to [called an “offer of proof”] or will review the document in question.

The County Board will vote to allow new evidence to be offered 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 at the school district expulsion hearing; and further, that
- The evidence, if received, would be a significant factor in determining the outcome of an issue in the case over which the County Board has jurisdiction to decide [Education Code §48922].

If the County Board votes to hear new evidence, it may either:

- Remand (send) the matter or any part thereof to the school district governing board for reconsideration, along with such instructions for the County Board may deem necessary. The County Board may order the pupil reinstated pending such reconsideration; or
- Grant a new hearing (a hearing *de novo*) before the County Board upon reasonable notice to all parties and in conformance with regulations of the County Board

County Board Deliberation

When the presentations and questioning are completed, the County Board will excuse from the Board Room all present except the County Board, the County Board’s legal advisor, the County Superintendent and any necessary staff. No representative of the school district or the Appellant will be allowed to attend the deliberations.

The County Board will decide an appeal after: (1) reviewing the expulsion record—the transcript and documents considered at the original expulsion hearing; (2) considering the issues raised by the Appellant in the appeal as well as issues apparent from the record itself and the school district’s arguments; and (3) determining which issues it has authority under law to address.

Please keep in mind that the County Board’s charge is to ensure that procedures were followed and that a fair hearing was conducted.

County Board Decision

After deliberating, the County Board will reconvene in open session and announce its decision. As the County Board consists of seven (7) members, four (4) affirmative votes are required to reverse an expulsion decision by a local school district governing board. If the County Board enters a decision reversing the school board’s decision, the County Board may direct the school 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. If the Appellant paid for the hearing transcript, such payment shall be refunded.

Although the County Board must render a written decision within three (3) school days of the hearing, it usually renders its verbal decision on the day of the hearing. The Appellant and the

governing board of the school district will be notified of the rationale and decision of the County Board, in writing, either by personal service or by certified mail. The order shall become final when rendered.

Appeal of County Board Decision

A final decision by the County Board may be appealed to the Superior Court.

Addenda

- A. MONTEREY COUNTY BOARD OF EDUCATION POLICY 5144.3 – PUPIL EXPULSION APPEALS
- B. FORM – EXPULSION APPEAL AND REQUEST FOR HEARING
- C. FORM - REQUEST FOR TRANSCRIPT AND SUPPORTING
- D. FORM – CERTIFICATION OF INABILITY TO AFFORD COST OF TRANSCRIPT

STUDENT EXPULSION APPEALS

A. **Purpose.** The purpose of this policy is to implement Education Codes 48919-48926 relating to student expulsion appeals to the Monterey County Board of Education (County Board).

B. **Definitions.** As used in this policy:

1. Appellant means the student, student's parent/guardian or legal counsel that files an appeal of an expulsion decision.
2. Day means a calendar day unless otherwise specifically provided.
3. Expulsion means removal of a student from (a) the immediate supervision and control, or (b) the general supervision, of school personnel, as those terms are used in Section 46300 of the Education Code.
4. Student includes a student's parent/guardian or legal counsel.
5. School day means a day upon which the schools of the school district are in session or weekdays during the summer recess.

C. **Notice of Appeal and Record.** If a student is expelled from a school district that is within the jurisdiction of the County Board, the student, his or her parent/guardian or legal counsel may file an appeal to the County Board, which shall hold a hearing thereon and render its decision.

1. *Time Limits for Filing Notice of Appeal.* The appeal shall be filed within 30 days following the decision of the school district governing board to expel the student. The period within which an appeal is to be filed shall be determined from the date the school district governing board votes to expel, even if enforcement of the expulsion action is suspended and the student is placed on probation pursuant to Education Code 48917. A student who fails to appeal the original action of the school district governing board within the prescribed time may not subsequently appeal a decision of the school district governing board to revoke probation and impose the original order of expulsion.
2. *Contents of Notice of Appeal.* In order to file a notice of appeal, the form in Addendum B of the Expulsion Appeal Handbook (BP 5144.3 Exhibit), titled "Expulsion Appeal and Request for Hearing," or an alternative written notice of appeal, must be completed in writing and delivered to the Monterey County Office of Education (MCOE) by U.S. mail or in person and shall contain, but need not be limited to, the following information:

- (a) Name, address, email address, and telephone number of the person filing the notice of appeal.
 - (b) Name, address and date of birth of the expelled student.
 - (c) Grade level in which student was enrolled immediately prior to expulsion.
 - (d) School and school district from which student was expelled.
 - (e) The date the school district governing board voted to expel the student, the effective date of the expulsion, and the length of the expulsion.
 - (f) A brief statement describing the actions, if any, taken by or on behalf of the student to obtain reconsideration of the school district governing board's decision to expel the student, including the date(s) and name(s) of school district personnel contacted and the response(s) of such school district personnel.
 - (g) A brief statement of the reason(s) why the expulsion order should be reversed and the student re-enrolled or other action taken.
3. *Record on Appeal.* The Appellant shall submit a request for a copy of the certified written transcripts and supporting documents from the expulsion hearing from the school district (Addendum C of the Expulsion Appeal Handbook) simultaneously with the filing of the notice of appeal with the County Board.
- (a) The school district shall provide the Appellant with the transcriptions, supporting documents, and records within ten school days following the request by the student. The Appellant shall immediately file suitable copies of these records with the County Board.
 - (b) It shall be the responsibility of the student to submit a written transcript for review by the County Board. The cost of the transcript shall be borne by the student except in either of the following situations: [Education Code (EC) 48921]
 - (1) Where the student's parent or guardian certifies to the school district that he/she cannot reasonably afford the cost of the transcript because of limited income or exceptional necessary expenses, or both (Addendum D of the Expulsion Appeal Handbook).
 - (2) In a case in which the County Board reverses the decision of the school district governing board, the County Board shall require that the school district reimburse the student for the cost of such transcription.

4. *Noncompliance.* Failure or refusal of a student to comply with the requirements of Section C shall constitute sufficient grounds for denial of the appeal. [EC 48919]

(a) If the notice of appeal does not set forth information required by Subsections C2 and C3 above, the person filing the notice of appeal shall be so notified in writing and shall be given a reasonable opportunity to submit such supplementary information. Such supplementary information shall be provided in writing within the time limits for filing the notice of appeal (see Section C1) or within five school days after filing the incomplete notice of appeal, whichever period of time is greater.

5. *Notice to School District.* Within three days after the notice of appeal is filed with the County Board, the County Board shall notify the school district governing board in writing, either by personal service or by certified mail that a notice of appeal has been filed and shall enclose a copy of the notice of appeal and any additional written materials provided by the student in support of the appeal.

D. Hearing by the County Board. The County Board shall hold the hearing within 20 school days following the filing of the written notice of appeal, and shall render a decision within three school days of the hearing unless the Appellant requests postponement for good cause shown. [EC 48919]

1. *Notice of Hearing.* Written notice of the hearing shall be given, either by personal service or by certified mail, to the student, to the person filing the notice of appeal, and to the school district governing board at least ten days prior to the date of the hearing. The notice shall include: The date, time, and place of hearing; a copy of this policy and the accompanying exhibit, the Expulsion Appeal Handbook; the opportunity for the student to appear in person or employ and be represented by counsel, the opportunity for the parties to inspect and obtain copies of all documents to be considered at the hearing; and the opportunity for the parties to present oral and written argument pursuant to Sections D3 and D4 of this policy.

2. *Manner of Hearing.* 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 date of the hearing, that the hearing be conducted in a public meeting. Upon the timely submission of a request for a student hearing, the County Board shall conduct the hearing in a public meeting unless another student's privacy rights would be violated, in which case parts of the hearing may be held in closed session as necessary to protect the other student's privacy. [EC 48920] Regardless of whether the hearing is conducted in a closed session or a public meeting, the County Board may meet in closed session for the purpose of deliberations. If the County Board admits any representative of

the student or the school district, the County Board shall at the same time admit representatives from the opposing party.

3. *Written Arguments.* The Appellant may file a written argument or an appeal brief with the County Board. Any written argument must be filed at least ten (10) calendar days prior to the date set for the hearing before the County Board. The Appellant must send or deliver a copy of the argument to the school district at the same time.

The school district also has the right to submit a written argument, or a reply brief. The district's initial argument must be filed at least ten (10) calendar days prior to the hearing date. The district must send or deliver a copy of the argument to the Appellant at the same time.

The school district and the Appellant may file written responses to one another's written arguments. Any response shall be filed not less than five (5) days prior to the date of the hearing and shall be provided by the responding party to the other party by personal service or U.S. Mail no later than the date upon which the response is filed.

4. *Conduct of Hearing.* The hearing shall be conducted as follows:
 - (a) The County Board President or his/her legal substitute shall conduct the hearing expeditiously, but with fairness to all parties.
 - (b) The County Board shall read aloud the notice of appeal filed by or on behalf of the student.
 - (c) The student or his/her designated representative shall present those reasons why the expulsion order should be reversed and such other information as may be pertinent to the issues on appeal before the County Board.
 - (d) The school district shall present those reasons why the expulsion order should be affirmed and such other information as may be pertinent to the issues on appeal before the County Board.
 - (e) The student or his/her designated representative may present additional argument, if desired.
 - (f) The school district may present additional argument, if desired.
 - (g) The County Board may question either party or persons appearing on behalf of either party.
 - (h) The hearing will then be closed and the County will commence its deliberations as provided in Section D2 of this policy.

- (i) The County Board shall determine the appeal from a student expulsion upon the record of the hearing before the school 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 district governing board shall be heard unless a de novo proceeding is considered as provided in Section 48923 of the Education Code and Subsection D6(a)(2) of this policy. [EC 48921]

5. *Scope of Review.* The County Board's review shall be limited to: [EC 48922]

- (a) Whether the school district governing board acted without or in excess of its jurisdiction.
 - (1) As used herein, 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 Education Code 48900 et seq.
 - (2) A situation where an expulsion order is not based upon the acts enumerated in Education Code 48900, or as applicable in Education Code 48900.2, 48900.3, 48900.4, or 48900.7.
 - (3) A situation involving acts not related to school activity or attendance.
- (b) Whether there was a fair hearing before the school district governing board.
- (c) Whether there was a prejudicial abuse of discretion in the hearing. As used herein, an abuse of discretion is established in any of the following situations:
 - (1) If school officials did not meet the procedural requirements of Education Code 48900-48926.
 - (2) If the decision to expel the student is not supported by the findings prescribed by Education Code 48915.
 - (3) If the findings are not supported by the evidence:

The County Board shall not reverse the decision of the school district governing board to expel the student based upon a finding of an abuse of discretion unless the County Board also determines that the abuse of discretion was prejudicial.

- (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 before the school district governing board.
 - (e) If the expulsion appeal is for a special education student (or if the school district had a basis of knowledge that the student had a disability prior to the occurrence of the student's misconduct), the following shall have been done: [EC 48915.5; 24 C.F.R. 300.534]
 - (1) An IEP team meeting was convened prior to the expulsion hearing to determine whether the student's conduct was a manifestation of his/her disability and to review whether the student's academic program and placement were appropriate at the time of the infraction. [20 U.S.C. §1415(k)(1)(E).]
6. *Decision of County Board of Education.* The decision of the County Board shall be limited as follows:
- (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 at the hearing before the school district governing board, it may do either of the following:
 - (1) Remand the matter to the school district governing board for reconsideration and may in addition order the student reinstated pending such reconsideration.
 - (2) Grant a hearing *de novo* upon reasonable notice thereof to the student and to the school district governing board. The hearing shall be conducted in conformance with the procedures set forth in Section 48919 of the Education Code insofar as is practicable.
 - (b) If the County Board determines that the decision of the school district's 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.
 - (c) In all other cases, the County Board shall enter an order either affirming or reversing the decision of the school district governing board. In any case in which the County Board enters a decision reversing the school district governing board, the County Board may direct the school district governing board to expunge the record of the student and the records of the school district of any references to the expulsion action and such expulsion shall be deemed not to have occurred.

7. *Finality of Decision.* The decision of the County Board shall be final and binding upon the student and upon the school district's governing board. The student and the school district governing board shall be notified of the final order of the County Board, in writing, either by personal service or by certified mail. The order shall become final when rendered. [EC 48924]

E. **Record of Appeal.** A record of the expulsion appeal hearing shall be preserved by the County Board by any means, as long as a reasonably accurate and complete written transcript of the proceedings can be made. [EC 48919] The record shall include all written documents, materials, and regulations submitted either by or on behalf of the student or by the school district; a copy of all notices mailed or personally delivered to the County Board to either or both of the parties to the appeal; and such other written documents and materials deemed necessary by the County Board for a proper disposition of the appeal.

Legal References:

EDUCATION CODE

1981 *Enrollment of students*
17292.5 *Program for expelled students*
35145 *Public meetings*
48900-48918.6 *Suspension and expulsion*
48919-48927 *Expulsion appeals to county boards of education*

GOVERNMENT CODE

11455.20 *Contempt*
51950-54962 *Ralph M. Brown Act*

U.S. CODE

20 U.S.C. §1415 *Procedural Safeguards*

CODE OF FEDERAL REGULATIONS

24 C.F.R. 300.500-537 *Protections for children not determined eligible for special education services*

STATEMENT OF BASIS FOR THE APPEAL

The County Board’s review of the District’s decision is limited to the following issues: 1) whether the District Board acted without or in excess of its jurisdiction; 2) whether there was a fair hearing before the District Board; 3) whether there was a prejudicial abuse of discretion; 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. (See Education Code §48922.) Please check one or more of the following items and describe how such item(s) apply to your case.

- 1. Explain how the governing board acted without or in excess of its jurisdiction in expelling the pupil. (See Education Code §48900, 48900.2, 48900.3, 48900.4, 48900.7, 48900.8, or 48915, 48918, 48922.)

- 2. Explain how the pupil was not afforded a fair hearing before the district governing board. (See Education Code §48918, 48918.1, 48918.5, 48918.6, 48922.)

- 3. Explain how there was a prejudicial abuse of discretion by the district governing board in the hearing. (See Education Code §48900, 48900.2, 48900.3, 48900.4, 48900.7, 48900.8, or 48915, 48918, 48918.1, 48918.5, 48918.6, 48922.)

- 4. Explain if there is relevant 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. (See Education Code §48918, 48922, 48923.)

(Please use another sheet of paper for additional comments, if necessary. Attach documentation, if any.)

Expulsion hearings are closed to the public unless you request a session open to the public.

I hereby certify that I requested in writing that the District Superintendent prepare a record of the expulsion hearing on _____. A copy of my request is attached.

I understand that this form must be filed with the Monterey County Board of Education within 30 days from the date the District Board voted to expel my student.

Parent/Legal Guardian Signature (or Pupil, if 18 years or older)

SEND COMPLETED FORM TO:

Superintendent of Schools
Monterey County Office of Education
901 Blanco Circle
P.O. Box 80851
Salinas, CA 93912-0851

Addendum C

Date: _____

District Superintendent

Re: Request for Transcript and Supporting Documents from School District

Dear

This is to inform you that I am filing an Expulsion Appeal and Request for Hearing with the Monterey County Board of Education relative to the district's expulsion of my daughter/son, _____. Education Code Sections 48919 and 48921 require that I request from you a transcript of the school district's 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 will be prepared within ten (10) school days of this request and the filing of the Expulsion Appeal and Request for Hearing with the Monterey County Board of Education, provided my request is within thirty (30) days of the district school board's decision to expel. Monterey County Board of Education procedure requires that either (1) your office will send a copy of the transcript and supporting documents directly to the Monterey County Board of Education, or (2) I take responsibility for the delivery of the transcript and documents within one (1) day of completion by your office. I am requesting:

_____ That you send a copy of the documents directly to the Monterey County Board of Education and a copy to me at the following address:

or

_____ That I be informed immediately when these documents are ready. I will then arrange for them to be picked up at your office, duplicated, and delivered to the Monterey County Board of Education office within one (1) working day of their availability from your office.

You may contact me regarding this request at: _____.
Telephone Number

Sincerely,

Signature

Print Name

MONTEREY COUNTY OFFICE OF EDUCATION

Certification of Inability to Afford Cost of Transcript

TO: District Superintendent

DATE: _____

Student Name: _____

Date of Expulsion Hearing Decision: _____

ELIGIBILITY FOR TRANSCRIPT AT NO COST:

I certify that I cannot reasonably afford the cost of the transcript because of:

1. Limited income _____
2. Exceptional necessary expenses _____

Declaration of Petitioner

I declare under penalty of perjury that the foregoing is true and correct and that I understand the notice contained in the certification above, and that this declaration was executed on:

Date: _____ at _____ (County), California.

(Signature of Petitioner)