



# **Solano County Board of Education**

## **Expulsion Appeal Handbook**

**To assist expelled students and their parents/guardians in  
understanding the appeal process and the rights of the student**

**2016 Revision**

# Expulsion Appeal Handbook

## Introduction

The Solano County Office of Education has prepared this Handbook to assist expelled students and the parent(s) or guardian(s) of expelled students in understanding the appeal process and the rights of the students. *Particular attention should be paid to issues noted in “italics.” These issues have been found confusing to parents filing past appeals.*

The Solano County Board of Education is committed to an objective review of the appeals of students expelled from local school districts.

While this information is informative, it must be reviewed in conjunction with the laws on student discipline and expulsion appeals within the *California Education Code, Sections 48900-48925*. You must also review the local school district’s policies and administrative procedures for suspension and expulsion. Remember, you are entitled to review the record of the school district’s hearing and supporting records or documents. You have the right to consult with and engage the services of an advocate or attorney.

## What is the Purpose of an Appeal?

The County Board of Education has limited authority under the law to review the procedures followed by the school district in expelling a student, including: whether the school district complied with the Education Code; whether “due process” was afforded; and whether there is evidence to support the local governing board’s findings and decision supporting the expulsion.

- The issues that the County Board of Education may consider are described more fully in this Handbook under “**SCOPE AND LIMITATION OF THE HEARING**” (Page 9).
- The meeting at which the County Board of Education considers the appeal *is not a new hearing to consider evidence about whether the student should have been expelled. The County Board of Education will “hear” evidence only in unusual circumstances.* The purpose of the appeal meeting is to listen to the argument as to whether the local school district’s procedures were proper.
- ***The County Board of Education does not have any authority to agree or disagree with the local school district governing board’s decision to expel or to modify the expulsion on the basis that the penalty was too harsh for the misconduct.***

The County Board of Education’s review of the appeal for the legal errors may result in: (1) upholding the expulsion decision; (2) reversing the decision and returning the student to attend school in the local district, as well as potentially expunging the record of the expulsion; or, in rare cases, (3) returning the case to the local school district either to consider additional evidence or to revise the factual findings.

- *A decision to overturn the expulsion and return the student to the local school district does not order attendance at the former school or any particular school.* The local school district has authority to determine attendance within district programs.
- The County Board of Education decision will address only expulsion issues. It will not review or order any change in the student’s suspension pending expulsion.

## When May an Appeal Be Filed with the Solano County Board of Education?

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

- *The thirty (30) day period 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 parent immediately. (The appeal must be received by the County Office of Education within thirty (30) days, not just postmarked). If the deadline is on a Saturday, Sunday, or County Office of Education holiday, the appeal may be filed on the next business day.*
- Only the governing board of a school district may expel a student. The principal of the student'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 student 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 probation is revoked and the student expelled.*

## What if the Appeal is Late?

***The County Board of Education has no jurisdiction to consider a late appeal. Any appeal filed after the deadline will be returned with a cover letter indicating that the appeal could not be processed.***

## **Questions Regarding Filing an Appeal**

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

**Associate Superintendent, Student Programs and Services  
Solano County Office of Education  
5100 Business Center Drive  
Fairfield, CA 94534  
(707) 399-4432 - Telephone  
(707) 863-4174 - FAX**

The Solano County Office of Education staff will answer questions and clarify the procedures outlined in this Handbook, but cannot give legal advice. 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 or by mail to:

**Associate Superintendent, Student Programs and Services  
Solano County Office of Education  
5100 Business Center Drive  
Fairfield, CA 94534**

## What Must Be Included in the Expulsion Appeal?

The written notice of appeal must contain all the following information\*:

- ✓ Name, address, and date of birth of the expelled student;
- ✓ Names, addresses, and telephone numbers of the parent(s) or guardian(s) of the student and the person, if any, representing the student. If the family is being represented at the expulsion hearing by legal counsel, the family must file a letter with the County Board of Education *at the time of filing* authorizing that person to act on behalf of the family/student;
- ✓ School district, school, and grade from which the student was expelled;
- ✓ The date of the school district governing board's decision to expel and the effective date of the expulsion;
- ✓ A brief statement or set of statements that explains why, in the parents' opinion or belief, the decision of the school district governing board should be reversed. The statement(s) must relate to one or more of the conditions described in this Handbook under **"SCOPE AND LIMITATIONS OF THE HEARING."** It is your responsibility to explain as clearly as you can and provide specific information about why you believe the school district governing board's decision should be reversed;
- ✓ Attach a copy of the Notice of Expulsion sent by the local school district;
- ✓ *{Identifying New Evidence}* You must clearly indicate whether you plan to offer new evidence which was not raised at the time the original expulsion hearing was held and describe such evidence. You must also state why the new evidence could not be produced or how it was improperly excluded at the expulsion hearing before the school district governing board. See **"SCOPE AND LIMITATIONS OF THE HEARING"** for a discussion of new evidence.

**\*PARENTS ARE ENCOURAGED TO USE THE "EXPULSION APPEAL AND REQUEST FOR HEARING" FORM (ADDENDUM B-C) IN THIS HANDBOOK IN LIEU OF WRITING A LETTER.**

# Who is Responsible for Filing the Transcript and Supporting Records of the Original Expulsion Process?

## A. Parent

The parent is responsible for immediately requesting the local school district to provide a transcript of the expulsion hearing and a copy of all documents from the first date of suspension.

- At the same time the parent files the appeal with the County Board of Education, he/she 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 provided at the back of this Handbook (Addendum D).
- The parent should keep a copy of the request for a transcript.

The parent 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 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 form, **“CERTIFICATION OF INABILITY TO AFFORD COST OF TRANSCRIPT,”** is provided at the back of this Handbook (Addendum E).
- In a case where the County Board of Education reverses the decision of the school district governing board, the County Board of Education must require that the school district governing board reimburse a parent 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, including documentation reflecting the findings of fact and recommendation of the panel conducting the hearing and the governing board’s action on the recommendation.

- The school district must prepare **two (2) copies** of the transcript, supporting documents, and records **within ten (10) school days** following receipt of the parent’s written request. *It is the parent's responsibility to see that the transcript of the prior hearing is delivered to the County Board of Education. The parent may request that the school district mail copies of these documents directly to the County Board of Education with a second copy to the parent, or the parent may wish to arrange to pick up the documents and deliver them to the County Office of Education.*

- *{Special Education Records}* If the expelled student was enrolled in special education (or was afforded the rights of a special education student prior to expulsion), the school district must identify substantiation in the hearing records (or provide additional documentation) that the legally required procedures were completed prior to conducting the expulsion hearing, in compliance with the Education Code and other applicable laws and regulations.

## 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 the County Office of Education, the County Superintendent of Schools will schedule a date for a meeting of the County Board of Education to consider the appeal.

- The County Board of Education will set a hearing date within **twenty (20) school days** after receipt of appeal form, unless the parent or the district request, in writing, a postponement. A waiver is generally offered to set the actual date of the appeal meeting on the second Wednesday of the month as a part of the regular meeting of the County Board of Education.
- Either the parent 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 County Superintendent of Schools will determine whether there is good cause for the request and will act on the request within two (2) days after making the determination. Any request for postponement made less than five (5) calendar days prior to the hearing will be considered by the Board of Education at the hearing. The request will be granted only upon a finding that a compelling reason or an emergency exists.
- Both the parent and the school district will be sent notice of the hearing date by certified mail at least **ten (10) calendar days** before the hearing. The notice will specify the date, time, and place of the hearing. The Solano County Board of Education holds regular meetings on the second Wednesday of each month at the Solano County Office of Education Board Room, 5100 Business Center Drive, Fairfield. The County Board of Education may be required to schedule a special meeting on a different date to hear the appeal, depending upon its regular business.
- *Parents are required to keep the County Board of Education informed of any change of address during the appeal process.* Failure to receive a hearing notice or other mail sent to the last known address shall not constitute “grounds” to continue the hearing.

The hearing will be held in closed session unless the Parent has requested public session in writing either by an indication in the space provided on the “**EXPULSION APPEAL AND REQUEST FOR HEARING**” form (Addendum of this Handbook) or by a separate written request filed with the County Office of Education **at least five (5) calendar days** prior to the hearing date (Education Code § 48920).



## Failure to Appear at the Hearing

Participation in the appeal hearing is required. If a parent or legal representative of a student fails to appear at the hearing after filing an appeal, the County Board of Education may dismiss the appeal without considering the merits.

## Filing Written Arguments Prior to Hearing

The school district and the parent or the parent's legal representative may, but need not, file a written argument (also called an appeal brief) with the County Board of Education. Any written argument must be **filed at least ten (10) days** prior to the date set for the hearing before the County Board of Education, or it may not be considered. The party submitting a written argument must also provide the other party with a copy of the argument by personal service or by mailing not later than the date upon which the argument is filed with the County Board of Education.

If either the parent or the school district submits a written argument, the other party may submit a reply, which must be filed with the County Board of Education at **least five (5) days** prior to the date of the hearing. The party submitting a reply must also provide the other party with a copy of the reply by personal service or by mailing not later than the date upon which the reply is filed with the County Board of Education.

## Use of the Hearing Packet

**Approximately four (4) calendar days** prior to the hearing, the County Office of Education will send both the parent and the district a packet that will include all the information that has been submitted during the appeal process. *Use of the packet is very important in preparing for the appeal hearing.*

- The packet will contain: (Tab 1) Expulsion Appeal Request, correspondence regarding expulsion, Suspension extension and suspension; (Tab 2) transcript of expulsion panel hearing; (Tab 3) documents presented at original expulsion hearing; (Tab 4) student records; (Tab 5) local school district expulsion policies; (Tab 6) Solano County Office of Education expulsion appeals policies; (Tab 7) State Education Code sections regarding expulsions; (Tab 8) miscellaneous.
- All pages in the packet are numbered consecutively. Both parties are encouraged to refer to the page numbers of the original expulsion hearing transcript and other documents in this packet during their presentation. Referring to page numbers will assist the County Board of Education members in following the presentation.

## Scope and Limitation of the Hearing

**The County Board of Education's charge in conducting an expulsion appeal hearing is to determine if the student's due process rights were violated in a manner that resulted in the student receiving an unfair hearing.** The County Board of Education is required to base its appeal consideration upon the written record of the hearing conducted in the student's district. Only under special circumstances discussed in Item A below may a County Board of Education actually consider new evidence. It is **not** the charge of the County Board of Education to agree or disagree with the local board's decision to expel but to assure that legal procedures as described in the *California Education Code* were followed and that a fair and proper hearing was conducted. In reviewing a case, the County Board of Education is limited to the four questions noted in Item B below. [Education Code §48922]

### A. New Evidence

**A request to offer new evidence must be noted when filing the notice of appeal.**

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

- Examples of "evidence" that may NOT be raised for the first time: additional information about the facts surrounding the student's misconduct; the student'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 that hearing rather than now.
- Examples of proper "argument" to raise at the appeal hearing in support of an issue raised in the appeal: "During the investigation of the incident and his testimony at the expulsion hearing, the student denied being present when the school property was stolen. 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 of Education not considering new evidence. If the parent proposes to offer new evidence, the County Board of Education 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 of Education 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 that, in the exercise of reasonable diligence, could not have been produced at the school district expulsion hearing; or

- Relevant and material evidence that 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 of Education has jurisdiction to decide [Education Code §48922].

If the County Board of Education 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:

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

## **B. Legal Issues Which May Be Considered**

The County Board of Education's review of the case is limited to the following four questions. While these questions are phrased in "legal terminology" [based upon Code of Civil Procedure §§1094.5(b) and (c)], there are many factual issues that fall within these questions.

### **1. Whether the school district governing board acted without or in excess of its jurisdiction?**

**Explanation:** The California Education Code (Education Code §§48900, 48900.2, 48900.3, 48900.4, 48900.7, 48915 and 48918) specifies the reasons for which a student may be expelled, the timelines that must be followed during expulsion proceedings, and that the violation(s) must be related to school activities or attendance.

#### **For example:**

- Was the offense or infraction for which the student was expelled grounds for expulsion authorized by state law or local board rule? A student may not be expelled unless the infraction or offense is a violation of the California Education Code or school rules adopted under Education Code § 35291.5.
- If the expulsion was based on a local board rule, is the rule inconsistent with state law?

- Did the situation involve acts not related to a school activity or school attendance?
- Was the expulsion hearing commenced within the time limits prescribed by law?

**2. Was there 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 of Education does NOT have authority to overturn an expulsion because another student received a suspension while your student was expelled arising from the same incident.]**

**Explanation:** The school district is required to provide the parent with timely notice of a hearing, to allow you to hear and examine all evidence submitted, the right to be represented by an advocate or counsel, and a reasonable opportunity to present your evidence to deny, explain or mitigate the allegations. Although only the governing board may take action to expel, it may appoint an administrative panel or hearing officer to hear the case, develop a finding of fact, and make a recommendation for action 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 student denied the right to be represented by an advocate or by legal counsel?
- Was the student prohibited from introducing the testimony of witnesses on his behalf?
- Was the evidence submitted in support of the expulsion the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs?
- Was there a failure to introduce any evidence to support the decision to expel?
- Was the student or the student’s legal representative, if any, given an opportunity to confront and question any witnesses who testified at the hearing, except as provided in Education Code section 48918(f)?
- Was the parent adequately advised of his/her rights to fully participate in the hearing?

**3. Was there a “prejudicial abuse of discretion” in the hearing [or in the processing of the expulsion]?”**

**Explanation:** Under the law (Education Code §48922) an abuse of discretion (although not necessarily a prejudicial abuse) would be established under any of the following circumstances:

**(a) 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 student [Education Code §48918(d)];
- Failure of governing board to issue a subpoena for witness in a timely manner [Education Code §48918(i)];
- The school district forwarded the notice of hearing to the parent eight (8) days in advance instead of ten (10) days in advance [Education Code §48918(b)];
- Governing board issues expulsion decision with no date set to consider readmission of the student [Education Code §48916(a)].

**(b) The decision to expel is not supported by the findings prescribed by Education Code section 48915.**

[Factual Findings] A "finding" must be written in the expulsion decision describing the conduct the student engaged in which is a basis for the expulsion. The finding must spell out the facts (where, when, what) sufficiently to verify that the student 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:

- (Right) 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.
- (Wrong) 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) [Educ. Code §48915(c)]. For all other types of misconduct, the governing board must also find either of the following facts:

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

For Example:

- The student has previously been warned and later suspended on three (3) different occasions 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 [Educ. Code §§48900(k) and 48915(e)(1)].
- (2) Due to the nature of the violation [misconduct], the presence of the student causes a continuing danger to the physical safety of the student or others.

*The County Board of Education 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 of Education. The second decision would be appealable again, but the likelihood of the decision being overturned by the County Board of Education would be smaller. As an example, the County Board of Education 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) The findings are not supported by the evidence.**

Misconduct must be proven by reliable “first-hand” evidence offered during the expulsion hearing. Such evidence may consist of testimony by a witness who observed the misconduct; an admission of the student involved; or in certain cases, by statements made and/or written down at the time the misconduct occurred and determined to be reliable. All other statements made outside the hearing are considered “hearsay” evidence. Misconduct may not be proven solely by hearsay evidence, although hearsay may be offered to support reliable evidence.

- The finding that a student started a fight was not proven where the only evidence offered at the hearing was by the vice principal who testified that he talked to another who said, “James started the fight.” Neither James nor the other student testified during the hearing.
- A written witness report from a yard duty aide was insufficient to prove that a student smoked marijuana where no other evidence was offered at the hearing.

**(d) Abuse of discretion must be “prejudicial.”**

The County Board of Education 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 was 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.]

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

**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 school district’s expulsion hearing?**

**Explanation:** Sometimes evidence which reasonably could have altered the outcome of the school district expulsion hearing is not known or available at the time of the hearing. When it is determined that this information could not reasonably have been produced and is deemed to be significant or was improperly excluded, the County Board of Education may:

- (a) remand the case back to the school district governing board for reconsideration; or
- (b) conduct its own new hearing (*de novo*).

## Finality of County Board of Education Decision

The County Board of Education's decision is final and binding on the student and on the governing board of the school district. The County Board of Education will notify the student and the governing board of the school district of the final order of the County Board of Education, in writing, either by personal service or by certified mail. The order is final when rendered.

## Conducting the Appeal Hearing

### A. Closed Session

Expulsion appeals are heard by the County Board of Education in closed session, unless the student requests, in writing, **at least five (5) days prior to the hearing date**, that the hearing be an open session hearing. In closed session, only the parent(s), any legal representative, the student and representatives of the local school district are permitted in the room with the County Board of Education members and their staff. In an open hearing, any member of the public may attend.

### B. Hearing Procedure

The Board President, or the designated presiding officer of the hearing, will call the hearing to order and describe the hearing procedure. Persons will be asked to identify themselves for the record. A tape recorder will be in operation throughout the hearing.

The presiding officer will ask the parent or legal representative to present an opening statement. (*Neither the Education Code nor the County Office of Education's Policy Manual permit representation of a pupil at an expulsion appeal hearing by a non-attorney.*) This is an opportunity for the parent to summarize or provide an overview of the issues in the appeal or to provide any background information which will be helpful to the County Board of Education members. The parent will then be allowed to identify the first issue identified in the appeal and to provide an argument in support of the appeal.

The presiding officer will then ask the school district representative to make a statement reflecting the school district's position and the school district representative will be allowed to respond to the parent's statement.

It is important here to remember to remain focused upon the record of the expulsion hearing contained in the packet provided to each participant and on the four (4) questions over which the County Board of Education has authority to rule. They are:

1. Whether the governing board acted without or in excess of its jurisdiction?
2. Whether there was a fair hearing by the school district?



3. Whether there was a prejudicial abuse of discretion by the school district in completing the expulsion procedures?
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 parent 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.*

*Both the parent and the district **will be limited to 30 minutes** for their presentations.*

### **C. Issues Raised By County Board of Education Members**

During and after each presentation, members of the County Board of Education may ask questions of the parent and of the school district's representative(s). County Board of Education 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 parent. Examples of issues commonly raised by the County Board of Education members are:

- Has the *additional finding* been made that either: (1) *the student has received lesser corrections which have not been effective; or (2) the student presents a danger to the physical safety of others or him/herself because of the nature of the misconduct?*
- If such finding has been made, has the school district described the evidence in the record which supports the finding?
- Was the misconduct proven by evidence which shows first-hand knowledge or which is not hearsay (or an exception)?

Both the parent 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.

### **D. County Board of Education Deliberation**

When the presentations and questioning are completed, the County Board of Education may either retire to another room to deliberate or excuse from the board room all present except the County Board of Education, the Board's legal advisor, the County Superintendent, and any necessary staff. No representative of the school district or the parent will be allowed to attend the deliberations.

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

- The County Board of Education may not substitute its judgment for the judgment of the school district governing board.
- The County Board of Education 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 of Education may not consider evidence other than that contained in the record of the proceedings of the school district governing board except as noted in these rules.

#### **E. County Board of Education Decision**

After deliberating, the County Board of Education will reconvene in open session and announce its decision. If the County Board of Education enters a decision reversing the school board's decision, the County Board of Education may direct the school board to expunge the record of the student, and the records of the district of any references to the expulsion action and the expulsion shall be deemed not to have occurred.

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

#### **F. Appeal of County Board of Education Decision**

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

# **Order of Presentation**

**Expulsion appeal hearings are usually presided over the President of the County Board of Education and are held in closed session unless the appellant has made a prior request in writing that the hearing be held in a public meeting.** The order of presentation is regulated at the discretion of the President as defined in County Board of Education Policy and Procedure. Suggested order of presentation is as follows:

**1. Call to Order**

**2. Opening**

Entries into the record of proceedings

- Legal authorization for the hearing
- Appellant's written request for an expulsion appeal hearing
- Names of the appellant, respondent, their representatives, County Office of Education staff, and County Board of Education members present

**3 Purpose, scope, and procedures of the hearing**

**4. Presentation (Presented by Secretary to the County Board of Education or staff)**

**5. Presentation by appellant or legal representative**

**6. Presentation by respondent district representative**

**7. Concluding remarks by the appellant**

**8. Hearing Closed**

## **Closed Session Deliberation**

The County Board of Education, Secretary to the Board, and/or counsel to the Board convene in closed session for deliberations.

- The Board discusses the findings of facts in the case; the Board is polled, and the Board's findings of facts are recorded.
- The Board discusses the order of the Board; the Board is polled, and the order of the Board is recorded.
- If, during deliberations, any member of the County Board of Education wishes to ask additional questions of any person who appeared before the Board, the President of the Board may reopen the closed session hearing, recall all parties, ask questions, excuse all parties, and resume closed session deliberations.

## **Public Session**

The County Board of Education is convened in open session, usually immediately after closed session deliberations, to take the following actions:

- The findings of facts are read;
- The order of the Board is read; a motion to adopt the order of the Board; and a vote of the motion. The order of the Board must be to (a) affirm the district governing board's decision, (b) reverse the district governing board's decision, (c) remand the matter to the district for reconsideration or the adoption of the required findings, or (d) grant a hearing *de novo*.
- Any references to the appellant, either in public session or in minutes of proceedings, shall be by case number only. The appellant's name shall remain confidential.

## **Hearing Adjourned**

## Expulsion Appeal Hearing Timeline

Step	Procedure	Responsibility	Timeline	Page
1	Parent or parent legal representative makes initial contact with County Office of Education	Parent	As soon as possible after the local school district board's decision to expel	3/4
2	County Office of Education mails parent packet of appeal information via email or certified mail, return receipt requested	County Office of Education	Immediately after contact by a parent.	
3	Parent files expulsion appeal with County Office of Education	Parent	Within thirty (30) calendar days of district expulsion	3
4	Parent submits written request for expulsion hearing transcript and completes "Inability to Pay" form if applicable; request is submitted to district superintendent	Parent	Concurrently with submission of expulsion appeal	6
5	District submits to County Office of Education a transcript of the expulsion hearing and other pertinent documents, including attendance registers, discipline actions, grades, etc.	School District	Within ten (10) school days of the receipt of request from parent	6
6	Appeal hearing is set and notice of hearing is mailed via certified mail, return receipt requested. Parent and school district will receive notice at least ten (10) calendar days before the hearing	County Office of Education	Within (20) school days after receipt of appeal form.	7
7	Parent or school district may submit to County Office of Education any written argument or documents not delivered previously	Parent or School District	Ten (10) calendar days prior to appeal hearing date	8
8	Parent or School district's response to written argument or documents not delivered previously	Parent or School District	Five (5) calendar days prior to appeal hearing date	8
9	Packets are prepared for the County Board of Education, to include all documentation submitted. Distribution: Parent/student, school district, County Superintendent, County Board of Education board members, and counsel to County Board of Education.	County Office of Education	Approximately four (4) calendar days before the appeal hearing	8
10	Expulsion appeal hearing is conducted in closed session unless the public session is requested by parent at least five (5) days in advance	County Board of Education	As scheduled by the County Board of Education	15
11	Closed deliberation by the County Board of Education	County Board of Education	Following the appeal hearing	16
12	Decision is announced in open session following closed deliberation	County Board of Education President or designee	Following deliberation	17
13	SCOE mails written decision via email or certified mail, return receipt requested to the school district and parent	County Office of Education	Within three (3) school days after hearing	17



5100 Business Center Drive; Fairfield, CA 94534; (707) 399-4400

## EXPULSION APPEAL AND REQUEST FOR HEARING SOLANO COUNTY OFFICE OF EDUCATION

**Note:** This Notice of Appeal, or intent to file such notice, must be communicated to the Solano County Board of Education (SCOE) within **30 calendar days** following the date of expulsion.

In accordance with Education Code Sections §§ 48919- 48924 and the Solano County Board of Education Policy #9000.21, an Expulsion Appeal hearing is hereby requested.

**PLEASE PRINT OR TYPE ALL MATERIALS EXCEPT SIGNATURE.**

NAME OF EXPELLED STUDENT (LAST, FIRST AND MIDDLE INITIAL)	BIRTH DATE	GRADE
ADDRESS (NUMBER, STREET, CITY AND ZIP CODE)		
NAME OF EXPELLING SCHOOL DISTRICT		
SCHOOL FROM WHICH EXPELLED	DATE LOCAL SCHOOL BOARD VOTED TO EXPEL	

**PARENTS (IF GUARDIAN, COMPLETE NEXT SECTION)**

FIRST AND LAST NAME OF PARENT(S)	TELEPHONE NUMBER(S) (    )
	TELEPHONE NUMBER(S) (    )

**GUARDIAN**

FIRST AND LAST NAME OF GUARDIAN	TELEPHONE NUMBER (    )
ADDRESS (NUMBER, STREET, CITY AND ZIP CODE)	

**\*ATTORNEY/ADVISOR (NOTICE MUST BE GIVEN TO SCOE AT TIME OF FILING IF AN ATTORNEY IS REPRESENTING STUDENT.)**

FIRST AND LAST NAME OF ATTORNEY	TELEPHONE NUMBER (    )
ADDRESS (NUMBER, STREET, CITY AND ZIP CODE)	

\*(    ) LEGAL REPRESENTATIVE    (    ) NON-LEGAL REPRESENTATIVE MAY ONLY ADVISE/NOT PERMITTED TO SPEAK ON BEHALF OF THE STUDENT

**PARENT UNDERSTANDING OF REASON(S) GIVEN BY THE LOCAL SCHOOL BOARD FOR EXPULSION:**

ATTACH A COPY OF THE NOTICE OF EXPULSION

**NOTE: AN EXPULSION MAY BE APPEALED ONLY ON ONE OR MORE OF THE FOLLOWING GROUNDS (SEE "SCOPE AND LIMITATIONS OF HEARING" IN EXPULSION APPEAL HANDBOOK):**

**A. THE LOCAL SCHOOL BOARD PROCEEDED WITHOUT OR IN EXCESS OF ITS JURISDICTION.**  
STATE BRIEFLY WHY YOU BELIEVE THIS IS TRUE:


**B. THE LOCAL SCHOOL BOARD FAILED TO PROVIDE FOR A FAIR HEARING.**  
STATE BRIEFLY WHY YOU BELIEVE THIS IS TRUE:


**C. THERE WAS A PREJUDICIAL ABUSE OF DISCRETION IN THE HEARING AS SUCH ABUSE IS DESCRIBED IN SECTION 48922 OF THE EDUCATION CODE.**  
STATE WHAT ABUSE OCCURRED AND HOW IT PREJUDICED THE CASE:


**D. THERE IS NEW, RELEVANT EVIDENCE WHICH COULD NOT HAVE BEEN PRODUCED AT THE TIME OF THE HEARING, OR THERE WAS RELEVANT EVIDENCE WHICH WAS IMPROPERLY EXCLUDED AT THE HEARING**  
EXPLAIN THE CIRCUMSTANCES AND DESCRIBE BRIEFLY THE NATURE OF THE NEW OR IMPROPERLY EXCLUDED EVIDENCE


(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 AM REQUESTING AN OPEN (PUBLIC) SESSION.

I HEREBY CERTIFY THAT I REQUESTED THE DISTRICT SUPERINTENDENT PREPARE A TRANSCRIPT OF THE EXPULSION HEARING AND SUPPORTING DOCUMENTS ON \_\_\_\_\_.

I FURTHER CERTIFY THAT I HAVE RECEIVED AND READ THE *EXPULSION APPEAL HANDBOOK* AND UNDERSTAND THERE ARE CERTAIN REQUIREMENTS THAT I MUST COMPLY WITH IN PROCEEDING WITH THIS APPEAL. I UNDERSTAND THAT THIS FORM MUST BE FILED WITH THE SECRETARY OF THE SOLANO COUNTY BOARD OF EDUCATION WITHIN THIRTY (30) DAYS FROM THE DATE THE DISTRICT BOARD VOTED TO EXPEL MY STUDENT.

I FURTHER CERTIFY THAT THIS INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

PARENT/LEGAL GUARDIAN SIGNATURE (OR STUDENT, IF 18 YEARS OR OLDER)

DATE

## *Sample Letter*

Form: Request for Transcript and Supporting Documents

(NOTE: This letter must be received by the School District Superintendent on or before the date you file the Expulsion Appeal and Request for Hearing with the Solano County Office of Education.)

(Date)

(District Superintendent's Name)

(School District Name)

(School District Address)

### **RE: Request for Transcript and Supporting Documents from School District**

Dear (Superintendent's Name):

This is to inform you that I am filing an Expulsion Appeal and Request for Hearing with the Solano 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) days of this request and the filing of the Expulsion Appeal and Request for Hearing with the Solano County Board of Education, provided my request is within thirty (30) days of the District school board's decision to expel.

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You may contact me regarding this request at: \_\_\_\_\_.  
Daytime Telephone Number

Sincerely,

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name



## *Sample Letter*

Form: Certification of Inability to Afford Cost of Transcript

(DATE)

(District Superintendent's Name)  
(School District Name)  
(School District Address)

### **RE: Certification of Inability to Afford Cost of Transcript**

Dear (Superintendent's Name):

This is to inform you that I, the Parent of \_\_\_\_\_, for the reasons listed below, cannot reasonably afford the cost of the District's expulsion hearing transcript. I request that the transcript be provided to me without cost because of:

Limited income (explain): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Exceptional necessary expenses (explain): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Sincerely,

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name