



**SAN JOAQUIN COUNTY OFFICE OF EDUCATION**  
*James A. Mousalimas*, County Superintendent of Schools

# **SAN JOAQUIN COUNTY BOARD OF EDUCATION**

## **EXPULSION APPEAL HANDBOOK**

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TO ASSIST EXPELLED PUPILS  
AND THEIR PARENTS OR GUARDIANS  
TO UNDERSTAND THE APPEAL PROCESS  
AND THE RIGHTS OF THE PUPIL

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# Expulsion Appeal Handbook

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# EXPULSION APPEAL HANDBOOK

## ***INTRODUCTION***

The San Joaquin County Board of Education has prepared this handbook to assist districts and expelled pupils and the parents or guardians of expelled pupils to understand the appeal process and their respective rights. A thanks is given to the Sacramento County Office of Education for permission to use their format. The handbook constitutes the official procedures adopted by the San Joaquin County Board of Education (County Board) for conducting expulsion appeals.

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

This information must be reviewed in conjunction with the laws on pupil discipline and expulsion appeals within the *California Education Code, Sections 48900-48927*. The school district's policies and administrative procedures for suspension and expulsion should also be reviewed. Parents and districts have the right to consult with, and engage the services of, an advocate or an attorney.

## ***WHAT IS THE PURPOSE OF AN APPEAL?***

The County Board has a limited authority under law to review the procedures followed by the school district prior to expelling a pupil to determine: whether the Education Code was complied with; 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 may consider are described more fully in this handbook under “SCOPE AND LIMITATIONS OF HEARING”.
- The meeting at which the County Board considers the appeal is not a new hearing (de novo) to consider evidence about whether the pupil should have been expelled. The County Board will “hear” evidence only in unusual circumstances. The purpose of the appeal hearing is to listen to arguments as to whether the local school district procedures and the law were properly followed.
- The County Board 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’s review of the appeal for the legal errors it has authority to review may result in: (1) upholding the expulsion decision; (2) reversing the decision and returning the pupil to attend in the local district, as well as possibly expunging the record of the expulsion; or (3) in rare cases, 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 pupil to the local school district does not order attendance at the former school or at any particular school. The local school district has authority to determine attendance within district programs.
- The County Board’s decision will address only expulsion issues. It will not review or order any change in the pupil’s suspension pending expulsion.

## ***WHEN MAY AN APPEAL BE FILED WITH THE COUNTY BOARD OF EDUCATION?***

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 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 actually received 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 governing 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 for violating probation.
- The County Board does not have the authority to hear an appeal for a "stipulated" expulsion.

### ***WHAT IF THE APPEAL IS LATE?***

The County Board has no jurisdiction to consider a late appeal. Any appeal filed after the deadline will be returned, accompanied by a cover letter indicating that the appeal was not processed.

### ***QUESTIONS REGARDING THE FILING OF AN APPEAL***

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

Janine Kaeslin, Assistant Superintendent  
San Joaquin County Office of Education  
County Operated Schools and Programs  
Phone: (209) 468-9265  
Fax: (209) 468-4951

The San Joaquin County Office of Education staff will answer questions and clarify the procedures outlined in this handbook. The staff will also contact the administration of the local school district that implemented the expulsion in order to coordinate the processing of the appeal.

Note: Contacting the San Joaquin County Office of Education with questions or a request to file an appeal does not constitute the filing of an appeal, and has no impact on the deadline for filing an appeal.

## ***SUBMITTING THE EXPULSION APPEAL PAPERWORK***

The notice of appeal may be submitted in person or by mail to:

Janine Kaeslin, Assistant Superintendent  
San Joaquin County Office of Education  
County Operated Schools and Programs  
2707 Transworld Drive (physical)  
P.O. Box 213030 (mailing)  
Stockton, CA 95213-9030

## ***WHAT MUST BE INCLUDED IN THE EXPULSION APPEAL?***

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

- Name, address, and date of birth of the expelled pupil;
- Names, addresses and telephone numbers of the parent(s) or guardian(s) of the pupil and the person or attorney, if any, representing the pupil;
- School district, school, and grade from which the pupil was expelled;
- The date of the school district governing board’s decision to expel and the effective dates of the expulsion;
- A copy of the appellant’s written request to the expelling school district to prepare a transcript of the district expulsion hearing.
- A brief statement, or set of statements, which explain why, in your 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 possible and to 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. 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 C*) in this handbook in lieu of writing a letter.

## **WHO IS RESPONSIBLE FOR FILING THE TRANSCRIPT AND SUPPORTING RECORDS OF THE ORIGINAL EXPULSION HEARING?**

### **A. Parent Responsibility:**

The parent is responsible for immediately requesting that the local school district 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, 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”* (Addendum D) is provided at the back of this handbook. The parent shall file a copy of this request for transcript with the County Board at the time of filing the appeal.

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, exceptional necessary expenses, or both. A *“CERTIFICATION OF INABILITY TO AFFORD COST OF TRANSCRIPT”* (Addendum E) is provided at the back of this handbook.
- 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 a parent who has paid for the cost of preparing the transcript and supporting documents or records.

### **B. Local School District Responsibility:**

The local school district is responsible for preparing an accurate written transcription of the expulsion hearing and copies of all hearing exhibits and correspondence regarding the suspension and expulsion, including documentation that reflects 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 within ten (10) school days following receipt of the parent’s written request. The school district shall mail one copy of these documents directly to the County Superintendent’s designee, with a second copy mailed to the parent as directed on the transcript request form.

- Special Education or 504 Records - if the expelled pupil has an IEP or 504 Plan, or afforded the rights of a special education pupil prior to expulsion, 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. A copy of the “manifestation” IEP or 504 Plan may suffice for this requirement.

### ***SETTING A DATE FOR THE HEARING APPEAL***

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

- The County Board will hold a hearing within twenty (20) school days following receipt of the transcript and supporting documents, unless the parent or the district requests a postponement.
- Either the parent or the local school district may request a postponement by submitting a written request, including the reason, to the San Joaquin County Office of Education at least five (5) calendar days prior to the hearing. The request shall be acted upon by the County Superintendent of Schools within two 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 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 mail at least ten (10) calendar days before the hearing. The notice will specify the date, time, and place of the hearing. The County Board holds regular meetings on the third Wednesday of each month at the San Joaquin County Office of Education Board Room, 2922 Transworld Drive, Stockton. Expulsion appeals are normally scheduled to commence between 12:00 and 1:00 p.m. The County Board may be required to schedule a special meeting with a different date or time to hear the appeal, depending upon its regular business.

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

## ***FAILURE TO APPEAR AT THE HEARING***

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

## ***FILING WRITTEN ARGUMENTS PRIOR TO THE APPEAL HEARING***

The parent, or a representative, 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 parent must send or deliver a copy of the argument to the school district at the same time. The parent may also file a response to any initial written argument submitted by the district, not less than five (5) days prior to the date of the hearing. The parent must send or deliver a copy of the response to the school district at the same time.

The school district also has the right to submit a written argument, or a reply brief, with the County Board. The district's initial argument must be filed at least ten (10) calendar days prior to the hearing date. If the parent files a written argument, the district's response, if any, shall be filed not less than five (5) days prior to the date of the hearing. The district shall also provide the parent with a copy of its reply argument by personal service or by mail no later than the date upon which the district's reply argument or brief is filed.

## ***USE OF THE APPEAL HEARING BINDER***

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

- The binder will typically contain: (Tab 1) parent appeal documents; (Tab 2) discipline review board packet; (Tab 3) findings of facts; (Tab 4) expulsion hearing transcript; (Tab 5) district correspondence to parents, and (Tab 6) district response.
- All pages in the binder are numbered consecutively. Both parties are encouraged to refer to the page numbers in this binder during their presentation. Referring to page numbers will assist the County Board of Education members in following the presentation.

## ***SCOPE AND LIMITATIONS OF THE APPEAL HEARING***

The County Board decides an appeal after: (1) reviewing the expulsion record, including the transcript and documents considered at the original expulsion hearing; (2) considering the issues raised by the parent 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 determine if the pupil's due process rights were violated in a manner which resulted in the pupil receiving an unfair hearing. It is not the charge of the County Board to agree or disagree with the school district governing board's decision to expel the pupil, but to ensure that due process procedures were followed and that a fair hearing was conducted.

A. New Evidence.

A request to offer new evidence must be noted in the appeal documents when filing the notice of appeal. At the appeal hearing, the County Board will hear no evidence other than the information that is already contained in the binder. 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. That evidence should have been offered at the school district hearing rather than now.
- Examples of proper arguments to raise at the appeal hearing in support of an issue raised in the appeal: "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. 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 very limited exception to the County Board not considering new evidence. If the parent proposes an offer of 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 to the school district governing board for reconsideration, along with such instructions the County Board may deem necessary. The County Board may order reconsideration of the entire matter or any part thereof. The County Board may order the pupil reinstated pending such reconsideration; or
- Grant a new hearing (hearing de novo) before the County Board upon reasonable notice to all parties and in conformance with regulations of the County Board; or

In the event that the County Board determines it is neither appropriate to remand the matter to the school district governing board for reconsideration (because the issue is one which the school district could not impartially decide, *e.g.*, “an administrator allegedly told the parents not to attend the expulsion hearing because it would not make any difference”) or to conduct a new de novo hearing (*e.g.*, because the pupil’s misconduct is not the issue on appeal), the County Board members may vote to allow new “sworn evidence” or documents limited to the issue raised. If the taking of new evidence at the same meeting would be prejudicial to the school district (*e.g.*, because a rebuttal witness is not present at the hearing), the County Board may recess the hearing to a future date to receive evidence relevant to the issue raised.

## B. Legal Issues That May Be Considered.

The County Board’s review of the case shall be limited to the following four questions. While these questions are phrased in legal terminology [Code of Civil Procedure §§ 1094.5(b) and (c)] and [Education Code § 48922], there are many factual issues that fall within these questions.

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

Explanation: 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 state law or local board rule? A pupil may not be expelled unless the 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, was the rule a reasonable and valid one and not inconsistent with state law?
- Did the situation involve conduct related to a school activity or to school attendance?
- Was the expulsion hearing commenced and a final decision issued within the time limits prescribed by law?

Special Education - if the pupil has an IEP or 504 Plan, the County Board will also consider the following:

- Was there a pre-expulsion “manifestation” meeting of the IEP or 504 team prior to the expulsion hearing? And was it determined that the misconduct was not a manifestation of the student’s disability? [Education Code § 48915.5(a)], [CFR 300.530 (e)] and [U.S.C. Title 20 Section 1415 (k)].

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.

Explanation: The school district is required to provide a parent timely notice of a hearing; allow the parent to hear and examine all evidence submitted; and provide the parent a reasonable opportunity to present evidence to deny, explain, or mitigate the allegations. (Education Code §§ 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 evidence submitted in support of the expulsion the kind of evidence upon which reasonable persons are accustomed to rely on in serious affairs?
- Was there a failure to introduce any 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(f)?
- Was the parent 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?*

Explanation: Abuse of Discretion - 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; or

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

For example:

- Hearing panel member is from same school as pupil (Education Code § 48918(d);
- Parent received notice of hearing 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 pupil Education Code § 48916(a).

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

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:

- John J. brought a knife to school on 9/12/12. John took the knife out of his backpack and showed it to two pupils 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” including, firearms, brandishing a knife, selling drugs, sexual assault and possession of explosives (Education 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 pupil has previously been warned and later suspended on three 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 [Education Code §§ 48900(k) and 48915(e)(1)].
- (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).

The County Board has the option to return the case to the local school 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 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 pupil 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.

For Example:

- The finding that a pupil 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 pupil testified during the hearing.
- A written witness report from a yard duty aide was insufficient to prove that a pupil smoked marijuana where no other evidence was offered at hearing.

- 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 pupil 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.*
- See the discussion about offering new evidence in “SCOPE AND LIMITATIONS OF THE APPEAL HEARING”.

## ***CONDUCTING THE APPEAL HEARING***

### A. Closed Session.

Expulsion appeals are heard by the County Board in closed session, unless the parent requests in writing, an open session hearing. In closed session, only the parents, or representative, the pupil, and representatives of the local school district are permitted in the room with the County Board members and their staff. In open session, any member of the public may attend the hearing.

### B. Hearing Procedure.

The Board President, or the designated presiding officer for the hearing, 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. A tape recorder will be in operation throughout the hearing.

The parent, or representative, will be asked to indicate whether he/she noted on the expulsion appeal form a request to offer new evidence as part of the appeal hearing. If so,

the County Board will listen to an “offer of proof” and decide whether new evidence should be allowed.

Next, the parent, or representative, will be asked by the Board President to present an opening statement. This is an opportunity for the parent to summarize or provide an overview of the issues in the appeal or provide any background information which will be helpful to County Board members.

The parent will then be allowed to identify the issues identified in the appeal and to provide an argument in support of each aspect of the appeal.

The representative of the school district will be asked to make an opening statement reflecting the school district’s position, and to respond to the issues raised in the parent’s appeal.

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

1. *Whether the governing board acted within 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 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.

C. Issues Raised by County Board Members.

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

- Has the additional finding been made that either: (1) the pupil has received lesser corrections which have not been effective; or (2) the pupil 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 that supports the finding?

- Was the misconduct proven by evidence which shows first-hand knowledge or which is not solely hearsay?

The appellant 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. If the school district representative demonstrates that he/she cannot reasonably respond to an issue raised by the Board member because of surprise, a continuance of the appeal hearing may be granted at the discretion of the County Board.

D. County Board Deliberations.

When the presentations and questions are completed, the County Board will either retire to another room to deliberate or excuse from the Board Room all present except the County Board, 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 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 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 except as noted in these rules.

E. County Board Decision.

After deliberating, the County Board will reconvene in open session and announce its decision. As the County Board consists of five (5) members, three (3) affirmative votes are required to reverse an expulsion decision by a local school district governing board irrespective of the quorum present at the appeal hearing. 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.

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 parent and the governing board of the school district will be notified of the decision of the County Board in writing. The order shall become final when rendered.

F. Appeal of County Board Decision.

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

1. Parent Appeal.

A decision of the County Board to uphold the expulsion decision by a school district governing board is not a decision based upon an evidentiary hearing. The decision is in the nature of exhaustion of an administrative appeal. A parent should contact an attorney to appeal the original decision by the school district that imposed the expulsion.

2. School District Appeal.

A decision of the County Board to reverse the expulsion decision by a school district governing board may be reviewed by the Superior Court in a Writ of Administrative Mandamus (C.C.P. § 1094.5) action filed by the local school district against the County Board. The County Superintendent of Schools will develop an administrative record of the appeal hearing upon receipt of notice from the Court. The order of the County Board to reinstate the pupil to attendance shall be complied with unless the Court grants a “stay” of the order.

## **ADDENDUMS**

- A SAN JOAQUIN COUNTY BOARD OF EDUCATION POLICY 5144.11 – STUDENT EXPULSION APPEAL FROM DISTRICT
- B EXPULSION APPEAL HEARING TIMELINE
- C EXPULSION APPEAL AND REQUEST FOR HEARING – 2 PAGES
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## *ADDENDUM A*

### **STUDENTS**

#### **Appeals from Expulsion**

If a pupil is expelled from a public school in San Joaquin County, the pupil or the parent or guardian of the pupil may, within 30 days following the decision of the local governing board to expel, file an appeal to the County Board of Education which shall hold a hearing thereon and render a decision. Expulsion appeals shall conform to the requirements established under the rules and regulations set forth herein.

The Superintendent shall provide each public school district within the jurisdiction of this Board of Education a copy of these rules and regulations.

#### **Notice of Appeal**

The appeal process is begun by filing, in writing, a notice of appeal with the San Joaquin County Board of Education through the Assistant Superintendent of Schools, Janine Kaeslin; San Joaquin County Office of Education, P. O. Box 213030, Stockton, CA 95213-9030. Appeals may also be submitted in person to the Assistant Superintendent at 2707 Transworld Drive, Stockton, CA 95206. Such notice shall be filed within thirty days following the decision of the local governing board to expel, even in a case where that governing board suspends enforcement of the expulsion in order to assign the pupil to a program of rehabilitation. The Superintendent shall send a copy of the filed notice of appeal to the school district from which the pupil was expelled.

The written notice of appeal shall contain the following information:

1. Pupil's name, date of birth, address and telephone number; parents' or guardians' names, addresses and telephone numbers; legal counsel's name and address, if any.
2. School district, school and grade level from which the pupil was expelled.
3. Date of the district governing board's decision to expel and the effective date of expulsion.
4. A brief statement, which describes why the appellant believes the decision of the local board, should be reversed. It is insufficient merely to recite the grounds for appeal set forth in Education Code Section 48922. Rather, appellant must specify particulars.

#### **Filing of Record, Additional Papers**

The appellant (pupil, parent, guardian or legal counsel) shall submit to the expelling district a request for a copy of the written transcripts and supporting documents from the district simultaneously with the filing of the notice of appeal with the County Board of Education.

The school district shall provide the appellant with the transcripts, supporting documents and records within ten (10) school days following receipt of the appellant's request. The appellant shall immediately file suitable copies of those records with the County Board of Education.

The cost of providing the transcripts and supporting documents shall be borne by the appellant except in either of the following situations:

1. Where the pupil'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.
2. In a case where the County Board reverses the decision of the local governing board, the County Board shall require that the local board reimburse the appellant for the cost of such transcription.

### **Termination by Abandonment**

The appellant is expected to pursue the appeal with diligence. If the appellant fails to pursue the appeal within the prescribed time limits, the County Superintendent or designee may declare the appeal abandoned and terminate proceedings.

### **Termination by Agreement**

The parties may agree to terminate proceedings under whatever terms seem to them appropriate. The parties will be expected to promptly notify the County Superintendent of such agreement.

### **Hearing by County Board**

Upon receipt from the appellant of written transcripts and supporting documents or records, the Superintendent shall place the appeal on the agenda of the County Board of Education. The board shall review the appeal within twenty school days of the receipt of the hearing transcript and expulsion documents and shall render a decision within three school days following the review. The Superintendent or designee shall notify the parties in writing of the date, time and place of the board meeting.

### **Filing of Written Arguments**

The appellant may, if he/she desires, submit a written argument or an appeal brief. Such written argument must be submitted at least ten calendar days prior to the date set for the hearing before the County Board. The Superintendent or designee shall send a copy of the appellant's argument or brief and all other filed documents to the local district.

The district shall have the right to respond by submitting any documents constituting a part of the record which were not submitted by the appellant. In addition, the district shall have the right to submit a written argument or reply brief. The district's responses, if any, shall be submitted not less than five calendar days prior to the date of the hearing. The district shall also serve a copy of its reply brief or written argument upon the appellant or his legal counsel, if any. Such service shall be by personal service or by mailing not later than the date upon which the reply argument or brief is filed with the County Board.

### **Scope of Review**

#### **A. Review of the Board**

Normally, the County Board shall determine an appeal upon review of the record of the school district expulsion hearing and no evidence other than that contained in such record shall be heard

However, the County Board may grant a new (de novo) hearing if the Board finds that:

1. Relevant and material evidence exists which, in the exercise of reasonable diligence, was not and could not have been produced before the local body; or
2. Relevant and material evidence exists which was improperly excluded before the local hearing body.

In either event, the County Board may either:

1. Remand the matter to the school district board for reconsideration, together with such instructions, as the County Board may deem necessary. The County Board may order reconsideration of the entire matter or any part thereof. The County Board may order the pupil reinstated pending such reconsideration; or
2. 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.

#### **B. Appellate Review**

If the County Board determines that neither a remand nor a de novo hearing before the County Board is appropriate, the Board will decide the appeal review of the record of the school district expulsion hearing. The review shall be limited to the following questions:

1. Whether the school district board has proceeded without or in excess of its jurisdiction.  
For example:

- a. Was the offense or infraction for which the pupil was expelled a ground for expulsion authorized by state law or local board rule?
  - b. If the expulsion was based on local board rule, was the rule a reasonable and valid one and not inconsistent with state law?
  - c. Did the situation involve acts not related to a school activity or to school attendance?
  - d. Was the expulsion hearing commenced within the time periods prescribed by law?
2. Whether there was a fair hearing before the school district board. For example:
- a. Was the pupil denied the right to be represented by legal counsel?
  - b. Was the pupil prohibited from introducing testimony of witnesses on his behalf?
  - c. Was there a failure to introduce any evidence to support the recommendation to expel?
  - d. Was the evidence submitted in support of the expulsion the kinds of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs?
  - e. Was the pupil (or his counsel) given an opportunity to confront and question any witnesses who testified at the hearing except as provided in EC 48918(f)?
3. Whether there was prejudicial abuse or discretion in the hearing. Under the law, an abuse of discretion (although not necessarily a prejudicial abuse) would be established: (a) if the school board did not proceed with the expulsion in the manner required by law; or (b) if the decision to expel is not supported by the findings prescribed by Education Code § 48918 (f); or (c) if the findings are not supported by the evidence.
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.

If the County Board finds that a remand or a de novo hearing is not warranted, then the County Board will enter an order either affirming or reversing the school district board's decision. If the County Board reverses the local board's decision, the County Board may also direct the local board to expunge all records of the expulsion {Education Code § 48923(c)} and, in addition, the County Board shall direct the local board to reimburse the appellant for the costs, if any, which the appellant had to bear for written transcription of a record submitted for the appellate review {Education Code § 48921 (2)}.

The decision of the County Board of Education shall be final and binding upon the pupil and the parent or guardian of the pupil and upon the governing board of the school district.

The notice of the final order of the County Board shall be in writing and shall be delivered to the pupil, the parent or guardian, or the pupil's legal representative and to the governing board by personal service or by certified mail. The order shall become final when rendered.

C. Procedure

The hearing will be presided over by the President of the County Board or, in the absence of the President, the Vice-President. The presiding officer, in ruling on matters of procedure and questions of law, may consult with the Board's legal advisor. The usual order of presenting oral argument will be:

1. Appellant's opening argument and appeal issues;
2. Respondent's rebuttal arguments;
3. Appellant's closing argument;
4. Respondent's closing argument;
5. Deliberation and decision.

The hearing will be in closed session unless open session is requested by the student either in filing the Notice of Appeal or by separate written request submitted at least five days prior to the date of the hearing (EC 48920). Whether the hearing is in closed or public session, the County Board may meet in closed session for purposes of deliberation. During a closed session, for the purposes of deliberation, the County Board may include any or all persons except that if one party is present the other party has the right to be present at the same time.

The proceedings before the County Board will be recorded. In the event either party requests a transcript of the hearing, such party shall bear the costs of preparing the transcript. The Board may require a reasonable deposit toward the anticipated costs of the preparation of a transcript.

Appellant may appear in person at such hearing or may be represented by an attorney. However, failure of the appellant to appear at the scheduled hearing, either in person or through legal counsel, may be deemed an abandonment of the appeal and the County Board may dismiss the appeal.

The respondent school district governing board shall have a representative appear at the hearing before the County Board. Such representative may be, but need not be, an attorney. However, the district board's representative should be knowledgeable concerning the facts relating to the expulsion.

Legal References:

EDUCATION CODE  
48900-48927

***ADDENDUM B***

***EXPULSION APPEAL HEARING TIMELINE***

Step	Procedure	Responsibility	When
1	Parent or parent representative makes initial contact with County Office of Education.	Parent	As soon as possible after local school district board's decision to expel
2	Expulsion Appeal Handbook is given to parent through email, the sjcoe.org website, or U.S. mail (certified), per parent request.	County Superintendent or designee	Immediately after contact by parent
3	Parent files expulsion appeal.	Parent	Within thirty (30) calendar days of district expulsion
4	Parent submits written request for pupil's transcript from district and completes "Inability to Pay" form, if applicable.	Parent	Concurrently with submission of expulsion appeal
5	District submits to parent and to County Office of Education pupil's transcript and other pertinent suspension and expulsion documents and notices.	School district	Within ten (10) school days of the receipt of written request from parent
6	Appeal hearing is set and notice of hearing is mailed (certified.) Parents and school district will receive notice at least ten (10) calendar days before the hearing.	County Board of Education	Hearing is scheduled to convene within twenty (20) school days after receipt of transcript and other documents
7	Parents submit to County Office of Education any written argument, brief or documents not delivered previously. Copy must also be sent to district.	Parent	At least ten (10) calendar days prior to appeal hearing date
8	District submits to County Office of Education written argument or brief, and/or response to parent. Copy must be sent to parent.	School district	At least ten (10) calendar days prior to hearing for initial brief. At least five (5) calendar days prior to appeal hearing date for response to initial parent argument.

9	Appeal binders, or packets, are prepared for County Board of Education, to include all documentation submitted. Distribute to parents/pupil, school district, County Board members, County Superintendent and counsel if applicable.	County Superintendent or designee	Approximately four (4) days before appeal hearing
10	Expulsion appeal hearing is conducted in closed session unless public session is requested (five) 5 days in advance.	County Board of Education	As scheduled by the County Board of Education
11	Closed deliberation by the County Board.	County Board (may include counsel)	Following the appeal hearing
12	Decision is announced in open session following closed session deliberation.	County Board President or designee	Immediately following deliberation
13	Written decision is mailed to parent, school district and legal counsel via Certified mail.	County Superintendent or designee	Within three (3) school days after hearing

*ADDENDUM C*

**EXPULSION APPEAL AND REQUEST FOR HEARING**

\_\_\_\_\_  
Last, First, and Middle Initial of Pupil

\_\_\_\_\_  
Date of Birth

\_\_\_\_\_  
Grade

\_\_\_\_\_  
Address (number, street, city, zip code)

\_\_\_\_\_  
School District

\_\_\_\_\_  
School

\_\_\_\_\_  
Date School District Governing Board Voted to Expel

\_\_\_\_\_  
First and Last Names of Parent(s), if applicable

\_\_\_\_\_  
Telephone Number (include area code)

\_\_\_\_\_  
Address (number, street, city, zip code)

\_\_\_\_\_  
First and Last Names of Guardian(s), if applicable

\_\_\_\_\_  
Telephone Number (include area code)

\_\_\_\_\_  
Address (number, street, city, zip code)

\_\_\_\_\_  
First and Last Name of Attorney, if applicable

\_\_\_\_\_  
Telephone Number (include area code)

\_\_\_\_\_  
Address (number, street, city, zip code)

Please state the reason(s) given by the School District Governing Board for expulsion. Please attach a copy of the Notice of Expulsion, if possible.

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

An expulsion may be appealed only on one or more of the following grounds. Check all that apply, and give a brief explanation of why you feel the expulsion should be set aside (reversed) in the area listed below that is applicable to your pupil's case. Attach documentation, if any.

\_\_\_\_\_ The school district governing board proceeded without, or in excess, of its jurisdiction.

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

\_\_\_\_\_ The school district governing board failed to provide for a fair hearing.

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\_\_\_\_\_ There was a prejudicial abuse of discretion in the hearing as such abuse is described in Education Code § 48922.

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\_\_\_\_\_ There is new, relevant evidence that could not have been produced at the time of the hearing, or there was relevant evidence that was improperly excluded at the hearing. Explain the circumstances and describe briefly the nature of the new or improperly excluded evidence.

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Type of Hearing Requested: \_\_\_\_\_ Closed to Public \_\_\_\_\_ Open to the Public  
(Note: Closed hearing is recommended due to student confidentiality issues)

\_\_\_\_\_  
Signature of Parent or Guardian

*NOTE: This Notice of Appeal shall be communicated to the San Joaquin County Board of Education within thirty 30 calendar days following the date of expulsion. Please print or type all materials, except signature.*

*NOTE: Only one (1) copy of this Expulsion Appeal and Request for Hearing is required to be filed with the San Joaquin County Board of Education. The County Board will prepare a copy for the local school district. If you have not already received a copy of the procedures for completing your appeal, please notify the Alternative Programs at the San Joaquin County Office of Education as soon as possible by calling (209) 468-9265*

**SEND OR DELIVER COMPLETED FORM TO:**

Janine Kaeslin, Assistant Superintendent  
San Joaquin County Office of Education  
P.O. Box 213030 (mailing)  
2707 Transworld Drive (physical)  
Stockton, CA 95213

**ADDENDUM D**

**REQUEST FOR TRANSCRIPT AND SUPPORTING DOCUMENTS FROM SCHOOL DISTRICT**

*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 San Joaquin County Board of Education*

\_\_\_\_\_  
Student's Name

\_\_\_\_\_  
Date of Appeal (today's date)

\_\_\_\_\_  
School District Superintendent Name

\_\_\_\_\_  
School District Name

\_\_\_\_\_  
School District Address

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

Dear \_\_\_\_\_:  
(Superintendent)

This is to inform you that I am filing an Expulsion Appeal and Request for Hearing with the San Joaquin 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 San Joaquin County Board of Education, provided my request is within thirty (30) days of the district school board's decision to expel. San Joaquin County Board of Education procedure requires that either (1) your office send a copy of the transcript and supporting documents directly to the San Joaquin 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 San Joaquin County Board of Education and a copy to me at the following address:

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

\_\_\_\_\_ That I am 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 San Joaquin County Board of Education office within one (1) working day of their availability from your office.

Sincerely,

\_\_\_\_\_  
Parent/Guardian Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Telephone Number

*ADDENDUM E*

**CERTIFICATION OF INABILITY TO AFFORD COST OF TRANSCRIPT**

Provide this document to the district Superintendent's office, if applicable

\_\_\_\_\_  
Date

\_\_\_\_\_  
Superintendent Name

\_\_\_\_\_  
School District Name

\_\_\_\_\_  
School District Address

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

Dear \_\_\_\_\_:  
(Superintendent)

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)