



INTEGRITY • CUSTOMER SERVICE • ACCOUNTABILITY • TEAMWORK • INNOVATION • PASSION

Dear Appellant,

This packet has been prepared to assist you in filing an appeal of a student expulsion with the Mendocino County Office of Education. The following materials are enclosed/ attached:

- Expulsion Appeal and Request for Hearing form
- Request for Transcript and Supporting Documents from School District form
- *Expulsion Appeal Handbook*
- Mendocino County Board of Education Policy and Regulation 5144.3

Filing an appeal requires you to complete a **three-step process**:

1. Fully complete the enclosed “Expulsion Appeal and Request for Hearing” form and submit it to the Mendocino County Office of Education, 2240 Old River Road, Ukiah, CA 95482, to the attention of County Superintendent or designee **within 30 days of the district’s expulsion**.
2. Simultaneously, submit to the school district a request for transcript and supporting documents which are a part of the official expulsion record (a form is enclosed for your convenience). The appeal form requires your certification that you have requested the transcript.

The school district is required to provide you with a certified copy of the written transcript and supporting documents within ten (10) school days of your request, as long as a complete “Expulsion Appeal and Request for Hearing” form has been filed with the County Office of Education.

3. File a suitable copy of the transcript and supporting documents with the Mendocino County Office of Education immediately thereafter.

Time is of the essence when filing appeals. The first two steps must be completely within thirty (30) days following the decision of the district board to expel.

Please feel free to call me at 467-5001 if you have any questions.

Sincerely,

County Superintendent of Schools

WG/dm
Enclosures

MENDOCINO COUNTY BOARD OF EDUCATION

Adopted: December 14, 2009

Revised: February 18, 2013



MENDOCINO COUNTY OFFICE OF EDUCATION
WARREN GALLETTI, SUPERINTENDENT OF SCHOOLS
2240 Old River Road • Ukiah, CA 95482-6156 • 707 467-5001 • Fax 707 462-0379

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EXPULSION APPEAL AND REQUEST FOR HEARING
(Must be filed within thirty (30) days of the District Board's decision to expel)

Date: _____

TO: MENDOCINO COUNTY OFFICE OF EDUCATION
2240 Old River Road
Ukiah, CA 95482
Attention: Expulsion Appeal Designee

In accordance with California Education Code 48919-48924 and the Mendocino County Office of Education Policy and Regulation 5144.03, an Expulsion Appeal Hearing is hereby requested.

(Please print or type)

Expelled Student: _____

Birthdate: _____ Grade most recently attended: _____

Parent/Legal Guardian: _____

Address: _____

Home Phone: _____ Work Phone: _____

Legal counsel or other designated representative of the student (if any):

Name: _____

Name of Firm (if appropriate): _____

Address: _____

Phone: _____ Fax: _____

Name of School District: _____

Date District Board Voted to Expel: _____

What is your understanding of the reason your child was expelled?

Why are you appealing the expulsion?

Why should the County Board reverse the decision to expel?

(NOTE: The County Board's review of the District Board's decision shall be limited to the following bases for appeal)

EXPULSION APPEAL AND REQUEST FOR HEARING (continued)

- _____ 1. The District Board acted without or in excess of its jurisdiction in expelling the student. (If applicable, state why you believe this is true.)

- _____ 2. The student was not afforded a fair hearing before the District Board. (If applicable, state why you believe this is true.)

- _____ 3. There was a prejudicial abuse of discretion during the hearing. (If applicable, state what abuse occurred and how it prejudiced the case.)

- _____ 4. There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the District Board. (If applicable, explain the circumstances and describe the nature of the new or improperly excluded evidence.)

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 provide a copy of the transcript of the expulsion hearing and supporting documents on _____ . (date)

I further certify that I have received and read the *Expulsion Appeal Handbook* and understand there are certain requirements and timelines with which I must comply in proceeding with this appeal.

I further certify that the information provided herein is true and correct to the best of my knowledge.

Signature of Parent/Legal Guardian (or student if 18 years of older)

Date

(You may attach additional pages, if necessary)

MENDOCINO COUNTY BOARD OF EDUCATION

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WARREN GALLETTI, SUPERINTENDENT OF SCHOOLS

2240 Old River Road • Ukiah, CA 95482-6156 • 707 467-5001 • Fax 707 462-0379

INTEGRITY • CUSTOMER SERVICE • ACCOUNTABILITY • TEAMWORK • INNOVATION • PASSION

REQUEST FOR TRANSCRIPT AND SUPPORTING DOCUMENTS FROM SCHOOL DISTRICT

DATE: _____

TO: SUPERINTENDENT: _____

SCHOOL DISTRICT: _____

This is to inform you that I am filing an Expulsion Appeal and Request for Hearing with the Mendocino County Board of Education relative to the district's expulsion of my child, _____, California Education Code Sections 48919 and 48921 require that I request from you a copy of the written transcripts of the expulsion hearing and supporting documents certified by you or the Clerk of the District Board to be a true and complete copy.

I understand that these documents will be provided within ten (10) school days of this request, provided my request is within thirty (30) days of the District Board's decision to expel and I have filed the Expulsion Appeal and Request for Hearing with the Mendocino County Board of Education.

Your office may send these documents directly to:

Mendocino County Board of Education
2240 Old River Road
Ukiah, CA 95482
Attention: Expulsion Appeal Designee

You may contact me regarding this request at _____ .
(telephone number)

Sincerely,

Signature of Parent/Legal Guardian (or student if 18 years or older)

Printed Name of Parent/Legal Guardian (or student if 18 years or older)

MENDOCINO COUNTY BOARD OF EDUCATION

EXPULSION APPEAL HANDBOOK

Mendocino County Office of Education
Warren Galletti, Superintendent of Schools
2240 Old River Road
Ukiah, California 95482

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INTRODUCTION

If a pupil is expelled from a public school district in Mendocino County, the pupil or the parent(s) or guardian(s) of the pupil may file an appeal to the Mendocino County Board of Education.

Mendocino County's public school districts include:

Anderson Valley Unified
Arena Union Elementary
Fort Bragg Unified
Laytonville Unified
Leggett Valley Unified
Manchester Union Elementary
Mendocino Unified
Point Arena Joint Union High School
Potter Valley Community Unified
Round Valley Unified
Ukiah Unified
Willits Unified

The Mendocino County Board of Education wishes to inform expelled pupils and their parent(s) or guardian(s) about their right to appeal a decision of their school district board to expel and to help them understand the appeal process.

The information that follows is an explanation of the appeal process. However, it is not a substitute for important original sources such as the California Education Code, Sections 48900-48924, the school district's policies and administrative procedures for suspension and expulsion, and the County Board's policy and procedures for expulsion appeals. You are also entitled to review the record of the school district's expulsion hearing and supporting documents or records and to consult or engage the services of an advocate or an attorney.

WHEN MAY AN APPEAL OF EXPULSION BE FILED WITH THE MENDOCINO COUNTY BOARD OF EDUCATION?

The expelled pupil or the parent(s) or guardian(s) may file a notice of appeal with the Mendocino County Board of Education within thirty (30) calendar days following the decision by the school district board to expel the pupil. If more than thirty (30) calendar days have passed since the date of expulsion, you have given up your right to appeal that decision to the County Board.

On some occasions, a school district board may expel a pupil and suspend enforcement of the expulsion, allowing the pupil to return to school under certain conditions. However, the thirty (30) day time limit for filing an appeal still applies even though the pupil may be attending a district school or program.

An appeal may be filed when the pupil or the parent(s) or guardian(s) believe that one or more of the conditions described under “Scope and Limitations of Hearing” (pages 4-6) have been violated.

It is important to understand that an appeal before the County Board is not a new hearing; rather, it is a review of the record of the school district’s proceedings to determine if legal procedures were followed and a fair hearing was provided. It is not the charge of the County Board to agree or disagree with the school district board’s decision to expel.

HOW IS AN APPEAL MADE?

Completing and submitting an *Expulsion Appeal and Request for Hearing* form with the County Office of Education begins the appeal process.

The *Expulsion Appeal and Request for Hearing* form must be submitted in person or by mail to:

Mendocino County Office of Education
2240 Old River Road
Ukiah, CA 95482
Attention: Expulsion Appeal Designee

FILING OF THE HEARING TRANSCRIPT AND SUPPORTING DOCUMENTS OR RECORDS

On the same day that you submit an *Expulsion Appeal and Request for Hearing* form with the County Office of Education, you must submit to the school district a written request for a copy of the written transcript of the expulsion hearing and all supporting documents or records. For your convenience, a *Request for Transcript and Supporting Documents* form is provided for this purpose.

The school district must provide you with copies of the transcript and supporting documents or records within ten (10) school days following receipt of your written request. Copies of these documents must be filed immediately with the County Office of Education. You may request that the school district mail copies of these documents directly to the County Office of Education, or you may arrange to pick up the documents and deliver them to the County Office of Education yourself.

You must pay the cost of the transcript and documents unless:

- You can certify to the school district that you cannot reasonably afford the cost of preparing the transcript because of limited income or exceptional necessary expenses, or both.
- The County Board reverses the decision of the school district board. The County Board will require the school district board to reimburse you for the cost of the transcript.

WHEN WILL THE HEARING BE HELD?

Once the County Office of Education has received your written notice of appeal, a hearing date will be set. The County Board must hold a hearing within twenty (20) school days following receipt of the written notice. Both you and the school district will be sent notices by mail at least ten (10) calendar days before the hearing indicating the date, time, and place of the hearing.

For good cause or if you and the school district agree in writing, you or the school district may receive a postponement of the hearing not to exceed thirty (30) calendar days. A request for postponement must be made in writing at least seven (7) calendar days prior to the date set for the hearing. A request for postponement received less than seven (7) days prior to the hearing or for a continuation beyond thirty (30) calendar days will be granted only upon a showing of good cause. Reasons for the extension will be included as part of the record at the hearing. The hearing will be held in closed session unless you request that the hearing be held in a public meeting. You may make the request on the “Expulsion Appeal and Request for Hearing” form or in a separate written request filed with the County Office of Education. Any request for a public session must be made in writing at least five (5) calendar days prior to the date of the hearing.

Prior to the hearing, copies of the transcript of the expulsion hearing and supporting documents or records, along with correspondence, written briefs, and other pertinent materials, will be sent to the County Board members for their review. Copies will be sent to you and the school district.

FILING WRITTEN ARGUMENTS

You or your representative may file a written argument or brief with the County Board. Your written argument may not exceed ten (10) pages, excluding exhibits, and must be filed at least seven (7) calendar days prior to the date set for the hearing. You must simultaneously file a copy of your argument or brief with the school district.

The school district also has the opportunity to submit a written argument or brief. Its written argument must comply with the same length and filing timelines. The district must simultaneously serve you or your representative with a copy of its argument or brief.

SCOPE AND LIMITATIONS OF THE HEARING

The County Board rules on an appeal after reviewing the expulsion record -- the transcript and supporting documents or records of the school district expulsion hearing. The County Board will hear no evidence other than that contained in the record. Please remember it is NOT the charge of the County Board to agree or disagree with the school district board's decision to expel the pupil, but to ensure that legal procedures were followed and that a fair hearing was conducted.

The review will be limited to the following four questions:

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

Explanation: The California Education Code (EC 48900, 48900.2, 48900.3, 48900.4, 48900.7, and 48915) specifies the reasons for which a pupil may be suspended or expelled. The Education Code further specifies acts for which the school district board shall expel [EC 48915(c)]. If the violation is not listed in the Education Code, nor written as part of school rules adopted under EC 35291, there are no grounds for expulsion. There are also timelines that must be followed during expulsion proceedings (EC 48918) and the act(s) must be related to school activities or attendance [EC 48900(r) and 48915(a)].

In a matter involving a pupil with previously identified exceptional needs who is currently enrolled in a special education program, the district board may order the pupil expelled only if all the following conditions are met: (1) An individualized education program (IEP) meeting is held within 10 days of the decision to begin expulsion proceedings; (2) The team considers all relevant information, including evaluations, observations, and current placement; (3) The team determines that the pupil's IEP and placement was appropriate and that special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the IEP and that any failure(s) to supply a free and appropriate public education or implement the IEP had no direct impact on the behavior in question; and (4) The team determines that the pupil's disability did not impair his/her ability to understand the impact and consequences of the behavior nor his/her ability to control the behavior (34 CFR 300.530).

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

Explanation: The school district is required to provide you a timely notice of the hearing; to notify you of the specific facts and charges; to allow you to be represented by legal counsel; to allow you to hear and examine all evidence submitted; and to provide you a reasonable opportunity to present evidence to deny, explain or mitigate the allegations (EC 48918).

Although only the district board may take action to expel, it may appoint an administrative panel or hearing officer to hear the case, develop findings of fact, and make a recommendation for

action to the district board. Thus, an administrative panel or hearing officer may conduct the required fair hearing on behalf of the district board. A subsequent hearing before the district board is not required if the expulsion hearing is conducted by an administrative panel or a hearing officer.

3. Was there was a prejudicial abuse of discretion in the hearing?

Explanation: Under the law (EC 48922), an abuse of discretion (although not necessarily a prejudicial abuse) would be established if:

- a. school officials did not meet procedural requirements of the Education Code; or,
- b. the decision to expel is not supported by the findings prescribed by EC 48915; or,
- c. the findings are not supported by the evidence.

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

4. Is there now 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 might have altered the outcome of the school district’s 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 may:

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

The four (4) items listed above are the only grounds for the County Board to reverse the local district board’s decision to expel (EC 48922).

WHAT HAPPENS AT THE HEARING?

The County Board conducts appeal hearings closed session, unless you have requested an open session. The hearings are held at:

Mendocino County Office of Education
2240 Old River Road
Ukiah, CA 95482

When the appeal comes up on the agenda, the President of the County Board, or the designated chair of the hearing, will excuse everyone not involved in the matter from the Board Room. Remaining in the Board Room will be: the pupil and the parent(s) or guardian(s); the pupil’s representative, if any; members of the County Board; legal counsel to the County Board; the

school district's spokesperson(s); the school district's legal representative, if any; and the County Superintendent and any staff necessary to conduct the meeting. A certified court reporter will be present to make a record of the hearing.

The Board President will introduce the matter for the record, including identifying by name all of the parties to the matter who are present. The Board President will also review the scope of the County Board's role and receive as evidence the written transcript of the expulsion hearing and supporting documents or records and written arguments or briefs submitted by you and the school district.

The pupil or the parent or guardian of the pupil or the pupil's representative, if any, will be asked to make a statement. This is an opportunity for you to elaborate upon or to explain more fully the information presented in the notice of appeal you filed and in the written argument or appeal briefs you may have submitted. It is important to remain focused upon the record of the expulsion hearing and one or more of the four (4) questions to which review by the County Board is limited. You need not be concerned about making a polished presentation, but it is important to prepare your presentation in advance. Having notes or a prepared script may be of great help.

Next, the representative(s) of the school district will be asked to make a statement reflecting the school district's position.

Each party will then be invited to make statements in rebuttal until the Board President determines that the position of each party has been fully presented. During and after each presentation, members of the County Board may ask questions of you and the school district's representative(s). When the presentations and questioning are completed, the Board President will declare the hearing closed and excuse all parties except the Board's legal counsel, the County Superintendent and any necessary staff.

The County Board will adjourn and deliberate in closed session. If, during deliberations, the County Board calls back any party associated with the appeal for further questions, all parties will be called back.

As the County Board renders its decision, keep the following in mind:

- The County Board may not substitute its judgment for the judgment of the school district board.
- The County Board may not reverse a school district board's decision because of a technical inadequacy in the hearing process unless it 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 board.

The County Board may only do one of the following [EC 48923]:

1. Remand the matter to the school district for reconsideration of new information which could not have been reasonably produced or which was improperly excluded at the expulsion hearing. The Board may also order the student reinstated during this time.
2. Conduct its own “hearing de novo” (new hearing) to consider new and original information and render its own decision. If the County Board decides to conduct a “hearing de novo,” it must provide reasonable notice to the pupil and the school district’s board.
3. If it is determined that the decision of the school district board is not supported by the findings, but evidence supporting the findings exists in the record of proceeding required by EC 48915, the County Board will remand the matter to the school district to adopt the required findings. The district will be directed to advise you of the date and time of this action. Please note: the district will NOT hold a new hearing. As before, you will receive a written notice of the decision to expel, accompanied by a notice of the right to appeal the expulsion to the County Board of Education. To appeal again, you must file a new written notice within thirty (30) calendar days of the district board’s final action and, at the same time, request the district to provide any new supporting documents. The same procedures and timelines for conducting an appeal hearing will be followed.
4. Affirm the decision of the school district board.
5. Reverse the decision of the school district board. If it reverses the decision, it may also direct the school district to expunge the record of any reference to the expulsion.

The County Board will render a decision within three (3) schooldays of the hearing. The pupil and the school district board will be notified of the final order of the County Board, in writing, either by personal service or by certified mail. The decision of the County Board is final and binding upon the pupil and upon the district board of the school district. The order becomes final when rendered.

PREPARING FOR THE HEARING

When taking the role of spokesperson, it is useful to prepare a statement in advance. The statement should convey the facts of the case from your perspective and should focus on the four questions listed in “Scope and Limitations of the Hearing.” Remember, no matter how compelling an appeal is believed to be, the County Board can only reverse a decision if it addresses one of the four areas.

The County Board will focus on the previous hearing, so your case should be built upon the record of that hearing and any evidence, which could not have been reasonably known or was unfairly excluded during the school district’s expulsion hearing. In preparing the statement, a review of the policies and procedures of the school district is advisable to determine if any procedures or timelines were not adequately met.

There may be grounds for an appeal if you can answer “No” to any of the following questions:

- Did the hearing occur within the time periods prescribed by law?
- Was the expulsion order based upon acts listed in the Education Code or a local district board rule?
- Was the act related to a school activity or attendance?
- Was adequate and timely notice of the hearing given to the pupil?
- Was the pupil notified of the specific facts and charges upon which the expulsion was based and given a copy of the discipline rules related to the violation?
- Was the pupil accorded the right to be represented by legal counsel?
- Was the hearing held in closed session (unless an open session was requested)?
- Was the pupil allowed to present evidence and introduce testimony of witnesses on his/her behalf?
- Was the pupil given the opportunity to hear and/or examine all evidence submitted against him/her and deny, explain, or mitigate the allegations against him/her?
- Was the pupil given an opportunity to confront and question any witnesses who testified at the hearing, except as provided in EC 48918(f)?
- Did school officials meet the procedural requirements of the Education Code?
- Was the district's decision to expel the pupil supported by findings prescribed by EC 48915?
- Were the findings supported by the evidence?
- Was all relevant and material evidence included at the hearing before the school district board?

**ADDITIONAL CONSIDERATIONS FOR
INDIVIDUALS WITH EXCEPTIONAL NEEDS**

If the pupil has exceptional needs and was under an Individualized Education Program (IEP) at the time of the expulsion, review the following:

- Was there a pre-expulsion meeting of the individualized education program team prior to the expulsion hearing [EC 48915.5(a); 34 CFR 300.530]?
- Was the pre-expulsion meeting held within 10 school days of the decision to begin expulsion proceedings?

- During the pre-expulsion meeting, did the team consider all relevant information, including evaluations, observations, and current placement?
- During the pre-expulsion meeting, was it determined that:
 1. The pupil's IEP and placement were appropriate?
 2. Special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the pupil's IEP or that any failure(s) to supply a free and appropriate public education or implement the IEP had no direct impact on the behavior in question?
 3. The pupil's disability did not impair his/her ability to understand the impact and consequences of the behavior?
 4. The pupil's disability did not impair his/her ability to control the behavior?
- If the suspension pending the expulsion hearing extended beyond ten (10) days, was parent agreement or a court order obtained [34 CFR 300.530(e)]? (Note: the pupil may be moved to an appropriate interim alternative placement up to 45 days without parent agreement or a court order if the pupil carries a weapon, knowingly is in possession of a controlled substance, or causes serious bodily injury [34 CFR 300.530(g)]).
- Did the district board, prior to making a final decision, receive special education and disciplinary records of the pupil [IDEA 1415(b)(1)]?

RIGHT TO HAVE AN ATTORNEY OR ADVOCATE

It is the intention of the County Board of Education to conduct hearings in a manner, which does not require attorneys. However, an advocate or legal counsel may be helpful if the procedures are not thoroughly understood or if there is limited English or difficulty in expression before a group. While attorneys are not required, all parties and the County Board of Education have the right to have an attorney present.

RESPONSIBILITIES AND OPTIONS FOR EDUCATIONAL PLACEMENT IF EXPULSION IS UPHELD

If you intend to remain a resident in the school district from which your child was expelled, obtain a copy of its procedures for review and readmission of expelled pupils.

The school district must ensure the pupil is provided with an educational program during the period of the expulsion. The school district will refer the pupil to an appropriate placement as determined by the seriousness of the offense, available alternatives, and other related factors. The placement may be one that is operated by the school district or the County Office of Education.

A pupil expelled for any of the offenses listed in subdivision (a) or (c) of EC 48915 is not permitted to enroll in any other school or district during the period of expulsion unless it is a county community school, a juvenile court school, or a community day school. The County

Office of Education operates Community School programs for pupils in grades seven through twelve. For enrollment information, contact the Office of Alternative Education at 524-2885.

Other options:

- If the pupil has been expelled for an act other than described in EC 48915(a) or (c) you may seek enrollment of the pupil in another school district. You must inform the proposed new school of the expulsion or any pending expulsion.
- You may apply for admission of the pupil in a private school.
- You may employ a tutor. The tutor must possess a valid California teaching credential.
- You may seek enrollment of the pupil in a Community School operated by the County Office of Education.

If you move into a different school district or if the pupil moves into another school district, you or the person who has assumed responsibility for the pupil must notify the new school district of the expulsion or any pending expulsion. The district must hold a hearing to determine if the pupil is a threat to students and staff.

It is important to remember that when a child 6 to 18 years of age is expelled from a school district, the parent or guardian is still responsible to see that the child attends school.

MENDOCINO COUNTY BOARD OF EDUCATION

Adopted: December 14, 2009



MENDOCINO COUNTY OFFICE OF EDUCATION
WARREN GALLETTI, SUPERINTENDENT OF SCHOOLS
2240 Old River Road • Ukiah, CA 95482-6156 • 707 467-5001 • Fax 707 462-0379

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EXPELLABLE ACTIONS

Pupils may be suspended or expelled for any of the following acts related to school attendance or a school activity:

- Causing, attempting to cause, or threatening to cause physical injury to another person [EC 48900(a)(1)].
- Willfully using force or violence upon the person of another, except in self-defense [EC 48900(a)(2)].
- Possessing, selling or otherwise furnishing any firearm, knife, explosive, or other dangerous object, unless, in the case of possession of any object of this type, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal [EC 48900(b)].
- Unlawfully possessing, using, selling, or otherwise furnishing, or being under the influence of, any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind [EC 48900(c)].
- Unlawfully offering, arranging, or negotiating to sell any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and then either selling, delivering, or otherwise furnishing to any person another liquid, substance, or material and representing the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant [EC 48900(d)].
- Committing or attempting to commit robbery or extortion [EC 48900(e)].
- Causing or attempting to cause damage to school property or private property [EC 48900(f)].
- Stealing or attempting to steal school property or private property [EC 48900(g)].
- Possessing or using tobacco, or any products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit use or possession by a pupil of his or her own prescription products [EC 48900(h)].
- Committing an obscene act or engaging in habitual profanity or vulgarity [EC 48900(i)].
- Unlawfully possessing or unlawfully offering, arranging, or negotiating to sell any drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code [EC 48900(j)].

EXPELLABLE ACTIONS (continued)

- Disrupting school activities or otherwise willfully defying the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties [EC 48900(k)].
- Knowingly receiving stolen school property or private property [EC 48900(l)].
- Possessing an imitation firearm. As used in this section, “imitation firearm” means a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm [EC 48900(m)].
- Committing or attempting to commit a sexual assault as defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal Code or committing a sexual battery as defined in Section 243.4 of the Penal Code [EC 48900(n)].
- Harassing, threatening, or intimidating a pupil who is a complaining witness or witness in a school disciplinary proceeding for the purpose of either preventing that pupil from being a witness or retaliating against that pupil for being a witness, or both [EC 48900(o)].
- Unlawfully offering, arranging to sell, negotiating to sell, or selling the prescription drug Soma [EC 48900(p)].
- Engaging in, or attempting to engage in, hazing as defined in subdivision (b) of Section 245.6 of the Penal Code [EC 48900(q)].
- Committing sexual harassment as defined in subdivision (b) of Section 212.5 (grades 4-12 only) [EC 48900.2].
- Causing, attempting to cause, threatening to cause, or participating in, an act of hate violence as defined in subdivision (e) of Section 233 (grades 4-12 only) [EC 48900.3].
- Engaging in harassment, threats, or intimidation, directed against school district personnel or pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of either school personnel or pupils by creating an intimidating or hostile educational environment (grades 4-12 only) [EC 48900.4].
- Making terrorist threats against school officials or school property, or both [EC 48900.7].
- Pupils shall be recommended for expulsion for any of the following acts committed at school or at an activity off school grounds, unless the principal or superintendent finds that expulsion is inappropriate, due to the particular circumstance [EC 48915(a)]:
- Causing serious physical injury to another person, except in self-defense.

EXPELLABLE ACTIONS (continued)

- Possession of any knife, explosive, or other dangerous object of no reasonable use to the pupil.
- Unlawful possession of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for the first offense possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.
- Robbery or extortion.
- Assault or battery upon any school employee as defined in Sections 240 and 242 of the Penal Code.

Pupils shall immediately be suspended and be recommended for expulsion for any of the following acts at school or at a school activity off school grounds [EC 48915(c)]:

- Possessing, selling, or otherwise furnishing a firearm. This subdivision does not apply to an act of possessing a firearm if the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district.
- Brandishing a knife at another person.
- Unlawfully selling a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.
- Committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900.
- Possessing an explosive.

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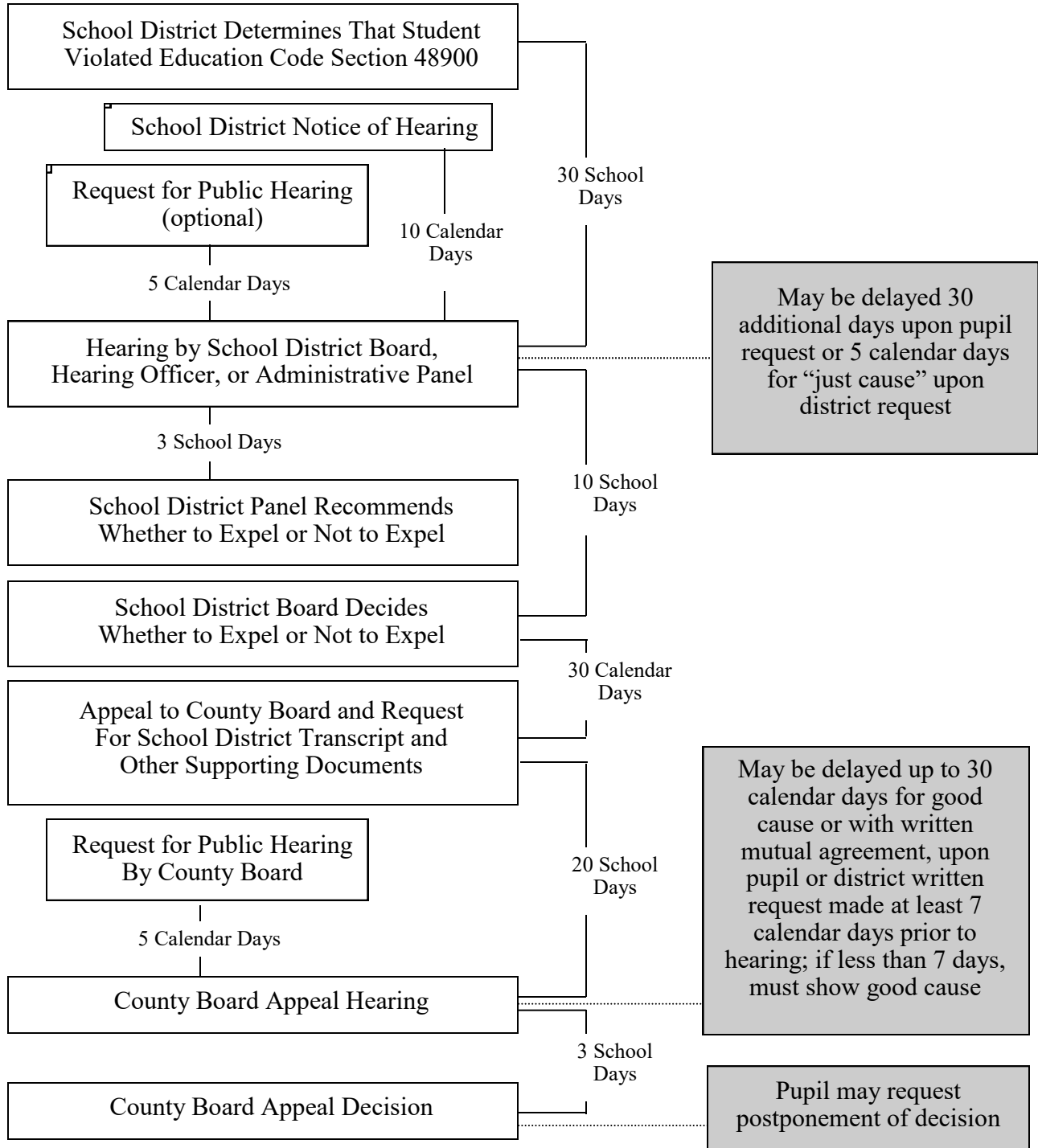
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EXPULSION AND APPEAL TIMELINES





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EXPULSION HEARING COMPLIANCE CHECKLIST

PRE-APPEAL HEARING CRITERIA

- _____ The pupil was afforded a hearing at the district level to determine whether he/she should have been expelled. The hearing was conducted within thirty (30) school days after the principal or superintendent determined that expulsion was appropriate or, if the pupil requested an extension in writing, the hearing was conducted within the appropriate timeframe. [EC 48919(a)]
- _____ Written notice of the hearing was forwarded to the pupil at least ten (10) calendar days prior to the date of the hearing. [EC 48918(a)]
- _____ The hearing notice contained the following information:
- _____ a) the date and place of the hearing
 - _____ b) a statement of the specific facts and charges upon which the proposed expulsion was based
 - _____ c) a copy of the disciplinary rules of the district related to the alleged violation
 - _____ d) a notice of the requirements of EC 48915.1
 - _____ e) a notice of the parent's/pupil's right to appear in person or be represented by counsel
 - _____ f) a notice of the right to inspect all documents to be used at the hearing, question witnesses who testify, question evidence presented at the hearing, and present oral and document
- _____ The hearing was conducted in closed session unless the pupil submitted a request in writing at least five (5) calendar days in advance, that the matter be heard in open session. [EC 48918(c)]
- _____ The recommendation for expulsion was based upon acts of the pupil enumerated in EC 48900 and/or EC 48915 and involved acts related to a school activity or attendance. [EC 48915 and 48918(h)]
- _____ If the pupil has been identified as an individual with exceptional needs, the expulsion hearing took place only after the following occurred: (see BE 5144.03g)
- _____ a) a pre-expulsion assessment was conducted
 - _____ b) an IEP team met and determined that the misconduct was not caused by, nor was it a direct manifestation of, the pupil's identified disability and that the pupil had been appropriately placed
 - _____ c) all due process hearing and appeals, if initiated pursuant to Section 1415 of Title 20 of the United State Code were completed. [EC 58915.5(h)]

EXPULSION HEARING COMPLIANCE CHECKLIST (continued)

- _____ The decision of the district board was made with ten (10) school days after the conclusion of the hearing, unless the pupil requests in writing that the decision be postponed. If the hearing is held by a hearing officer or an administrative panel, or if the district board does not meet on a weekly basis, the district board shall decide whether to expel the pupil within forty (40) school days after the date of the pupil's removal from his or her school of attendance for the incident for which the recommendation for expulsion is made by the principal or superintendent, unless the pupil requests in writing that the decision be postponed. [EC 48918(a)]

- _____ The decision of the district board to expel a pupil was based upon substantial evidence relevant to the charges and adduced at the expulsion hearing and that, except as permitted by law, no evidence to expel was based solely upon hearsay evidence. [EC 48918(f)]

- _____ The pupil/parent/representative was given the opportunity to question witnesses, challenge testimony and evidence against the pupil, and to provide testimony and evidence on the pupil's behalf at the hearing. [EC 48918(j)]

- _____ A record of the hearing was made and maintained by the district. [EC 48918(k)]

- _____ Final action to expel was taken in open board session. [EC 48918(j)]

- _____ The expulsion order was accompanied by a plan of rehabilitation. [EC 48916(b)]

- _____ A notice of expulsion was sent to the parent/pupil and contained information related to the right to appeal the decision to the county board of education. [EC 48918(j)]

- _____ The notice of expulsion contained information regarding an education alternative placement to be provided to the pupil during the time of the expulsion. [EC 48918(j)]

- _____ An appeal of the expulsion was filed by the pupil/parent within thirty (30) school days following the original decision of the district board, regardless of whether a period of probation and/or suspension was ordered. [EC 48919]

- _____ At the time of filing an appeal to the county board of education, the parent/pupil simultaneously submitted a request to the district for a transcript of the proceedings and any related documentation and that such was provided by the district within five (5) school days of the request. [EC 48919]

- _____ The district board provided the county board with a copy of the original expulsion hearing transcript and other related documents. [EC 48919]

EXPULSION HEARING COMPLIANCE CHECKLIST (continued)

POST-APPEAL HEARING CRITERIA

- _____ Based upon the record of the proceedings and a review of the evidence, the district board acted within its jurisdiction. [EC 48922(a)(1)]
- _____ Based upon the record of the proceedings and a review of the evidence, the district board or administrative designee of the board conducted a fair and impartial hearing. [EC 48922(a)(2)]
- _____ Based upon the record of the proceedings and a review of the evidence, there was no prejudicial abuse of discretion in the original hearing. [EC 48922(a)(3)]
- _____ Based upon the record of the proceedings and a review of the evidence, the district was reasonably diligent in providing all material evidence and than no evidence was improperly excluded at the original hearing. [EC 48922(a)(4)]
- _____ Based upon the record of the proceedings and a review of the evidence, the decision to expel was supported by the findings prescribed in EC 48915. [EC 48922(c)(2)]
- _____ Based upon the record of the proceedings and a review of the evidence, the findings were supported in evidence. [EC 48922(c)(3)]

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EXPULSION CHECKLIST FOR SPECIAL EDUCATION STUDENT

In a matter involving a pupil with previously identified exceptional needs who is currently enrolled in a special education program, the district board may order the pupil expelled pursuant to Education Code Section 48915(b) or (d) only if all of the following conditions are met:

- _____ 1. The completion of a pre-expulsion assessment, which shall include a review of the appropriateness of the pupil's placement at the time of the alleged misconduct, and a determination of the relationship, if an, between a pupil's behavior and his/her disability.
 - _____ a. The parent shall make the pupil available for the assessment at a site designated by the local educational agency (LEA) without delay.
 - _____ b. The parent's right to an independent assessment under EC 56329 applies despite the fact that the pupil has been referred for expulsion.
 - _____ c. Parental consent is not required prior to conducting a pre-expulsion educational assessment pursuant to subdivision (e), or as a condition of the final decision of the district board to expel.

- _____ 2. An individual education program (IEP) team meeting is scheduled and held.
 - _____ a. The parent has the right to participate in the IEP meeting preceding the commencement of expulsion proceedings, following the completion of a pre-expulsion assessment, through actual participation, representation, or a telephone conference call.
 - _____ b. The meeting shall be held at a time and place mutually convenient to the parent and the LEA within the period, if any, of the pupil's pre-expulsion suspension.
 - _____ c. A telephone conference call may be substituted for the meeting.
 - _____ d. Each parent shall be notified of his/her right to participate in the meeting at least forty-eight (48) hours prior to the meeting. Unless a parent has requested a postponement, the meeting may be conducted without the parent's participation if the notice required has been provided.
 - _____ e. The notice shall specify that the meeting may be held without the parent's participation unless the parent requests a postponement for up to three (3) additional school days.
 - _____ f. Each parent may request that the meeting be postponed for up to three (3) additional school days.
 - _____ g. If a postponement has been granted, the LEA may extend any suspension of a pupil for the period of postponement if the pupil continues to pose an immediate threat to the safety of himself/herself or others, and the LEA notifies the parent that the suspension will be continued during the postponement. However, the suspension shall not be extended beyond ten (10) consecutive school days unless agreed upon by the parent, or by court order.

EXPULSION CHECKLIST FOR SPECIAL EDUCATION STUDENT (continued)

- ___ h. If a parent who has received proper notice of the meeting refuses to consent to an extension beyond ten (10) consecutive school days and chooses not to participate, the meeting may be conducted without the parent’s participation

- ___ 3. The IEP team shall
 - ___ a. review the pre-expulsion educational assessment.
 - ___ b. review and consider the pupil’s health records and school discipline records.
 - ___ c. determine whether the misconduct was or was not caused by, was or was not a direct manifestation of, the pupil’s identified disability.
 - ___ d. determine whether the pupil had been or had not been appropriately placed at the time the misconduct occurred.

- ___ 4. IEP Team Determination
 If the IEP team determines that the alleged misconduct was not caused by, or a direct manifestation of, the pupil’s disability, and if it is determined that the pupil was appropriately placed, the pupil shall be subject to the applicable disciplinary actions and procedures.

- ___ 5. Due Process Hearing
 The parent has the right to a due process hearing if the parent disagrees with the decision of the IEP team or if the parent disagrees with the decision to rely upon the information obtained, or proposed to be obtained.

- ___ 6. Expulsion Hearing
 - ___ a. No expulsion hearing shall be conducted for an individual with exceptional needs until all the following have occurred:
 - ___ 1) a pre-expulsion assessment is conducted
 - ___ 2) the IEP team met and determined that
 - ___ a) the pupil’s misconduct was not caused by, or was not a direct manifestation of the pupil’s identified disability
 - ___ b) the pupil had been appropriately placed at the time the misconduct occurred
 - ___ 3) due process hearing and appeals, if initiated, are completed

- ___ 7. Transportation
 If an individual with exceptional needs is excluded from school bus transportation, the pupil is entitled to be provided with an alternative form of transportation at no cost to the pupil or parent.

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