

EXPULSION APPEAL HANDBOOK

Mendocino County Office of Education
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TABLE OF CONTENTS

Introduction	1
When May an Appeal of Expulsion be Filed with the County Board of Education?	2
How is an Appeal Made?	2
Filing of the Hearing Transcripts and Supporting Documents	2
When Will the Hearing be Held?	3
Filing Written Arguments	3
Scope and Limitations of the Hearing	4
What Happens at the Hearing?	5
Preparing for the Hearing	7
Additional Considerations for Individuals with Exceptional Needs	8
Right to Have an Attorney or Advocate	9
Responsibilities and Options for Educational Placement if Expulsion is Upheld	9

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