Cecilia A. Massetti, Ed.D.
Superintendent of Schools

Agenda Item 8.5

Board of Education Action Item
September 14, 2021

Topic:
Review of MCBE BB 9630 Expulsion Appeal Policy

Background:
Board Policy 2740 has been renumbered to Madera County Board of Education Policy (MCBE) Board Bylaw (BB) 9630. The duty for the MCBE to serve as the appellate Board falls within the scope of MCBE and has been added as a section 9600 Appeals to the Board Bylaws.

MCBE BB 9630 has been revised in accordance with legal requirements.

Financial Impact:
None

Resource:
Cecilia A. Massetti, Ed.D.
Madera County Superintendent of schools

Recommendation:
It is recommended the Board approve MCBE BB 9630 Expulsion Appeals.

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BYLAWS OF THE BOARD

9600 APPEALS

2000 ADMINISTRATIVE COMPLIANCE / APPEALS
9630 – EXPULSION APPEAL

Expulsion Appeals EXPULSION APPEALS MCBE BB 9630 BP 2740

The Madera County It is the policy of the Board of Education will to hear and resolve expulsion appeals for pupils who have been expelled by local district governing school boards and the student/parent or guardian files an appeal to the County Board of Edcuation. The County Board of Education shall hold a hearing thereon and render its decision. The order shall become final when rendered. The decision of the County Board of Education shall be final and binding upon the pupil and upon the governing board of the school district. Such appeals must be made in writing within thirty (30) days following the decision to expel by the local district governing school board.

Within twenty (20) school days following the filing of the formal request, the County Board of Education shall hold a hearing.

Expulsion appeals shall be heard in closed session, unless the appellant requests a public hearing. When an appeal is considered in closed session, the name of the appellant will not be disclosed. The County Board's decision shall be made at the end of the hearing in public session, and shall require a majority vote of the members of the County Board of Education. Within three (3) school days following the hearing, the final decision of the County Board of Education shall be reduced to writing and transmitted to the affected parties.

The County It is the policy of the Board of Education will to consider the following factors when resolving expulsion appeals:

1. Whether the district governing board has proceeded without or in excess of its jurisdiction.
    a. Hearing is not commenced within prescribed time periods.
    b. Expulsion order is not based on acts enumerated in EC 48900.
    c. Situation involves acts not related to school activity or attendance.

2. Whether there was a fair hearing before the district governing board.

3. Whether there was a prejudicial abuse of discretion in the hearing.
    a. School officials have not met procedural requirements.
    b. Decision to expel is not supported by findings in EC 48915.

4. Whether the findings were supported by the evidence.

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5. Whether there is relevant evidence, which, in the exercise of reasonable diligence, could not have been provided or which was improperly excluded at the hearing before the local district governing board.

Legal Reference
Education Code Sections 48914 Meeting with Parent or Guardian of Pupil 48915 Conduct for Expulsion 48917 Governing Board Responsibilities 48918 Governing Board Procedures 48919 Expulsion to County Board of Education 48920 County Board; Manner of Hearing Expulsion Appeal 48921 Expulsion Appeal to County Board of Education; Transcripts 48922 County Board-scope of Review 48923 Decision of County Board 48924 Finality of County Board Decision 4917-20 48922 Administrative Regulations 5740 Code of Civil Procedure 1094.5 (b/c)

~~Reference: Education Code: 48914, 48915, 4917-20, 48922~~
~~Administrative Regs 5740~~
~~Code of Civil Procedure 1094.5 (b/c)~~

~~Date Approved~~Adopted: 12/18/1989
~~Madera County~~
~~By Board: 12/18/1989 Board of Education:~~
Revised and Renumbered: September 14, 2021

BYLAWS OF THE BOARD

9600 APPEALS

2000 ADMINISTRATIVE COMPLIANCE / APPEALS
9630 – EXPULSION APPEAL

Expulsion Appeals - ProceduresEXPULSION APPEALS – PROCEDURESMCBE BB AR 96302740

Pursuant to adopted policy of the County Board of Education and EC 48915, a student or his parent or guardian may appeal a decision by thea local district governing board of a local district to expel the student to the County Board of Education within thirty (30) days and that the County Board is required to adopt rules and regulations to be followed during the appeals process.

The County Board of Education hereby adopts the following rules and regulations to the matter of expulsion appeals.

1. Request for Hearing *REQUEST FOR HEARING*
    a. An appeal to the County Board of Education is initiated by filing, with the Secretary of the County Board of Education, a request for a hearing before the County Board of Education.
    b. The request for hearing shall be in writing, must be dated and signed by the student or his/her parent or guardian and legal representative, if any, and shall contain the following information:
        i. Name and address of the expelled student
        ii. Name and address of parent or guardian and legal representatives, if any.
        iii. School from which expelled.
        iv. Last grade in which the student was enrolled.
        v. Date of decision to expel student.
        vi. Brief statement of reasons for requesting a hearing before the County Board of Education.

    The request may contain such additional information as the student or his/her parent or guardian or legal representative, if any, considers to be relevant.

    c. The request for hearing may be mailed or personally delivered to the Secretary of the County Board of Education at 1105 S. Madera Ave, Madera, CA 93637 28123 Avenue 14, Madera, California 93638, and must be received by him/her no later than thirty (30) calendar days following the decision to expel by the local district governing board.

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2. Scheduling of Hearing Date ~~SCHEDULING OF HEARING DATE~~
   a. Upon receipt of the request for hearing, the secretary of the County Board of Education shall place the request on the agenda for the next meeting of the County Board of Education for the purpose of setting a time for the hearing.
   b. The County Board of Education shall consider the request for hearing and shall set the matter for hearing no later than the next regularly scheduled meeting of the County Board of Education, but in no case later than twenty (20) school days following the filing of the formal request for appeal, provided that there shall be at least ten (10) days notice of such meeting as specified in Rule 3.

3. Notification of Hearing Date~~NOTIFICATION OF HEARING DATE~~
   The Secretary of the County Board of Education shall notify the student, his/her parent or guardian and legal representative, if any, and the superintendent of the school district involved, of the hearing no later than ten (10) days prior to the date set for the hearing. The notification shall be in writing and shall contain the following information:
   a. Date, time and place of hearing.
   b. A statement that the hearing shall be conducted in executive session unless the student or his parent or guardian shall, in writing, at least five (5) calendar days prior to the hearing, request that the hearing be a public meeting.
   c. A statement that it is the responsibility of the person requesting the hearing to submit a written transcription and documents constituting the record of the proceedings before the local district governing board to the County Board of Education for its review. The cost of the transcript and documents shall be borne in the manner specified by Education Code Section 48921.
   d. Copy of these Rules and Education Code Sections 48914, 48915, 48917, 48918, 48919, and 48920.

4. Certification of Record~~CERTIFICATION OF RECORD~~
   A written transcript together with any other documents that constitute the record of the proceedings before the local district governing board shall be delivered to the Secretary of the County Board of Education no later than five (5) days prior to the date set for the hearing. The party submitting the transcript and documents shall also submit with the transcript and documents a declaration certifying that the transcript and documents are true and correct copies of the original from which they were transcribed or reproduced.

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5. Scope of Hearing~~SCOPE OF HEARING~~
   The County Board of Education shall determine the appeal upon the record of the hearing before the local district governing board. No evidence other than that contained in the record of the proceedings before the local district governing board shall be heard unless the student or his representative claims that relevant evidence exists which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the

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district board in which case he shall be given an opportunity to make an offer or proof on that issue. The record of the proceedings before the district governing board shall be limited to the transcript of the proceedings and such written documentation and evidence as was actually presented to the district governing board and the decision of the district governing board and its findings of fact, if any.

6. Hearing Procedure***HEARING PROCEDURE***
   A permanent record of the hearing before the County Board of Education shall be made:

   The student or his representative shall be heard first and the representative of the district governing board shall be heard second. Each party shall have the right to a rebuttal.

   The President of the County Board of Education shall preside during the hearing and shall supervise the hearing procedure.

7. Scope of Review***SCOPE OF REVIEW***
   The review by the County Board of Education of the decision of the local district governing board shall be limited to the following questions:
   a. Whether the district governing board acted without or in excess of its jurisdiction.
   b. Whether there was a fair hearing before the district governing board.
   c. Whether there was a prejudicial abuse of discretion in the hearing before the district governing board.
   d. Whether there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or was improperly excluded at the hearing before the district governing board.

8. Decision***DECISION***
   a. If, at the conclusion of the hearing, the County Board of Education finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or was improperly excluded at the hearing before the local district governing board it shall either:
      i. Remand the matter to the district governing board for reconsideration and may, in addition, order the student reinstated pending such reconsideration, or
      ii. Grant a hearing de novo as specified in number 9.

   b. In all other cases, the County Board of Education shall either affirm or reverse the decision of the district governing board. In any case in which the County Board of Education reverses the decision of the district governing board, it may also order the district governing board to expunge all records of the student and the district of any reference to the expulsion.

c. The County Board of Education shall prepare and adopt findings of fact setting forth its decision and shall incorporate the same into a written decision which shall be delivered by certified mail to the student, his parent or guardian and legal representatives, if any, and to the district governing board not later than three (3) days after the date of the hearing. The decision shall become final when so delivered and shall be binding upon all the parties.

9. Hearing de Novo ~~***HEARING DE NOVO***~~
   a. In any case in which the County Board of Education grants a hearing de novo pursuant to 8(a), it shall make a finding that there is relevant evidence which, in the exercise of reasonable diligence could not have been produced or was improperly excluded at the hearing before the district governing board and shall incorporate the same into its written decision which shall be delivered to the parties according to the provisions of 8(c) together with the notice of hearing date for the de novo hearing. The notice shall conform to the provisions of 3, except that there need not be a transcript and documents of the proceedings before the district governing board submitted to the County Board of Education prior to a hearing de novo.
   b. All parties may appear at the hearing de novo either with or without counsel and shall have the right to call and cross-examine witnesses, introduce relevant evidence and present oral and written arguments to the County Board of Education.
   c. Technical rules and evidence shall not apply to a hearing de novo but evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.
   d. The representative of the district governing board shall proceed first and the student or his representative shall proceed second. Each party shall be entitled to a brief opening and closing argument.
   e. A permanent record of the hearing shall be made.
   f. The president of the County Board of Education shall preside during the hearing, supervise the hearing, and rule on the admissibility of evidence.
   g. At the conclusion of the hearing de novo, the County Board of Education shall make its decision either affirming, reversing or modifying the decision of the district governing board according to the provisions of 9(c).
   h. The decision of the County Board of Education must be based on substantial evidence.

10. Relief from Rules~~***RELIEF FROM RULES***~~
    The County Board of Education may grant relief from these Rules under such circumstances and subject to such conditions as the County Board of Education shall consider to be appropriate and in the best interests of the persons concerned.

11. Order of Precedence***ORDER OF PRECEDENCE***

These Rules are established pursuant to Section 48915 of the California Education Code and shall at all times be interpreted and applied so as to be consistent with the provisions of the Education Code. In the event any portion of these Rules is found to be inconsistent with or contrary to any portion of the Education Code, then the Education Code shall prevail.

Date Adopted: **by Board:** 1//9/1990January 9, 1990
Revised: _____May 9, 2000
Revised and Renumbered: September 14, 2021

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