MADERA COUNTY
BOARD OF EDUCATION

EXPULSION APPEAL HANDBOOK

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

SEPTEMBER 2021

Expulsion Appeal Handbook

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EXPULSION APPEAL HANDBOOK

INTRODUCTION

The Madera County Board of Education has prepared this handbook to assist expelled pupils and the parents or guardians of expelled pupils to understand the appeal process and the rights of the pupil. 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 Madera County Board of Education (County Board) for conducting expulsion appeals.
Particular attention should be paid to issues noted in italics. These issues have been found confusing to parents and others filing appeals in the past.

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.* You must also review the school district's policies and administrative procedures for suspension and expulsion. Remember, you are entitled to review the record of the school district's hearing and supporting records or documents. You have the right to consult with, and engage the services of, an advocate or 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 <u>not</u> 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 <u>not</u> 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 *<u>within thirty (30) calendar days</u>* 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 <u>after</u> 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.

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:

Dianna Marsh, Assistant Superintendent
Madera County Superintendent of Schools
Phone: (559) 662-3871
Fax: (559) 661-3551
Email: dmarsh@mcsos.org

The Madera County Superintendent of Schools 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 Madera County Superintendent of Schools 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:

Dianna Marsh, Assistant Superintendent
Madera County Superintendent of Schools
1105 S. Madera Ave.
Madera, CA 93637

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" (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" is provided at the back of this handbook (Addendum D).* ***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," is provided at the back of this handbook (Addendum E).*

- 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 Records* - if the expelled pupil is enrolled in special education, 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 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 Madera County Superintendent of Schools, 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 Madera County Superintendent of Schools <u>at least five (5) calendar days</u> 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 second Tuesday of each month at the Madera County Superintendent of Schools Conference Center. Expulsion appeals are normally scheduled to commence between 3:30 p.m. and 5:00 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 Madera County Superintendent of Schools <u>*at least five (5) calendar days*</u> 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 Madera County Superintendent of Schools, a packet that will include all of the information that has been submitted during the appeal process. *Use of the packet is very important in preparing for the appeal hearing.*

- The packet will 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 of the original expulsion hearing transcript and other documents 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 procedures were followed and that a fair hearing was conducted.

A. New Evidence.

A request to offer new evidence must be noted 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 packet. 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 <u>not</u> 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 <u>if</u> 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. (See testimony, page 112, and witness statement, page 143.) 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 <u>only</u> 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 Issue 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 receives special education services, the County Board will also consider the following:

- Was there a pre-expulsion "manifestation" meeting of the IEP 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)].

NOTE: The school district does not have jurisdiction to expel a special education pupil unless the special education meetings and procedures established by law preceding expulsion have been completed.

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 <u>all</u> other types of misconduct, the governing board must also <u>find either of the</u> <u>following facts:</u>

(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). *In practice, it is very difficult to determine whether the finding is justified because it is based upon conclusion and prediction rather than facts.*

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.

- 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 hearsay (or an exception)?

You 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 seven (7) members, four (4) 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.

ADDENDA

A MADERA COUNTY BOARD OF EDUCATION BYLAWS OF THE BOARD 9630 – EXPULSION APPEAL

MADERA COUNTY BOARD OF EDUCATION BYLAWS OF THE BOARD ADMINISTRATIVE REGULATION 9630

B EXPULSION APPEAL HEARING TIMELINE

C EXPULSION APPEAL AND REQUEST FOR HEARING – 2 PAGES

D REQUEST FOR TRANSCRIPT AND SUPPORTING DOCUMENTS FROM SCHOOL DISTRICT

E CERTIFICATION OF INABILITY TO AFFORD COST OF TRANSCRIPT

ADDENDUM A

BYLAWS OF THE BOARD

9630 – EXPULSION APPEAL

Expulsion Appeals ***MCBE BB 9630***

The Madera County Board of Education will hear and resolve expulsion appeals for pupils who have been expelled by local district governing boards and the student/parent or guardian files an appeal to the County Board of Education. 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 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 Board of Education will 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.
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)

Adopted: 12/18/1989
Revised and Renumbered: September 14, 2021

BYLAWS OF THE BOARD

9630 – EXPULSION APPEAL

Expulsion Appeals - Procedures *MCBE BB AR 9630*

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 a local district governing board 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
    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 , 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.

2. 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
   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
   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.

5. 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 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
   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
   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
    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:
        1. Remand the matter to the district governing board for reconsideration and may, in addition, order the student reinstated pending such reconsideration, or
        2. 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
    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

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

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.

Adopted**: January 9, 1990**
Revised: May 9, 2000
Revised and Renumbered: September 14, 2021

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 mcsos.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 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.

_____

_____

_____

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

_____

_____

_____

_____ 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.

_____

_____

_____

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 Madera 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 Madera 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 Madera County Office of Education as soon as possible by calling (209) 468-9265

SEND OR DELIVER COMPLETED FORM TO:

Dianna Marsh, Assistant Superintendent
Madera County Superintendent of Schools
1105 S. Madera Ave., Madera, CA 93637

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 Madera 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 Madera 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 Madera County Board of Education, provided my request is within thirty (30) days of the district school board's decision to expel. Madera County Board of Education procedure requires that either (1) your office send a copy of the transcript and supporting documents directly to the Madera 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:d

_____ That you send a copy of the documents directly to the Madera 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 Madera 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)

Board of Education Expulsion Appeal Handbook